

1 other contexts and other sections should be disclosed.

2 I say, with respect, the considerations of the
3 integrity of the Board's decision-making process militate
4 in favour of keeping this information confidential.

5 Those are my reply submissions.

6 MS. HARE: Thank you. We have no questions.

7 We're hoping that we can make a decision today, but
8 that may or may not happen. So what we would like to do is
9 take a two-hour break until 2:00 o'clock. If it looks like
10 we will not be able to make a decision, we, through
11 counsel, will let you know so that we're not keeping you
12 here all afternoon. Okay? Thank you

13 --- Luncheon recess taken at 11:52 a.m.

14 --- On resuming at 2:10 p.m.

15 **DECISION:**

16 MS. HARE: Please be seated.

17 The Board has made a decision. Toronto Hydro-Electric
18 System limited has argued that the decision on
19 confidentiality dated April 8th, 2014 did not have
20 appropriate regard to the factual and legal context of a
21 section 29 application.

22 Toronto Hydro-Electric System Limited seeks an order
23 that the decision be reviewed and varied so that certain
24 interrogatory responses be kept confidential. The
25 information sought through the interrogatories falls into
26 three general categories:

27 1), historical and current costs for wireless
28 attachments;

1 2), historical and current revenues for wireless
2 attachments;

3 3), terms of an agreement between Toronto Hydro-
4 Electric System Limited and a customer.

5 This panel does not agree that adequate consideration
6 was not given by the original panel to the unique issues
7 associated with a section 29 application. In fact, it is
8 clear that the decision did consider this issue but did not
9 agree with Toronto Hydro-Electric System Limited.

10 The decision specifically states, and I
11 quote: "THESL argues that the Board should
12 approach the issue of confidentiality differently
13 in this case because the application is being
14 made under section 29. The Board does not
15 agree."

16 End quote from that decision.

17 What we have heard this morning was, for the most
18 part, a re-argument of issues raised previously which were
19 not accepted by the original panel. The decision on
20 confidentiality determined that the potential competitive
21 harm to Toronto Hydro-Electric System Limited, a regulated
22 company, did not outweigh the need for transparency and
23 openness.

24 It was not that the previous panel did not consider
25 these issues or that there was an error in fact or law, but
26 rather the panel decided in a way that was contrary to the
27 position of THESL.

28 The Board must continue to be cautious in not

1 overturning decisions simply because a party does not like
2 the outcome of the original decision.

3 With respect to the first two general categories of
4 information, this panel finds that the information being
5 sought deals with current and past costs and revenues
6 incurred by the regulated distributor while offering a
7 service that is currently regulated.

8 Should Toronto Hydro-Electric System Limited be
9 successful in its section 29 application, it will be a
10 competitive service provider with respect to wireless
11 attachments. The Board will no longer regulate the terms,
12 conditions, and rates for wireless attachments. At that
13 time, the treatment of its costs and revenues will be a
14 different matter.

15 This was clearly recognized by the original panel, as
16 it did not require that information relating to Toronto
17 Hydro Energy Service, an unregulated entity, to be
18 disclosed publicly. However, the information sought
19 through these interrogatories relates to a period during
20 which Toronto Hydro-Electric System is offering these
21 services as a regulated business.

22 Ratepayers have a right to know what the past and
23 existing costs and revenues are. The fact that this
24 information has not previously been sought or publicly
25 disclosed by Toronto Hydro-Electric System does not mean
26 that it should not be now.

27 There is one exception that this panel is making to
28 the original panel's findings. This panel finds that

1 copies of the agreement between Toronto Hydro-Electric
2 System Limited and a wireless-attachment customer requested
3 in Board Staff IR No. 22 will remain confidential.

4 This Panel finds that in this case the doctrine of
5 issue estoppel does apply, and as that agreement was
6 afforded confidential status in the CANDAS case, the Board
7 should not revisit that determination. The original
8 panel's decision is varied accordingly.

9 Are there any questions?

10 MR. WARREN: No.

11 MS. HARE: Thank you very much.

12 --- Whereupon the hearing adjourned at 2:17 p.m.

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