



**SPA Inc.**  
**15 Malabar Place**  
**Toronto, Ontario, M3B 1A4**  
**(416) 391-0738 : Cell (416) 930-8735**  
**e-mail : [spainc@rogers.com](mailto:spainc@rogers.com)**  
**Principal: Roger Higgin PhD, MBA, P.Eng.**

October 28, 2018

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Toronto, ON  
M4P 1E4

Dear Ms. Walli,

**Re: EB-2018-0165 Toronto Hydro Electric System Limited 2019-2024 Rate Application  
Procedural Order No 1 Confidentiality Requests  
Comments on behalf of Energy Probe.**

We are consultants for Energy Probe in this case.

We have concerns related to the Claim of Confidentiality regarding the evidence of Power Systems Engineering (PSE), filed at Exhibit 1B Tab 4 Schedule 2

We note, that Energy Probe and its consultants accept the general practice that proprietary information/methods of Consultants is/are protected by Copyright and other Laws.

However, the claim for Confidentiality for PSE goes beyond normal regulatory practice and inhibits the necessary disclosure and discovery process.

This evidence is crucial to the THESL Rate Plan and should be on the Public Record

We also note this is the Second Cost/Reliability Benchmarking Report Filed by PSE. The first was filed in 2014 in EB-2014-0116.

It is appropriate to consider the treatment of the 2014 Report and Evidence

As noted in EB-2014-0116 Toronto Hydro-Electric System Limited-Procedural Order No 1 page 2:

### Confidentiality

THESL filed a redacted Application and an un-redacted version in confidence. THESL requested that the un-redacted information in the areas listed below be maintained in confidence pursuant to Rule 10.01 of the Board's *Rules of Practice and Procedure*:

- Forecast Proceeds from Sale of Properties;
- Cost Difference between Internal and External Construction of Projects;
- Personal Information; and
- Business Numbers.

THESL provided the reasons why it requested confidential treatment and the reasons why public disclosure of the information would be detrimental to THESL.

### **There was no request of confidentiality for the PSE Report and Evidence**

The 2014 PSE Report was filed in EB-2014-0116 Exhibit 1B Tab 2 Schedule 5 Appendix B.

On Page 1 of the 2014 Report, PSE provided the following Notice/Disclaimer regarding THESL information and PSE Proprietary methods, designs, or specifications:

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To our knowledge, no specific request for confidentiality of the PSE Report or Models was made to the Board.

The 2018 PSE Report and Evidence is filed in EB-2018-0165 Exhibit 1B Tab 4 Schedule 2

PSE has not provided a Notice/Disclaimer regarding the Proprietary aspects of its 2018 Report and Methodology

We submit that rather than claiming blanket confidentiality, a similar Notice/Declaration to that in the 2014 Report will protect PSE appropriately in this case.

In addition, examination of the evidence filed in support of PSE's EB-2018-0165 Report leads us to the conclusion that PSE has not provided same level of disclosure and descriptions regarding

the Total Cost and Reliability Models to that provided in Section 2, pages 13-26 of the 2014 PSE Report.

We suggest it is not appropriate for THESL/PSE to file incomplete evidence on the Models and then to request Confidentiality of the whole Report and Models. This requires intervenors, such as Energy Probe, to operate within Confidentiality/NDAs, and constrains the ability to efficiently request information and disclosure regarding the datasets, assumptions and specifications of the Models via Interrogatories, at the Technical Conference, or in Cross Examination.

## **Conclusion**

The PSE Report and Evidence should be placed on the Public Record

PSE has to option to file a Notice/Disclaimer regarding the Proprietary aspects of its work.

If it chooses not to do this, it should clearly indicate why a Notice/Declaration, similar to that in the 2014 PSE Report is not appropriate, and/or, specifically delineate which aspects of its Work and Methodology are Proprietary and require protection under Section 10.01 of the Board's Rules. PSE should also address the issue of providing a greater level of disclosure on the Models.

Absent additional evidence, we suggest the Board deny the Confidentiality request related to PSE Evidence and require THESL/PSE to place complete evidence on the Public Record.

Respectfully submitted

A handwritten signature in blue ink, appearing to read "RM Higgin", is placed over a light blue rectangular background.

Roger M.R. Higgin. SPA Inc. Consultants to Energy Probe

Cc

Toronto Hydro Regulatory Affairs

Charles Keizer  
Crawford Smith  
Torys LLP

Parties of Record