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October 30, 2018

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Our File No. 184158

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: EB-2018-0165: Toronto Hydro-Electric System Limited, Application for electricity distribution rates beginning January 1, 2020 until December 31, 2024

BOMA is writing in response to Toronto Hydro's ("TH") confidentiality claims made in their letters to the Ontario Energy Board (the "Board") on August 15, 2018 and September 28, 2018.

1. In its September 28th letter, following a request from Board staff for the information in italics below, TH asked for confidential treatment of that information which formed the basis for the PSE's benchmarking study. Specifically, TH claimed confidentiality treatment for:

- "a. *Data used in the respective study, in the form of a Microsoft Excel spreadsheet or other files;*
- b. *Microsoft Excel or other files that made use of the source data and produced measures that were used, directly or indirectly, by the respective benchmarking models;*
- c. *Microsoft Excel or other files used to produce the Tables and Figures in the PSE benchmarking report;*

- d. *The computer code used to generate results for the respective benchmarking models; and*
- e. *Electronic GIS files used to define utility service territories and PSE defined urban congested areas."*

The Board has set a high bar for confidentiality requests. In its Practice Direction on Confidential Filings ("Direction"), at p2, it states:

"The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law."

The default position is that the evidence be placed on the public record.

No such prohibition applies to the information cited above. Moreover, this type of information is not included in Appendix B to the Direction, which lists the types of information that has previously been found to be confidential.

PSE's benchmarking study is a critical part of TH's five year rates proposal. The Board has emphasized the importance of benchmarking evidence on several recent occasions. It is important that intervenors have access to the underlying data, on which the study is based. The study is quantitative in nature, and its conclusions are dependent on the integrity of the data inputs.

TH suggests that the data in question has commercial value and public disclosure of it would result in financial and competitive harm to PSE. However, the fact that the material has some commercial value is not, in itself, a compelling reason for confidential treatment. Almost all company methods, procedures, and data have some commercial value. Moreover, TH simply asserts, but offers no evidence, for the proposition that PSE would lose business as a result of disclosure of this data. The opposite might well be true, if its method were distinctive, as the company would benefit from such disclosure to attract additional clients. The applicant does not substantiate the suggestion that any loss to PSE would be significant. Finally, PSE could copyright its study, as it did for a similar study it prepared in EB-2014-0116, to discourage improper commercial use.

In summary, BOMA would suggest the above-listed material be placed on the public record, as requested by Board staff.

2. BOMA supports confidential treatment for the business corporation numbers and personal information contained in those pages of the evidence (Exhibit 4B, Tab 2, Schedule 3) (TH tax filings) labelled confidential in red. These categories of information are contained in Appendix B to the Direction.

3. Commercially sensitive and Proprietary Information (Exhibit 4B, Tab 2, Schedule 3, Tax Form T661).

The information for which confidentiality is claimed is contained in the Scientific Research and Experimental Development Expenditures claims portion of TH's tax returns. TH objects to placing that information on the public record on the basis that release of that information would affect the competitive position of TH. TH does not compete; it is a regulated monopoly carrier. It has no competitive position in the true sense of the word.

On the other hand, information on research and innovation within the utility are an increasingly important part of its activity going forward and that activity is supported, in whole or in part, by ratepayers. Third parties collaborating with TH in joint projects would be aware of TH's regulatory obligations. There may be clauses in the Agreements such parties have with TH which permits release of information if ordered by the regulator. Even if there are not such clauses, the Board can and should place that information on the public record.

4. Difference Between Internal and External Construction Projects

The cost comparison between in-house and contracted out capital project work is a vital part of TH's productivity initiatives, and would be very helpful to ratepayers. The company's evidence does not cite individual contractor's costs, rather it submits average numbers for many contractors. It is, therefore, not likely to affect proposals from third party contractors. Moreover, TH is not obliged to accept any bids. If it thinks that an outside bid is too high, it can seek other bids. Contractors will continue to bid aggressively to work for a very large creditworthy utility with a very large capital program.

5. Information Posing Security and Safety-Related Risks

The first set of confidentiality requests relate to TH's proposal to construct a "dual control centre" to supplement, and reinforce, the existing primary control centre at 500 Commissioner's Road (Exhibit 2B, Section 8.1, Appendix A and Appendix B). This is a very expensive project which will be a focus of attention by BOMA and other intervenors in this proceeding. Aside, perhaps, from Appendix B, Emergency Critical Functions, which is entirely redacted from the evidence. BOMA believes that the redacted material, which is substantial, and includes such subjects as principal drivers for the investment, cost benefit and risk analysis, is excessive, and should not be accepted by the Board.

The project outputs are mainly enhanced reliability, safety of staff, and better customer service. It is not in the main, or at all, a cybersecurity proposal. The material should be placed on the public record, except, perhaps, for Appendix B. BOMA was unable to review Appendix B in a timely manner, as the entire text was blacked out, and the confidential version has not yet been provided, despite a request to TH.

In Exhibit 2B, Section 8.2, the confidential claims are more focused on system security enhancements, in particular, additional automated systems. BOMA would support that more focused request for confidentiality.

Finally, BOMA would ask the Board to direct TH to provide the material for which confidentiality is being claimed to the counsel who have signed the Declarations and Undertakings.

The practice of blacking out those parts of a document for which confidentiality is being claimed is not appropriate, as it does not permit intervenors' counsel to properly judge and respond to TH's claims for confidentiality. The better practice is surely to label the pages as confidential, or underline the portions of a page for which confidentiality is being claimed, or a combination of the two methods.

BOMA has written TH requesting the confidential materials which are the subject of the confidentiality claims, but has had no response.

Yours truly,

FOGLER, RUBINOFF LLP



Thomas Brett

TB/dd

cc: All Parties (*via email*)