



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION ON CONFIDENTIALITY

**Toronto Hydro-Electric System Limited
2020 – 2024 Rates Application**

EB-2018-0165

October 31, 2018

Background

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a 5-year Custom Incentive Rate-setting application with the Ontario Energy Board (OEB) on August 15, 2018 (updated September 14, 2018) under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its distribution rates, to be effective January 1, 2020 to December 31, 2024.

In Procedural Order No. 1, dated October 25, 2018, the OEB provided OEB staff and intervenors the opportunity to provide submissions on the confidentiality requests made by Toronto Hydro.

Toronto Hydro filed certain information in both redacted and un-redacted (confidential) formats. Toronto Hydro requested that the un-redacted information in the evidence listed below be maintained in confidence pursuant to Rule 10.01 of the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings*:

1. Personal information contained in corporate income tax returns
 - Exhibit 4B, Tab 2, Schedule 3, Form T661, Part 1 and Part 2
 - Exhibit 4B, Tab 2, Schedule 3, T2 Summary, Schedules 31, 550, 552 and 569
2. Business numbers contained in corporate income tax returns
 - Exhibit 4B, Tab 2, Schedule 3, Form T661, Part 1, Part 2 and Part 9
 - Exhibit 4B, Tab 2, Schedule 3, T2 Summary, Schedules 1, 2, 5-10, 23, 31, 33, 50, 53, 500, 508, 510, 511, 546, 550, 552, 568 and 569
3. Commercially sensitive and proprietary information contained in corporate income tax returns
 - Exhibit 4B, Tab 2, Schedule 3, Form T661, Parts 2-8
4. Cost difference between internal and external construction projects
 - Exhibit 1B, Tab 2, Schedule 2, p. 22
5. Information posing security and safety-related risks
 - Exhibit 2B, Section E8.1, pp. 1-2, 5-9, 12, 15, 17-18, 20-29, Appendix A, pp. 4, 6, 8 and Appendix B
 - Exhibit 2B, Section E8.2, pp. 1, 3, 16-18, 20, 22, 24-26

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6. Certain datasets and models underpinning the Power Systems Engineering Inc.'s Econometric Benchmarking Report.¹

Toronto Hydro provided rationale supporting the requested confidential treatment.

The OEB's policy is to place all filed documents on the public record, unless it can be satisfied that there is a good reason to keep the information confidential.² The onus rests with the party seeking confidential treatment.

With the exception of category 3 (commercially sensitive and propriety information contained in corporate tax returns), OEB staff submits that the noted evidence should be considered confidential in accordance with the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings* for the reasons that follow.

OEB Staff Submission

OEB staff reviewed the confidentiality requests and the related documents. OEB staff has no objection to the OEB affording confidential treatment to the documents under categories 1-2 and 4-6 (as listed above). As noted by Toronto Hydro in its confidentiality request letters, this type of information is eligible for confidential treatment under the Practice Direction and the OEB has treated similar documents as confidential in previous proceedings.³

OEB staff does have some concerns regarding the information identified as commercially sensitive and proprietary (category 3). These documents (filed in confidence at Exhibit 4B, Tab 2, Schedule 3, Form T661, Parts 2-8) are Toronto Hydro's income tax filings, in particular those related to Expenditures Claims for its claim for Scientific Research and Experimental Development tax credits. Toronto Hydro states

¹ The confidentiality requests for categories 1-5 were filed with the pre-filed evidence (dated August 15, 2018). The confidentiality request for category 6 was filed on September 28, 2018.

² *Practice Direction on Confidential Filings*, October 28, 2016, p. 1.

³ The OEB approved confidential treatment for categories 1, 2 and 4 in Toronto Hydro's 2015-2019 Custom IR proceeding (EB-2014-0116, Decision on Confidentiality and Procedural Order No. 4, January 7, 2015). The OEB approved confidential treatment for category 5 in Ontario Power Generation Inc.'s 2017-2021 Payment Amounts proceeding (EB-2016-0152, Decision and Order on Confidentiality, January 31, 2017). The OEB approved confidential treatment for category 6 in Hydro One Networks Inc.'s 2018-2022 distribution rates proceeding (EB-2017-0049, Decision on Confidentiality, April 12, 2018).

that these documents contain commercially sensitive and proprietary information that, if disclosed, could affect the competitive position of Toronto Hydro and third parties.

It is not apparent to OEB staff why these documents should be considered confidential. Toronto Hydro provided no precedent for declaring this type of information confidential, and similar documents were placed on the public record in Ontario Power Generation Inc.'s most recent Payment Amounts proceeding.⁴ As Toronto Hydro is a monopoly service provider, it is not clear to OEB staff how its "competitive" position could be adversely impacted. To the extent any competitive interest is at stake, it is not clear how the information in the tax returns impacts this interest. At a minimum, the redacted information (which is the documents in their entirety) appears to be overly broad, and Toronto Hydro should provide individual line redactions as opposed to filing the entire document in confidence.

All of which is respectfully submitted.

⁴ EB-2016-0152.