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November 13, 2018

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited (“Toronto Hydro”)  
Custom Incentive Rate-setting Application for 2020-2024 Electricity Distribution Rates  
and Charges – Response to Submissions Received on Confidentiality Request  
Ontario Energy Board (“OEB”) File No. EB-2018-0165**

The purpose of this letter is to reply:

1. to the submissions made in respect of Toronto Hydro’s request for confidential treatment of certain information (the “Confidentiality Request”); and,
2. to the PWU’s letter dated November 8, 2018, written in response to Toronto Hydro’s letter dated November 5, 2018.

### **Confidentiality Request**

Toronto Hydro received submissions from: (i) Energy Probe Research Foundation (“Energy Probe”) by letter dated October 28, 2018; (ii) the Building Owners and Managers Association, Greater Toronto (“BOMA”) by letter dated October 30, 2018; and (iii) OEB Staff by letter dated October 31, 2018.

For the reasons set out in the Confidentiality Request and below, Toronto Hydro maintains that confidential treatment should be afforded to the information requested, with the exception of certain information contained in the 2016 tax return (discussed in section 4, below), pursuant to the OEB’s *Rules of Practice and Procedure* and the *Practice Direction on Confidential Filings*.

***1. The dataset and models relating to Power Systems Engineering Inc.’s (“PSE”)  
Econometric Benchmarking Report contain proprietary technical information***

BOMA and Energy Probe object to Toronto Hydro’s request for confidential treatment of the

dataset and models underlying PSE's Econometric Benchmarking Report.<sup>1</sup>

BOMA's states that this type of information is not specifically enumerated in Appendix B to the *Practice Direction on Confidential Filings*, and that Toronto Hydro has not shown how disclosure will result in substantial loss to PSE.<sup>2</sup>

PSE's dataset and models have been processed, derived, and calculated using significant investment and time. The resulting technical proprietary information has considerable commercial value to PSE. Public disclosure of this information would cause significant financial and competitive harm to PSE.

In previous proceedings (including Toronto Hydro's 2015-2019 Rate Application) the OEB has routinely accorded confidential treatment to the same type of proprietary technical information, on the basis that disclosure would likely adversely affect PSE's competitive position and cause significant loss.<sup>3</sup> This precedent has been recently applied by the OEB in its November 6, 2018 decision in respect of the confidentiality request for PSE data and models in Hydro One Sault Ste. Marie LP's 2019 transmission revenue requirement proceeding:

... the OEB finds that the technical material and the aggregated form of data contained in the Working Papers such as models, calculations, and source codes, represent significant intellectual property. The public disclosure of this information could reasonably be expected to cause potential commercial and financial harm to PSE and SNL [being the third party data provider in that case].<sup>4</sup>

Energy Probe's submissions on this issue contains several inaccuracies. First, Energy Probe argues that a confidentiality request was not made for the same materials in the utility's last Application (EB-2014-0116).<sup>5</sup> To the contrary, in correspondence dated December 19, 2014, Toronto Hydro expressly sought confidential treatment of "information relating to PSE's costs and reliability benchmarking models."<sup>6</sup> In other words, the PSE dataset and models underlying the current Confidentiality Request are identical to the request made in the 2015-2019 proceeding.

Second, Energy Probe appears to assume that Toronto Hydro is seeking confidential treatment

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<sup>1</sup> PSE's Econometric Benchmarking Report is found at Exhibit 4B, Tab 4, Schedule 2.

<sup>2</sup> BOMA Submissions (October 30, 2018) [**"BOMA Submissions"**], p. 2.

<sup>3</sup> Also see: (i) Hydro One Networks Inc.'s 2018-2022 distribution rates proceeding (EB-2017-0049), Decision on Confidentiality (April 12, 2018); and (ii) Hydro One Sault Ste. Marie LP's 2019 transmission revenue requirement proceeding (EB-2018-0218), Decision on Confidentiality and Procedural Order No. 2 (November 6, 2018) [**"EB-2018-0218 PO #2"**].

<sup>4</sup> EB-2018-0218 PO #2, p. 2.

<sup>5</sup> Energy Probe Submissions (October 28, 2018) [**"Energy Probe Submissions"**], p. 2.

<sup>6</sup> See: Toronto Hydro's Confidentiality Request re PSE September 2014 Data (December 19, 2014).

of “the whole [PSE] Report”.<sup>7</sup> This is wrong. The request applies only to the datasets and models underlying the PSE report. The PSE report, in its entirety is publicly available at Exhibit 1B, Tab 4, Schedule 2 of the 2020 Rate Application.

Energy Probe further argues that the 2018 PSE report does not contain the same disclaimer (i.e., prohibiting the unauthorized use of proprietary information) that was found in the PSE report filed in the 2015-2019 Rate Application.<sup>8</sup> Respectfully, the absence of this disclaimer has no bearing on the issue of confidentiality. The presence or absence of such a disclaimer does not change the fact that the underlying datasets and models are proprietary technical information that represent considerable commercial value for PSE.

Finally, Energy Probe asserts that PSE has not provided the same level of disclosure and descriptions in this report as compared to the report included in the 2015-2019 Rate Application. This assertion is equally wrong but has nothing to do with the issue of confidentiality. To the extent the two reports may align or differ in some aspects of their presentation, it has no bearing on the fact that the underlying datasets and models remain proprietary and confidential to PSE.

***2. Disclosure of the cost difference between internal and external construction projects would place upward pressure on Toronto Hydro’s costs***

BOMA objects to confidential treatment of the cost difference between internal and external construction projects. BOMA argues that the average cost difference is not likely to affect proposals from third party contractors, since Toronto Hydro is not obliged to accept any bids that it considers too high.<sup>9</sup>

Toronto Hydro respectfully submits that BOMA’s position fails to recognize the reality and complexities of Toronto Hydro’s negotiations with construction contractors and unions, and that disclosure of this information would likely prejudice Toronto Hydro’s competitive position and place upward pressure on Toronto Hydro’s costs. The OEB recognized these concerns and afforded confidential treatment of the same information in Toronto Hydro’s 2015-2019 Rate Application.<sup>10</sup>

***3. Disclosure of security and safety-related information could adversely impact Toronto Hydro’s infrastructure***

Toronto Hydro received objection from one intervenor, BOMA, on the issue of confidential treatment of the information posing a security or safety-related concern. In its submissions,

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<sup>7</sup> Energy Probe Submissions, p. 3.

<sup>8</sup> Energy Probe Submissions, p. 2.

<sup>9</sup> BOMA Submissions, p. 3.

<sup>10</sup> See: EB-2014-0116 (i) Toronto Hydro letter re Confidential IRs (November 11, 2014), and (ii) OEB Decision on Confidentiality and Procedural Order No. 4 (January 7, 2015) at p. 4.

BOMA argues that the proposed confidentiality redactions are excessive and ought to be narrowed in scope.<sup>11</sup>

Toronto Hydro has reviewed the information and maintains its position that the information warrants confidential treatment. Disclosure of this information would have an adverse impact on the security and safety of Toronto Hydro's infrastructure. Toronto Hydro has carefully only redacted information that contains the vulnerabilities of the utility's safety and security systems, and also any information that, when viewed in aggregate, could indirectly reveal or allow inferences to be drawn regarding the potential existence and nature of such vulnerabilities. As noted in our Confidentiality Request, this type of information has been previously granted confidential treatment by the OEB.<sup>12</sup>

***4. Scientific Research and Experimental Development schedule (redacted from the 2016 corporate tax return) will be filed on the public record***

BOMA and OEB Staff object with respect to the Scientific Research and Experimental Development ("SR&ED") schedule (Form T661) filed on a confidential basis as part of Toronto Hydro's 2016 tax return at Exhibit 4B, Tab 2, Schedule 3.

Toronto Hydro has carefully considered these submissions and is prepared to file the SR&ED schedule on the public record and consequently withdraws its request for confidential treatment in relation to this information.<sup>13</sup> Toronto hydro will be updating its application accordingly and placing this information on the public record. For clarity, Toronto Hydro's business numbers and any personal information remains redacted from this schedule.

**Reply to Power Workers Union**

In its November 5, 2018 letter, Toronto Hydro asked that should the cost difference between internal and external construction projects (item #2 above) be afforded confidential treatment, it not be made available to the PWU including where its representatives have signed the OEB Declaration and Undertaking.

The PWU letter appears to acknowledge the reasonableness of Toronto Hydro's request as it relates to certain representatives but argues that access should be given to its counsel. Toronto Hydro disagrees.

Toronto Hydro's disagreement has nothing to do with the creditworthiness of counsel's undertaking. The issue relates to the difference between the purpose of this proceeding and

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<sup>11</sup> BOMA Submissions, pp. 3-4.

<sup>12</sup> See: EB-2016-0160, Hydro One Networks Inc. Decision on Confidentiality Request (Revised) (September 26, 2016) at pp.3-5; and EB-2016-0152, Ontario Power Generation Inc. Decision and Order on Confidentiality (January 31, 2017) at p. 21.

<sup>13</sup> Being information found at Exhibit 4B, Tab 2, Schedule 3, Form T661, Parts 2-8.

collective bargaining. Here, the OEB is charged with setting just and reasonable rates for the distribution of electricity in Toronto. A number of intervenor groups have been granted status by the OEB expressly to advance the interests of consumers of that electricity. Why the PWU requires the information to advance its interests in the proceeding – however those are defined – is unstated. The application is not intended to enable or facilitate collective bargaining. That however appears to be the genesis of PWU's position. In the most recent round of bargaining the parties agreed in writing that Toronto Hydro would not be obliged to share the information with the PWU. Toronto Hydro's obvious concern now is that the PWU is effectively trying to achieve indirectly a result it could not achieve directly in bargaining. It is inviting the OEB to circumvent the agreement reached by the parties in bargaining. That is not the proper purpose of a rate proceeding and does nothing to advance the objectives of the OEB.

Moreover, even if the PWU's request were related to a genuine need for the information in this case, Toronto Hydro submits that the prejudice to its competitive position outweighs that interest, particularly where, as set out above, the interest of consumers is already represented.

In the event the OEB however is inclined to agree with the PWU that its counsel should be granted access to the information, Toronto Hydro asks that two further restrictions be granted. First, that such individuals be external to and at arms-length from the PWU. Second, that they not be involved in any future collective bargaining-related activities on its behalf.

In its letter, the PWU argues that the Board-mandated Declaration and Undertaking should suffice to protect Toronto Hydro's interest. This argument has twice been made by the PWU and rejected by the OEB. In both OPG's most recent payment amounts proceeding (EB-2016-0152) and the Alectra-Guelph MAADs (EB-2018-0014) case, the OEB required PWU representatives (including counsel) to provide a Declaration and Undertaking as well as an affidavit affirming the satisfaction of certain requirements comparable to the two conditions. In doing so, the OEB indicated its intention to "give ratepayers the highest degree of confidence in the OEB's processes and treatment of highly sensitive information", and not to question "[PWU counsel's] integrity or to suggest that [he has] not complied with previous undertakings".<sup>14</sup>

Please do not hesitate to contact me if you have any questions.

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<sup>14</sup> EB-2016-0152, OEB Letter re: Power workers' Union objections regarding filing of affidavit (January 31, 2017), p. 5.

Yours truly,

A handwritten signature in blue ink that reads "Andrew J. Sasso". The signature is fluid and cursive, with the first name "Andrew" and last name "Sasso" clearly legible.

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cc: Charles Keizer, Torys LLP  
Crawford Smith, Torys LLP  
Intervenors of Record for EB-2018-0165

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