



**EB-2018-0165**

**Toronto Hydro-Electric System Limited**

**Application for electricity distribution rates beginning  
January 1, 2020 until December 31, 2024**

**DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 2  
November 21, 2018**

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a 5-year Custom Incentive Rate-setting (IR) 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.

Procedural Order No. 1, dated October 25, 2018, accepted a number of parties as intervenors in the proceeding and granted cost award eligibility to all parties that requested it. Procedural Order No. 1 also established deadlines for the filing of submissions on Toronto Hydro's confidentiality requests and for Toronto Hydro to reply to the submissions of parties.

The OEB received a late intervention request from the Mowat Centre (Mowat) on October 26, 2018.

On November 20, 2018, the OEB issued two separate letters. The first denied Mowat's intervention request and the second confirmed the Distributed Resource Coalition (DRC) as an intervenor in the proceeding.

The OEB's Decision on Confidentiality and further procedural steps are set out below.

## Decision on Confidentiality

Toronto Hydro filed certain information in both redacted and un-redacted (confidential, which is only available to parties that have signed the OEB's Declaration and Undertaking with respect to confidentiality) 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
6. Certain datasets and models underpinning Power Systems Engineering Inc.'s (PSE) Econometric Benchmarking Report.<sup>1</sup>

The OEB received submissions on Toronto Hydro's confidentiality requests from OEB staff, the Building Owners and Managers Association – Greater Toronto (BOMA) and Energy Probe Research Foundation (Energy Probe).

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<sup>1</sup> The confidentiality requests for items 1-5 were filed with the pre-filed evidence (dated August 15, 2018). The confidentiality request for item 6 was filed on September 28, 2018.

Toronto Hydro filed a letter on November 5, 2018 stating that if the OEB deems the information in Item 4 discussed above to be confidential, the Power Workers Union (PWU) should not receive the confidential information even with the signing of a Declaration and Undertaking. The PWU responded to Toronto Hydro's letter on November 8, 2018 providing reasons the counsel for PWU should have access to the redacted information in Item 4 like any other intervenor.

Toronto Hydro filed a reply submission on November 13, 2018 that responded to the submissions of OEB staff, BOMA and Energy Probe. The reply submission also included a response to PWU's November 8, 2018 letter.

The OEB considered the submissions of parties regarding Toronto Hydro's confidentiality requests. The OEB's findings on each of Toronto Hydro's confidentiality requests are set out below.

1. Personal information contained in corporate income tax returns

The OEB agrees with Toronto Hydro that the information identified in its tax return is personal information. In accordance with section 4.3 of the OEB's *Practice Direction on Confidential Filings* and Rule 9A.02 of the OEB's *Rules of Practice and Procedure*, the un-redacted version of the information will not be provided to any other party, including a person who has provided a Declaration and Undertaking under the *Practice Direction on Confidential Filings*.

2. Business numbers contained in corporate income tax returns

The OEB finds that Toronto Hydro's business numbers shall be kept confidential. Disclosure of this information could expose Toronto Hydro to the risk of fraud.

3. Commercially sensitive and proprietary information contained in corporate income tax returns

The OEB notes that Toronto Hydro, in its reply submission, withdrew its confidentiality request for this category of information. An un-redacted version of this information was filed publicly on the record.<sup>2</sup>

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<sup>2</sup> The business numbers and personal information contained in these tax forms remains redacted.

#### 4. Cost difference between internal and external construction projects

The OEB considers the redacted information set out at Exhibit 1B, Tab 2, Schedule 2, page 22 to be sufficiently aggregated such that negotiations with construction contractors or unions should not be impacted. The publicly filed evidence indicates that the redacted information was “calculated using the weighted average of individual estimate variances equal to the portion of contractor work performed by each of the six or seven contractors in a reference year”.<sup>3</sup> Given the information is a weighted average of work from multiple contractors it is not clear how disclosure of this information would impact individual negotiations. Public disclosure of this information could make it less complicated to test Toronto Hydro’s application.

The OEB recognizes that this same information was granted confidential treatment in Toronto Hydro’s last Custom IR proceeding<sup>4</sup>, and Toronto Hydro’s submissions were predominately focused on whether counsel for the PWU should be granted access. Therefore, the OEB will provide an opportunity for Toronto Hydro to augment its submission with respect to whether the information related to the cost difference between internal and external construction projects should be granted confidential treatment before the OEB makes a final determination.

#### 5. Information posing security and safety-related risks

The OEB agrees with Toronto Hydro that there is the potential for security and/or safety-related risks if the information identified by Toronto Hydro in its proposed general plant capital-related evidence is made public. As such, the information will be kept confidential.

#### 6. Certain datasets and models underpinning PSE’s Econometric Benchmarking Report.

The OEB will treat the datasets and models supporting PSE’s Econometric Benchmarking Report as confidential on the basis that the datasets and models contain proprietary technical information. This is consistent with how the OEB has treated this type of material in previous proceedings.<sup>5</sup> The public disclosure of this information could reasonably be expected to cause potential commercial and financial harm to PSE.

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<sup>3</sup> EB-2018-0165, Exhibit 1B, Tab 2, Schedule 2, p. 22.

<sup>4</sup> EB-2014-0116.

<sup>5</sup> For example in EB-2018-0218 for Hydro One SSM.

## Procedural Order

Procedural Order No. 1 established deadlines up to the filing of reply submissions on Toronto Hydro's confidentiality requests. The OEB sets out further procedural steps below.

## Interrogatories

At this time, provision will be made for written interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be material. Parties should use the materiality thresholds documented in Chapter 2 of the Filing Requirements as a guide. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

Parties should consult sections 26 and 27 of the OEB's *Rules of Practice and Procedure* regarding required naming and numbering conventions and other matters related to interrogatories.

## Issues List

The OEB is making provision for an issues conference. OEB staff will provide a draft issues list to the applicant and intervenors prior to the issues conference. At the issues conference, OEB staff shall work with the applicant and intervenors to attempt to come to an agreement on the draft issues list for consideration by the OEB. If an agreement is not reached, the OEB will accept submissions on the draft issues list.

## Application Update

Toronto Hydro plans to file an update to its application after 2018 results are available, and provided a list of planned application updates as part of its evidence.<sup>6</sup> The OEB has scheduled procedural steps for this proceeding up to the filing of this updated evidence. In order to schedule the additional procedural steps, the OEB requires Toronto Hydro to confirm the timing for the planned updated evidence. The OEB's preference is that all application updates be made at one time.

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<sup>6</sup> EB-2018-0165, Updated Exhibit 1A, Tab 3, Schedule 1, Appendix B.

## Expert Evidence

If either OEB staff or any cost eligible intervenor plans to file expert evidence in this proceeding, the proponents of such evidence shall first file a letter with the OEB describing the nature of the evidence, whether the expert evidence will be commissioned jointly with other parties, how those customers represented by the intervenors are affected by the subject matter of the evidence, the estimated cost for the evidence, and the anticipated date for the filing of any such evidence. In addition, the expert's prior experience testifying on the subject before a regulator should be included.

The estimated cost should include an explanation of any assumptions regarding the purpose and scope of the participation of the expert in the proceeding, and should include an estimate of any incremental time that will be spent by the intervenor's counsel or any other consultant(s) in relation to the expert evidence.

After reviewing this material, the OEB will provide guidance on whether and to what extent any costs associated with the participation of any expert(s) or the preparation of any expert report(s) will be eligible for cost recovery.

Parties should note that the schedule set out below may be adjusted subject to the OEB's consideration of any expert evidence proposals or to accommodate any other required changes to the proceeding.

It is necessary to make provision for the following matters related to this proceeding. The OEB will issue further procedural orders from time to time.

## THE ONTARIO ENERGY BOARD ORDERS THAT:

### Confidentiality

1. Toronto Hydro shall file a supplementary submission on its confidentiality request with respect to Item 4 (as discussed above) with the OEB and serve it on all intervenors by **November 27, 2018**.

### Interrogatories

2. OEB staff and intervenors shall request any relevant information and documentation from Toronto Hydro that is in addition to the evidence already

filed, by written interrogatories filed with the OEB and served on all parties by **December 18, 2018**.

3. Toronto Hydro shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **January 21, 2019**.

### Issues List

4. OEB staff will provide a draft issues list to Toronto Hydro and intervenors by **January 24, 2019**.
5. An issues conference will be held on **January 25, 2019** starting at 9:30 a.m. in the OEB's Offices at 2300 Yonge Street, 25th floor, Toronto, Ontario.
6. If agreement is reached on the draft issues list, the agreed to draft issues list shall be filed with the OEB on **February 4, 2019**.
7. If no agreement is reached on the draft issues list, submissions on the draft issues list shall be filed by **February 5, 2019**.

### Application Update

8. Toronto Hydro shall file a letter advising the OEB as to when its planned application updates will be filed by **February 13, 2019**.

### Technical Conference

9. A transcribed technical conference will be held on **February 19, 2019** starting at 9:30 a.m. in the OEB's Offices at 2300 Yonge Street, 25th floor, Toronto, Ontario to clarify any matters arising from the interrogatories. If required, the technical conference will continue on **February 20 and 21, 2019**. Parties intending to participate are to notify Toronto Hydro, and copy all parties, of the topic areas for questioning by **February 13, 2019**.

### Expert Evidence

10. OEB staff shall inform the OEB if it plans to file expert evidence no later than **February 5, 2019**, and shall provide the details described on page 6.

11. Cost eligible intervenors that plan to file expert evidence shall inform the OEB of those plans no later than **February 12, 2019**, and shall provide the details described on page 6.
12. OEB staff and any intervenors permitted to file expert evidence shall file such evidence with the OEB, and provide a copy to Toronto Hydro and intervenors by **March 12, 2019**.
13. OEB staff, intervenors or the applicant shall request any relevant information and documentation regarding filed OEB staff and intervenor evidence by written interrogatories filed with the OEB and served on all parties by **March 21, 2019**.
14. Intervenors and OEB staff that filed evidence shall file with the OEB complete written responses to the interrogatories and serve them on the applicant, all intervenors and OEB staff by **April 3, 2019**.

All filings to the OEB must quote the file number, EB-2018-0165, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB flash drive in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Lawrie Gluck at [lawrie.gluck@oeb.ca](mailto:lawrie.gluck@oeb.ca) and OEB Counsel, Michael Millar at [michael.millar@oeb.ca](mailto:michael.millar@oeb.ca).



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**DATED** at Toronto, November 21, 2018

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary