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November 27, 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 – Supplementary Confidentiality Submission  
Ontario Energy Board ("OEB") File No. EB-2018-0165**

Pursuant to the OEB's Decision on Confidentiality and Procedural Order No. 2, Toronto Hydro provides its supplementary submission on its request for confidential treatment of the cost difference between internal and contractor construction projects.<sup>1</sup>

Toronto Hydro submits that the disclosure of this information, which has never been released to contractors or unions and which has historically been treated as confidential by the OEB, will harm ratepayers by applying upward pressure on Toronto Hydro's costs.

The utility further submits that the confidential treatment of this information will not complicate assessment of Toronto Hydro's application, and that in any event, the OEB should not consider complexity as a consideration in its assessment of confidential treatment.

**i. Disclosure of this information will cause cost increases**

Toronto Hydro relies on a competitive procurement process to secure contractors at the best value for the utility and its ratepayers. The OEB found this information to be confidential in Toronto Hydro's last rate application,<sup>2</sup> and Toronto Hydro and the OEB have continued to treat it on a confidential basis in Toronto Hydro's annual reporting of the metric in question. Disclosure of this commercially sensitive information now will harm ratepayers by applying upward pressure on Toronto Hydro's costs and interfere in Toronto Hydro's future negotiations with both external contractors and collective bargaining units.

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<sup>1</sup> Exhibit 1B, Tab 2, Schedule 2, page 22.

<sup>2</sup> EB-2014-0116, Toronto Hydro-Electric System Limited Application (filed July 31, 2014).

In the circumstance that the information reveals contractor costs to be lower than internal labour costs, disclosure of the cost difference between internal versus contractor work will inevitably incentivize the contractor group as a whole to increase prices, narrowing the price gap with internal resources and driving up overall costs.

Similarly, in the circumstance that the information reveals internal labor costs to be lower than contractor costs, disclosure of the cost difference between internal versus contractor work will inevitably incentivize collective bargaining units to increase their bottom line in future negotiations with the utility, narrowing the price gap with external resources and driving up overall costs.

The fact that the data is aggregated does not remedy this problem so long as it reveals a difference between contractor and internal labour costs. For example, in the case where contractors costs are lower than internal labour costs, a contractor that is utilized for a significant portion of the utility's work can easily develop an understanding of its pricing relative to Toronto Hydro's internal cost based on the release of this aggregate number. There are a limited number of contractors who undertake work on Toronto Hydro's distribution system, and an even smaller number of contractors with the capacity and specialized expertise to regularly undertake major construction work for a utility of this size and complexity. An external contractor need only have a reasonable approximation of its cost difference (rather than an exact number) to be motivated to increase its pricing in future bids. The resulting impact creates a direct prejudice on the utility's competitive position and places upward pressure on costs.

In addition, Toronto Hydro competes for these contractors with other major utilities that execute sizeable capital programs in and around the Greater Toronto Area. This further heightens the importance of keeping the average cost difference confidential, so as to avoid negatively impacting the utility's negotiations and, in turn, the interest of ratepayers.

**ii. Confidential treatment of this information does not complicate matters**

Toronto Hydro also submits that the confidential treatment of this number will not create any complexities or hinder the OEB's ability to evaluate its application. This information appears a single time within the entire application,<sup>3</sup> and in the context of reporting on a historical 2015-2019 measure that the utility will not be tracking during the period (2020-2024) for the present application.

In addition, while the OEB stated in its Procedural Order No. 2 that "[p]ublic disclosure of this information could make it less complicated to test Toronto Hydro's application.", Toronto Hydro respectfully submits that complexity is not a relevant factor to consider in assessing an

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<sup>3</sup> Exhibit 1B, Tab 2, Schedule 2, page 22.

applicant's confidentiality request.

The Board's *Practice Direction on Confidential Filings* (the "Practice Direction") makes no reference to complexity as a factor in determining confidential treatment. As Appendix A of the Practice Direction makes clear, relevant factors include potential harm that disclosure could create and the nature of the information itself.

In any event, as mentioned above, since the internal versus contractor cost difference appears in a single instance throughout the entire Application, Toronto Hydro submits that confidential treatment will not create any complexity hindering the efficiency of this proceeding.

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

Yours truly,

A handwritten signature in blue ink, reading "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