



EB-2018-0165

**Toronto Hydro-Electric System Limited**

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

**DECISION ON CONFIDENTIALITY  
December 14, 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.

In its Decision on Confidentiality and Procedural Order No. 2, the OEB approved confidential status for four of the six categories of information requested by Toronto Hydro.<sup>1</sup> For the cost difference between internal and external construction projects<sup>2</sup>, the OEB considered the redacted information sufficiently aggregated such that negotiations with construction contractors or unions should not be impacted. The OEB also noted that public disclosure of this information could make it less complicated to test Toronto Hydro's application.

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<sup>1</sup> In its reply submission on confidentiality, dated November 13, 2018, Toronto Hydro withdrew its confidentiality request related to commercially sensitive and proprietary information in its corporate tax returns. An un-redacted copy of this information is filed on the public record for this proceeding.

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

The OEB previously treated this information as confidential.<sup>3</sup> The OEB provided Toronto Hydro with the opportunity to augment its submission before the OEB made a final determination.

Toronto Hydro's supplemental submission largely reiterated the same point previously made; that disclosure of the information would affect both its contracting and collective bargaining, and therefore would result in increased costs for its customers. Toronto Hydro submitted that the fact that the data is aggregated does not remedy this concern as long as it reveals any difference between contractor and internal labour costs, which the external contractors or the labour unions could use to benefit their position in future bargaining with the utility.

Toronto Hydro also argued that it would not be more complex to test its application if the information is confidential, and that complexity is not one of the OEB's criteria for determining whether information will be kept confidential.

The OEB did not say that complexity was a criteria it considered for determining whether information should be granted confidential status. The OEB's *Practice Direction on Confidential Filings* (Practice Direction) states that "[t]he Board and parties to a proceeding are required to devote additional resources to the administration, management and adjudication of confidentiality requests and confidential filings."<sup>4</sup> This is reiterated in the OEB's Chapter 1 Filing Requirements for Distribution Rate Applications.<sup>5</sup> The Practice Direction also states that "[t]he 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."<sup>6</sup> The onus is on Toronto Hydro to demonstrate that confidential treatment is warranted.

The OEB is not satisfied that Toronto Hydro has provided sufficient rationale for granting confidential treatment for the cost difference between internal and external construction projects. However, the OEB has further questions for Toronto Hydro on this matter. Rather than continue this process through written questions and submissions, the OEB will reserve its judgement at this time.

The OEB intends to hold an oral hearing for this Toronto Hydro proceeding. This will afford an opportunity for the OEB to ensure it has all of the relevant information on this

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<sup>3</sup> EB-2014-0116, Decision on Confidentiality and Procedural Order No. 4, January 7, 2015.

<sup>4</sup> Ontario Energy Board, *Practice Direction on Confidential Filings*, p. 2.

<sup>5</sup> Ontario Energy Board, Filing Requirements for Electricity Distribution Rate Applications, Chapter 1, p. 3.

<sup>6</sup> Ontario Energy Board, *Practice Direction on Confidential Filings*, p. 2.

matter. All parties shall continue to treat this information confidential until the OEB makes a final determination.

Toronto Hydro submitted that the PWU should not have access to the un-redacted version of its evidence on the cost difference between internal and external construction projects.

Counsel for the PWU argued that the OEB's mandated Confidentiality Declaration and Undertaking (Undertaking) requires a person to commit that the confidential information will be used exclusively for duties performed in respect of this proceeding, and that the confidential information not be disclosed except to a person granted access to such confidential information, or to the OEB.

The OEB will permit the disclosure specifically to Richard Stevenson, counsel for PWU. No staff or other representatives from PWU are granted access. As all parties are aware, there are significant consequences for breaches of the OEB's Undertaking. In addition to sanctions that the OEB can take, Mr. Stevenson as a lawyer has additional obligations to the Law Society of Ontario (LSO), and in particular to the LSO's *Rules of Professional Conduct*, to which he is bound. The OEB is satisfied that the significant consequences of a breach of the Undertaking are such that the risk of disclosure is minimized.

**DATED** at Toronto, December 14, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary