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January 21, 2019

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited ("Toronto Hydro")  
Custom Incentive Rate-setting ("Custom IR") Application for 2020-2024 Electricity Distribution  
Rates and Charges – Interrogatories Responses – Request for Confidential Treatment  
OEB File No. EB-2018-0165**

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Pursuant to Rule 10.01 of the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings* (the "**Practice Direction**"), Toronto Hydro requests that certain information contained in documents produced as part of the utility's interrogatory responses be kept confidential.

Toronto Hydro seeks confidential treatment in relation to portions of the documents submitted in response to interrogatories (the "**Responsive Documents**"). The Responsive Documents include documents prepared internally by Toronto Hydro, reports prepared for and on behalf of Toronto Hydro by its consultants as well as consultant retainer agreements.

Descriptions of the particular information contained in the Responsive Documents for which Toronto Hydro seeks confidential treatment and the rationale for the request, including the reasons that public disclosure would be detrimental to Toronto Hydro or others, are set out below. In all cases the information for which confidential treatment is sought is information of the type contemplated by Appendix A to the *Practice Direction*.

**Appendix 'A'** to this letter contains unredacted, confidential versions of the Responsive Documents, each of which has been marked "confidential" and identifies all portions of the document for which confidentiality is claimed by using highlighting. The confidential materials in Appendix 'A' are being provided to the OEB in a separate, sealed envelope that is marked "confidential" and have been excluded from the electronic version of this request.

Toronto Hydro is requesting confidential treatment for information contained in the Responsive Documents on several bases, which can be broadly categorized as:

1. information of, or pertaining to, third parties that is subject to existing contractual confidentiality obligations;

2. commercially sensitive proprietary information of consultants, the public disclosure of which could prejudice such entities' commercial interests and competitive positions;
3. personal information related to specific identifiable individuals;
4. business numbers contained in corporate tax return;
5. information posing safety and security risks to electricity distribution system;
6. information related to Toronto Hydro affiliates as well as Toronto Hydro's non-rate-regulated business activities; and
7. information in connection with construction projects executed by internal workforce and external contractors.

Toronto Hydro's reasons for requesting confidential treatment for each of these categories of information are set out below.

### **1. Proprietary Information of Third Parties**

- 1B-SEC-3, Appendix A: *Davies Consulting, 2016 Emergency Management Benchmark Study*;
- 1B-SEC-3, Appendix D: *Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices*;
- 4A-SEC-90, Appendix A: *Letter from Toronto Hydro Corporation to the City Manager re Executive Compensation at City Agencies and Corporations*;
- 1B-Staff-9, Appendix P: *Unit Costs for UMS Group Benchmarking Study*

Certain information contained in the Responsive Documents is information that is proprietary to, or pertains to, third parties, and which was obtained by Toronto Hydro or its consultants on the basis that such information shall not be publicly disclosed. Such information is subject to contractual confidentiality and/or non-disclosure obligations. Neither Toronto Hydro, nor its consultants, are authorized by the relevant third parties to disclose such information publicly. Disclosing such information on the public record would breach Toronto Hydro's or its consultants' obligations to the third parties, which could cause harm to the third parties and could adversely impact Toronto Hydro and/or its consultants' ability to obtain or rely upon such information from these parties in the future.

### **2. Commercially Sensitive and Proprietary Information of Consultants**

- 1B-SEC-3, Appendix D: *Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices*;
- 4A-SEC-90, Appendix A: *Letter from Toronto Hydro Corporation to the City Manager re Executive Compensation at City Agencies and Corporations*;
- 1B-CCC-8, various *Consultant Retainer Agreements* filed as Appendices to the response.

Certain information contained in the Responsive Documents is information of a proprietary and commercially sensitive nature, the public disclosure of which could prejudice the commercial interests and a competitive position of the consultants.

Toronto Hydro's consultants are commercial enterprises which, among other services, collect, compile and provide clients with access to proprietary industry specific data (on both an aggregated and non-

aggregated basis) that is not otherwise in the public domain, as well as analysis based on such proprietary data. The compilation and analysis of such proprietary data, and the provision of such information to clients for a fee, is a key part of the consultants' business model and a major revenue stream. As such, the consultants' proprietary data is of significant commercial value and has consistently been treated as confidential. The public disclosure of the consultants' proprietary data and analysis would make such information freely available for use by potential clients. This would undermine the basis of the consultants' business, potentially seriously prejudicing the consultants' commercial and competitive position, as well as their ability to carry on business offering such data, research and analysis.

Furthermore, the retainer agreements entered into between Toronto Hydro and its consultants include pricing terms agreed to by Toronto Hydro and its consultants that resulted from a process of competitive negotiations. Additionally, in some cases the retainers include personal information about consultant's employees as well as other commercial terms and information considered by consultants to be commercially sensitive. Toronto Hydro is advised that disclosing this information on the public record could prejudice the respective competitive position of consultants in terms of future negotiations to provide similar services to Toronto Hydro or other potential clients.

### **3. Personal Information related to Specific Identifiable Individuals**

- 1B-SEC-3, Appendix D: *Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices*;
- 4A-SEC-90, Appendix A: *Letter from Toronto Hydro Corporation to the City Manager re Executive Compensation at City Agencies and Corporations*;
- 4B-Staff-142, Appendix A: *2017 Corporate Tax Return*

Certain information contained in the Responsive Documents is personal information as defined in the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31. This personal information includes the titles and compensation of specific identifiable individuals employed by Toronto Hydro that is not otherwise in the public domain, as well as personal information contained in Toronto Hydro's 2017 corporate tax return including: the names, phone numbers, job titles, professional designations and years of experience of employees; the names and addresses of external individuals; and the names of students and apprentices. The public disclosure of such information would both adversely impact such individuals personally, by undermining their right to privacy in their personal information, and adversely affect the public interest in maintaining the public's reasonable expectation of privacy in relation to personal information. This type of information has been previously deemed confidential by the OEB.<sup>1</sup>

### **4. Business Numbers**

- 4B-Staff-142, Appendix A: *2017 Corporate Tax Return*

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<sup>1</sup> See for instance, EB-2014-0116, Toronto Hydro-Electric System Decision on Confidentiality and Procedural Order No. 4 (January 7, 2015); See EB-2018-0028, Energy+ Inc. Decision on Confidentiality Requests (December 21, 2018) at p. 3; EB-2018-0165, Toronto Hydro-Electric System Decision on Confidentiality and Procedural Order No. 2 (November 21, 2018) at p. 3.

For security and fraud protection reasons, Toronto Hydro seeks confidential treatment for any business numbers contained in its 2017 corporate income tax return. Toronto Hydro submits that disclosure of this information can expose the utility and other parties to the risk of fraud, and notes that this information has previously been deemed confidential by the OEB.<sup>2</sup>

## **5. Information posing Security and Safety-Related Risks**

- 1B-SEC-3, Appendix F: *Facilities Security Internal Benchmarking Survey*;
- 2B-SEC-69, Appendix A: *Toronto Hydro Preliminary Scoping Business Case – Control Operations Reinforcement Program*;
- 2B-Staff-96 (c): *Response to Interrogatory*

Certain information contained in the Responsive Documents relates to the vulnerabilities and locations of Toronto Hydro's existing and proposed dual control centre. Toronto Hydro also seeks confidential treatment of the information that directly or indirectly discusses the vulnerabilities of existing security infrastructure of Toronto Hydro and those utilities that participated in the security survey. If disclosed publicly, this information could be exploited by malicious actors and could adversely affect the safety and security of the distribution system. Toronto Hydro therefore seeks confidential treatment of this information. This type of information has previously been deemed confidential by the OEB.<sup>3</sup>

## **6. Information related to Toronto Hydro Affiliates and Non-Rate Regulated Business Activities**

- 1A-CCC-1 Appendix A: *Toronto Hydro Corporation 2018-20 Corporate Business Plan*;
- 1B-SEC-9, various *Internal Audit Report Summaries* filed as Appendices to the response.

Certain information contained in the Responsive Documents relates to Toronto Hydro's affiliates as well as Toronto Hydro's non-rate regulated business activities, the public disclosure of which could prejudice Toronto Hydro's and its affiliates' commercial interests and competitive position with respect to such activities. In addition, the 2018-20 Business Plan contains forward-looking financial information which should not be made public as this would contravene Toronto Hydro Corporation's disclosure obligations under the *Ontario Securities Act*, R.S.O. 1990, c.S.5. These obligations constitute further grounds for the OEB to rule that this information be kept confidential. This type of information has previously been deemed confidential by the OEB.<sup>4</sup>

## **7. Information related to Construction Projects Executed by Internal Workforce and External Contractors**

- 1B-SEC-9, Appendix A: *2015 Q1 Internal Audit Report Summary*;
- 1B-SEC-17: *Interrogatory Response*;

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<sup>2</sup> See EB-2014-0116, Toronto Hydro-Electric System Decision on Confidentiality and Procedural Order No. 4 (January 7, 2015) at p. 4 and EB-2013-0196, 0197, 0198, Decision on Confidential Request and Procedural Order No. 5 (September 27, 2013) at pp. 7-8.

<sup>3</sup> EB-2018-0165, Decision on Confidentiality and Procedural Order No. 2 (November 21, 2018) at p. 4.

<sup>4</sup> EB-2010-0008, Decision and Order on Confidential Filings and Procedural Order No. 7 (August 26, 2010) at pp. 3-4; EB-2013-0321, Procedural Order No. 13 (November 25, 2010) at p. 2.

- 1B-Staff-9, Appendix O: *Toronto Hydro Response to UMS Group Information Request*

Certain information contained in the Responsive Documents relates to construction projects executed by Toronto Hydro's internal workforce and external contractors and includes, among other things, (i) cost differences between internal and external construction projects; (ii) estimated percentage of internal labour per unit for projects carried out primarily internally; (iii) names of contractors and (iv) distribution of work awarded to contractors. This information is commercially sensitive and its disclosure could interfere significantly in Toronto Hydro's negotiations with construction contractors, as well with the utility's collective bargaining position. This type information is subject to further consideration by the OEB and, in the interim, the OEB directed all parties to treat it in confidence.<sup>5</sup>

Please contact me directly if you have any questions or concerns.

Respectfully,

A handwritten signature in blue ink, reading "Andrew J. Sasso".

**Andrew J. Sasso**

Director, Regulatory Affairs

Toronto Hydro-Electric System Limited

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<sup>5</sup> EB-2018-0165, Decision on Confidentiality (December 14, 2018) at p. 3.