

**Ontario Energy
Board**
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL

February 11, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited (Toronto Hydro)
Application for 2020-2024 Rates
OEB Staff Submission on Confidentiality
Board File Number: EB-2018-0165**

Please find attached OEB staff's submission on the confidentiality requests made by Toronto Hydro with respect to its interrogatory responses in the above noted proceeding.

Yours truly,

Original Signed By

Lawrie Gluck
Case Manager

cc: All parties in EB-2018-0165



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION ON CONFIDENTIALITY

**Toronto Hydro-Electric System Limited
2020 – 2024 Rates Application**

EB-2018-0165

February 11, 2019

Background

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

In the Decision on Confidentiality and Procedural Order No. 2, issued on November 21, 2018, the OEB made provision for the filing of interrogatories and interrogatory responses.

On January 21, 2019, Toronto Hydro filed certain information in its interrogatory responses in both redacted and un-redacted (confidential) formats.¹ Toronto Hydro requested that the un-redacted information in the interrogatory responses 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*.

Toronto Hydro requested confidential treatment for seven categories of information, namely:

1. Proprietary information of third parties
2. Commercially sensitive and proprietary information of consultants
3. Personal information related to specific identifiable individuals
4. Business numbers contained in its 2017 corporate tax return
5. Information posing safety and security risks
6. Information related to Toronto Hydro's affiliates and non-rate regulated business activities
7. Information related to construction projects executed by internal workforce and external contractors

On February 5, 2019, the OEB issued a Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3. In that decision, the OEB found that the information in certain interrogatory responses relating to categories 3, 4 and 5 in the

¹ Certain updates to the confidential materials were filed on February 1, 2019. EB-2018-0165, Toronto Hydro Letter – Request for Confidential Treatment Update, February 1, 2019. These updates were consolidated with the latest versions of the interrogatory responses on February 4, 2019. EB-2018-0165, Toronto Hydro Letter – Interrogatory Response Record Update, February 4, 2019.

above list shall be maintained in confidence as requested by Toronto Hydro.² Consistent with the findings in the Decision on Confidentiality issued on December 14, 2018³, the OEB determined that the confidential treatment of information relating to category 7 in the above list will be addressed after examination at the oral hearing.⁴

The OEB made provision for submissions on the request for confidential treatment for the information under categories 1, 2 and 6.

OEB Staff Submission

OEB staff provides its submission on the confidentiality requests related to categories 1, 2 and 6 below.

1. Proprietary Information of Third Parties

Toronto Hydro stated that information of, or pertaining to, third parties that is subject to existing contractual confidentiality obligations is included in the following documents:

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

Toronto Hydro stated that neither Toronto Hydro, nor its consultants, are authorized by the relevant third parties to disclose such information publicly.⁵ OEB staff has no objection to the OEB affording confidential treatment to the information contained in the above noted documents that relates to proprietary information of third parties for the reasons provided by Toronto Hydro.

² EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, pp. 3-4.

³ EB-2018-0165, Decision on Confidentiality, December 14, 2018, pp. 2-3.

⁴ EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, p. 5.

⁵ EB-2018-0165, Toronto Hydro Letter – Request for Confidential Treatment, January 21, 2019, p. 2.

OEB staff notes that the OEB has made prior determinations to protect the information of third parties. In the 2014 Ontario Power Generation (OPG) payment amounts proceeding⁶, the OEB initially denied OPG's request, on behalf of its consultant, for confidential treatment of an Electric Utility Cost Group (EUCG) database.⁷ Originally, the OEB found that individual participants were not identifiable. However, EUCG filed correspondence with the OEB following the decision, stating that it was possible to "reverse engineer" the database to discern the identity of utilities that had participated in the EUCG study. As the data was provided confidentially to EUCG, and as EUCG advised the OEB that identification of third parties was possible, the OEB subsequently determined that the EUCG database would be deemed confidential.⁸

2. Commercially sensitive and proprietary information of consultants

Toronto Hydro stated that commercially sensitive and proprietary information of consultants, the public disclosure of which could prejudice such entities' commercial interests and competitive positions, is included in the following documents:

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

With respect to documents (a) and (b) in the above list, Toronto Hydro stated that its consultants compile proprietary industry specific data and this data is a key part of the consultants' business and is of significant commercial value.⁹

OEB staff does not support the requested confidential treatment of the information contained in documents (a) and (b) that Toronto Hydro states is commercially sensitive and proprietary to its consultants.¹⁰ The information for which Toronto Hydro seeks

⁶ EB-2013-0321.

⁷ EB-2013-0321, Ontario Power Generation, Transcript Volume 3, p. 112, June 16, 2014.

⁸ EB-2013-0321, Ontario Power Generation, Transcript Volume 11, p. 69, June 27, 2014.

⁹ EB-2018-0165, Toronto Hydro Letter – Request for Confidential Treatment, January 21, 2019, pp. 2-3.

¹⁰ As discussed above, in category 1, OEB staff does support the confidential treatment of the information in these same documents that is proprietary to third parties. OEB staff also notes that the OEB has already determined that the personal salary-related information contained in the noted documents is

confidential treatment relates to compensation benchmarking that is central to this proceeding and important for the public to be able to access. OEB staff notes that similar information to which Toronto Hydro requests confidential treatment as contained in the above noted documents was denied confidential treatment in the 2017-2018 Hydro One Transmission Rate proceeding.¹¹ With respect to a Preliminary CEO/CFO Pay Benchmarking Study by Hugesson Consulting and Executive and Non-Executive Compensation Benchmarking Reports by Towers Watson, the OEB determined that benchmarking of Hydro One's compensation levels is an important aspect of the application, not only from the OEB's perspective, but also from the perspective of the public at large. The OEB further stated that the information was presented at an aggregate level and that the probative value outweighed any potential prejudice.¹²

OEB staff also notes that a Total Compensation Benchmarking Study by Willis Towers Watson was filed in the 2017-2021 OPG payment amounts proceeding.¹³ That study included similar compensation benchmarking data, and confidential treatment was not sought.

With respect to document (c) in the above list, OEB staff has no concerns with confidential treatment for pricing terms and personal information in the consultant retainer agreements. The OEB has approved confidential treatment for this type of information previously.¹⁴ However, OEB staff does have concerns with the redactions made to the retainer agreement with London Economics International.¹⁵ Unlike the other consultant retainer agreements with Toronto Hydro, three pages of the agreement with London Economics International are fully redacted and OEB staff submits that this level of redaction is not necessary. OEB staff submits that Toronto Hydro should be directed to re-file the document with more targeted proposed redactions.

6. Information related to Toronto Hydro's affiliates and non-rate regulated business activities

properly considered confidential. EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, pp. 3-4.

¹¹ EB-2016-0160.

¹² EB-2016-0160, Hydro One Networks Inc., Decision on Confidentiality, September 26, 2016, pp. 5-6.

¹³ EB-2016-0152, Ontario Power Generation, Exhibit F4-3-1, Attachment 2.

¹⁴ EB-2016-0152, Ontario Power Generation, Decision on Confidential Filings and Procedural Order No. 3, November 1, 2016.

¹⁵ EB-2016-0152, Interrogatory Responses, 1B-CCC-8-Appendix F.

Toronto Hydro stated that information related to its affiliates and its non-rate regulated business activities are included in the following documents:

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

Toronto Hydro stated that the disclosure of certain information contained in the above noted documents could prejudice Toronto Hydro's and its affiliates' commercial interests, and that public disclosure of certain information from the business plan would contravene Toronto Hydro's obligations under the *Ontario Securities Act*.¹⁶

OEB staff notes that Toronto Hydro applied two levels of redactions to the information contained in the above noted documents. First, there is certain information that is only redacted in the public versions of the documents. Second, there is certain information that is redacted in both the public and confidential versions of the documents.

With respect to the first subset of redactions (i.e. only redacted in the public version of the documents), OEB staff agrees with Toronto Hydro that the information redacted is related to its affiliates and its non-rate regulated business and is properly maintained in confidence for the reasons cited by Toronto Hydro. OEB staff notes that the OEB determined that certain information in OPG's business plan and other documents related to OPG's unregulated businesses would be held in confidence in the last three cost based proceedings, most recently in the 2017-2021 payment amounts proceeding.¹⁷

With respect to the second subset of redactions (i.e. redacted in both the public and confidential versions of the documents), Toronto Hydro stated the following in its interrogatory responses:

With respect to 1A-CCC-1-Appendix A, certain information in the business plan is redacted as it relates to analysis completed for unregulated business activities, which Toronto Hydro believes is not relevant to deciding the issues in this proceeding.¹⁸

¹⁶ EB-2018-0165, Toronto Hydro Letter – Request for Confidential Treatment, January 21, 2019, p. 4.

¹⁷ EB-2016-0152, Ontario Power Generation, Decision on Confidential Filings and Procedural Order No. 3, November 1, 2016.

¹⁸ EB-2018-0165, Interrogatory Responses 1A-CCC-1, p. 1.

With respect to 1B-SEC-9 (various internal audit report summaries), certain sections in the audit report summaries relate to information that Toronto Hydro believes is subject to solicitor-client privilege and as such, Toronto Hydro refuses to provide this information.¹⁹

OEB staff does not believe that these redactions in the confidential versions of the noted documents are subject to requests for confidentiality.²⁰ Toronto Hydro has instead made the noted redactions to 1A-CCC-1-Appendix A on the basis of relevance and the appendices to 1B-SEC-9 on the basis of solicitor-client privilege (with an associated refusal to file the information). As such, OEB staff will not provide submissions on the sections of the above noted documents that have been omitted by way of redactions.

All of which is respectfully submitted.

¹⁹ EB-2018-0165, Interrogatory Responses 1B-SEC-9, p. 1.

²⁰ There is no request for permanent confidential treatment for category 6 in Toronto Hydro's letter requesting confidential treatment of its interrogatory responses. EB-2018-0165, Toronto Hydro Letter – Request for Confidential Treatment, January 21, 2019, p. 4.