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February 12, 2019

Reply To: Thomas Brett  
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Our File No. 184158

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: EB-2018-0165: Toronto Hydro-Electric System Limited, Application for Electricity  
Distribution Rates beginning January 1, 2020 until December 31, 2024**

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Please find enclosed herewith BOMA's Submission on Confidentiality.

Yours truly,

**FOGLER, RUBINOFF LLP**

Thomas Brett

TB/dd

Encls.

cc: All Parties (*via email*)

**ONTARIO ENERGY BOARD**

**Toronto Hydro-Electric System Limited**

**2020 – 2024 Rates Application**

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**SUBMISSION ON CONFIDENTIALITY OF  
BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO  
("BOMA")**

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**February 12, 2019**

**Tom Brett**  
Fogler, Rubinoff LLP  
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**Counsel for BOMA**

## **BOMA's Submission on Confidentiality**

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BOMA is writing to address Toronto Hydro's claim for confidentiality for items 1, 2, and 6 in the Board's Procedural Order No. 3.

BOMA objects to providing confidential treatment to items 1 and 2. Toronto Hydro's confidentiality claims for items 1 and 2 are based on the idea that the report and the letter are based on proprietary information of consultants, and are commercially sensitive.

BOMA believes that information which justifies, by way of benchmarking, the compensation level of senior executives of a publicly-owned utility, should be publicly available as a matter of principle. Moreover, executive compensation is an important and an iconic part of the utility's revenue requirement, and amounts sought to be recovered from ratepayers to compensate executives must be judged to be reasonable. A key measure of reasonableness is how that compensation relates to the compensation of senior executives in peer utilities. The Mercer study shows that relationship. The Board has often emphasized the importance of benchmarking in custom IR applications. BOMA notes that senior executive compensation was on the public record in EB-2016-0160, and was discussed extensively by the Board in its decision.

The fact that information is commercially sensitive is not an appropriate ground for a confidentiality claim. Much corporate information can be deemed commercially sensitive. Consultants that support utilities' proposals to the Board, like Mercer, are well aware that the Board's basic approach is that all applications are on the public record in the normal course, and they would be aware of the fact that the Board has almost always not allowed confidentiality

claims on the basis of commercial sensitivity. Other utilities that provide information to these consultants are equally aware of such regulatory treatment.

The fact that the information is claimed to be proprietary, and is in the possession of the consultant, is also not a reason for that information not to be disclosed in Board proceedings. The consultant is using the information it has gathered for its own commercial gain.

Finally, BOMA notes that the current compensation of the five most senior executives in Toronto Hydro is annually reported in the company's Annual Information Report to the Ontario Securities Commission, and is, accordingly, on the public record. In this case, the company's Annual Information Report can be found as an appendix to item 2.

With respect to item 6, the business plan filed has already been redacted to remove any information related to non-regulated affiliates or divisions of Toronto Hydro. As a result, it remains only the business plan of the regulated utility for the years 2016 to 2018, and in skeletal form. At best, it gives a useful snapshot of historical information, and for all those reasons, should not be given confidential status.

**All of which is respectfully submitted.**