

**Toronto Hydro-Electric System Limited**

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

**DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 4  
February 27, 2019**

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.

In the Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, dated February 5, 2019, the OEB established dates for OEB staff and intervenors to file submissions on certain requests for confidentiality with respect to the interrogatory responses and for Toronto Hydro to reply to those submissions.

The OEB's Decision on Confidentiality and further procedural steps are set out below.

**Decision on Confidentiality**

**Background**

Toronto Hydro filed certain information contained in its interrogatory responses in both redacted and un-redacted (confidential, which is only available to parties that have signed the OEB's Declaration and Undertaking with respect to confidentiality) formats. Toronto Hydro requested that the un-redacted information in certain 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* (Practice Direction).

In the OEB's Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, the OEB decided that the information contained in the interrogatories related to the following categories of information are properly considered confidential:

- Category 3 – Personal Information related to Specific Identifiable Individuals
- Category 4 – Business Numbers
- Category 5 – Information posing Security and Safety-Related Risks<sup>1</sup>

The OEB also determined that the request for confidentiality for information contained in the interrogatory responses related to category 7 (Information related to Construction Projects Executed by Internal Workforce and External Contractors) would be addressed after the OEB has had the opportunity to ask further questions at the oral hearing.<sup>2</sup>

With respect to category 8 (1B-AMPCO-4 – Appendix A), the OEB asked Toronto Hydro to explain the treatment that it is seeking for the information contained in the noted document.<sup>3</sup> Toronto Hydro responded by letter, dated February 7, 2019, noting that it did not intend to file the document, either publically or confidentially, due to copyright restrictions.<sup>4</sup>

The OEB allowed OEB staff and intervenors to make submissions on Toronto Hydro's requests for confidentiality with respect to the interrogatory responses in the categories listed below and for Toronto Hydro to reply to those submissions.<sup>5</sup>

### **Category 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

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<sup>1</sup> EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, pp. 3-4.

<sup>2</sup> EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, p. 5.

<sup>3</sup> EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019, pp. 5-6.

<sup>4</sup> EB-2018-0165, Toronto Hydro Letter – Interrogatory Clarification (1B-AMPCO-4), February 7, 2019.

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

**Category 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

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

- 1A-CCC-1 Appendix A: Toronto Hydro Corporation 2018-2020 Corporate Business Plan
- 1B-SEC-9, various Internal Audit Report Summaries filed as Appendices to the response

The OEB received submissions on the above noted confidentiality requests from OEB staff, the Building Owners and Managers Association – Greater Toronto (BOMA) and the School Energy Coalition (SEC).

Toronto Hydro filed a reply submission on February 14, 2019 that responded to the submissions of OEB staff, BOMA and SEC.

OEB staff submitted that the confidentiality requests for the interrogatories related to categories 1 and 6 should be granted.

For category 1, which included proprietary information of third parties, OEB staff noted that the OEB had made prior determinations to protect the information of third parties.<sup>6</sup>

For category 2, commercially sensitive and proprietary information of consultants, OEB staff did not support the requested confidential treatment. OEB staff submitted that the information relates to compensation benchmarking, and the OEB had denied confidential treatment for similar evidence in a previous proceeding for Hydro One

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<sup>6</sup> OEB staff referred to certain findings in the 2014 Ontario Power Generation Payment Amounts proceeding (EB-2013-0321, Ontario Power Generation, Transcript Volume 11, p. 69, June 27, 2014). EB-2018-0165, OEB Staff Submission on Confidentiality, February 11, 2019, pp. 2-3.

Networks Inc. (Hydro One).<sup>7</sup> OEB staff also stated that Ontario Power Generation (OPG) did not seek confidential treatment for similar compensation benchmarking information.<sup>8</sup> OEB staff raised further concerns about the extent of the redactions to the retainer agreement with London Economics International (LEI).<sup>9</sup>

For category 6, affiliate and non-rate regulated business activities, OEB staff agreed that the information for which confidential treatment was sought relates to affiliates and Toronto Hydro's non-rate regulated business. On that basis, OEB staff submitted that the information is properly maintained in confidence.<sup>10</sup>

SEC supported OEB staff's submission, but added that information for a third-party utility regulated by the OEB should not be granted confidential treatment.<sup>11</sup>

BOMA objected to providing confidential treatment to any of the above noted categories of information. BOMA submitted that a claim that information is proprietary to a consultant is not a reason for information not to be disclosed, noting that the consultant is using the information for its own commercial gain. BOMA also submitted that "commercially sensitive" is not an appropriate ground for a confidentiality claim. BOMA further argued that for category 6, the business plan had already been redacted to remove information on non-regulated affiliates and therefore the remainder of the business plan should be public.<sup>12</sup>

In its reply argument, Toronto Hydro maintained that the information in the interrogatory responses set out in the above noted categories should be afforded confidential treatment, with the exception of parts of the LEI retainer agreement.<sup>13</sup> Specifically, with respect to category 2 (commercially sensitive and proprietary information of consultants), Toronto Hydro noted that there are important differences between the compensation benchmarking provided in the Mercer Report<sup>14</sup> and the information, as

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<sup>7</sup> OEB staff referred to certain findings in the 2017-2018 Hydro One Transmission Rate proceeding (EB-2016-0160, Hydro One Networks Inc., Decision on Confidentiality, September 26, 2016, pp. 5-6). EB-2018-0165, OEB Staff Submission on Confidentiality, February 11, 2019, pp. 3-4.

<sup>8</sup> OEB staff referred to a compensation benchmarking study filed in the 2017-2021 OPG Payment Amounts proceeding (EB-2016-0152, Ontario Power Generation, Exhibit F4-3-1, Attachment 2). EB-2018-0165, OEB Staff Submission on Confidentiality, February 11, 2019, p. 4.

<sup>9</sup> EB-2018-0165, OEB Staff Submission on Confidentiality, February 11, 2019, p. 4.

<sup>10</sup> EB-2018-0165, OEB Staff Submission on Confidentiality, February 11, 2019, p. 5.

<sup>11</sup> EB-2018-0165, SEC Submission on Confidentiality, February 12, 2019, p. 1.

<sup>12</sup> EB-2018-0165, BOMA Submission on Confidentiality, February 12, 2019, pp. 2-4.

<sup>13</sup> Toronto Hydro filed an updated version of the LEI retainer agreement with more targeted redactions. EB-2018-0165, Toronto Hydro Reply Submission on Confidentiality, February 14, 2019, pp. 1-3.

<sup>14</sup> EB-2018-0165, Interrogatory Responses, 1B-SEC-3, Appendix D: Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices.

cited by OEB staff, in the Hydro One<sup>15</sup> and OPG proceedings.<sup>16</sup> Toronto Hydro included, in its reply submission, a letter from Mercer's counsel explaining the differences between the Mercer Report and the reports cited by OEB staff.<sup>17</sup>

## Findings

The panel has reviewed the request by Toronto Hydro to have responses to certain interrogatories treated confidentially. The OEB accepts Toronto Hydro's request. The OEB notes that the information for which Toronto Hydro requested confidential treatment is available to consultants and legal counsel of the parties to the proceeding upon execution of the OEB's Declaration and Undertaking form attached to the Practice Direction.

The OEB finds that Toronto Hydro has made reasonable efforts to limit the redacted information, including its revised request reducing the amount of information redacted in the LEI retainer agreement.

The fact that a regulated utility has entered an agreement with a third party or consultant to keep information confidential is not sufficient rationale on its own for the OEB to grant confidential treatment. Each situation must be individually assessed. The OEB has determined that the information contained in the interrogatories pertaining to categories 1 and 2 for which Toronto Hydro is seeking confidential treatment is either proprietary or commercially sensitive, and the OEB grants the confidential treatment. The Practice Direction includes in Appendix A considerations in determining requests for confidentiality. This list includes the following two factors:

- (a) the potential harm that could result from the disclosure of the information, including:
  - i. prejudice to any person's competitive position;
  - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations;
  - iii. whether the information could interfere significantly with negotiations being carried out by a party; and
  - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;

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<sup>15</sup> EB-2016-0160.

<sup>16</sup> EB-2016-0152.

<sup>17</sup> EB-2018-0165, Toronto Hydro Reply Submission on Confidentiality, February 14, 2019, Appendix B.

- (b) whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board.<sup>18</sup>

The OEB is satisfied that the identified information in categories 1 and 2 falls under these factors.

The OEB acknowledges the submissions made by OEB staff, SEC, and BOMA related to disclosure of compensation information. The OEB finds that the letter filed by Mercer addresses the differences between the Mercer Report<sup>19</sup> and other information for which the OEB has previously denied confidential treatment. The OEB accepts that this information is commercially sensitive, and grants confidential treatment.

The OEB agrees that the information contained in the interrogatories pertaining to category 6 is related to affiliates or non-rate regulated business activities and should be afforded confidential treatment.

### **Procedural Order**

In the Decision on Confidentiality and Procedural Order No. 2, dated November 21, 2018, the OEB established a deadline for Toronto Hydro to file a letter advising when its application update would be filed.

In response to the Decision on Confidentiality and Procedural Order No. 2, Toronto Hydro advised that it would file its application update related to 2018 financial figures and 2018 year-end deferral account balances on April 30, 2019.<sup>20</sup>

The OEB is establishing a process for written interrogatories and responses with respect to the application update. The OEB expects that the interrogatories will focus on only the updates to the application that were provided by Toronto Hydro. Parties are reminded that they should not engage in detailed exploration of items that do not appear to be material. Parties should use the materiality thresholds documented in Chapter 2 of the Filing Requirements as a guide. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing was focused on material issues.

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<sup>18</sup> OEB Practice Direction on Confidential Filings, October 28, 2016, Appendix A.

<sup>19</sup> EB-2018-0165, Interrogatory Responses, 1B-SEC-3, Appendix D: Mercer (Canada) Limited, Toronto Hydro Corporation Senior Executive Compensation Policies & Practices.

<sup>20</sup> EB-2018-0165, Toronto Hydro Letter – Application Update, February 13, 2019.

The OEB is also establishing an oral hearing schedule and deadlines for argument by parties.

It is necessary to make provision for the following matters related to this proceeding. The OEB will issue further procedural orders from time to time. All of the existing deadlines set out in the Decision on Confidentiality and Procedural Order No. 2 remain unchanged.

**THE ONTARIO ENERGY BOARD ORDERS THAT:****Application Update**

1. Toronto Hydro shall file its application update by **April 30, 2019**.

**Interrogatories on Application Update**

2. OEB staff and intervenors shall request any relevant information and documentation from Toronto Hydro with respect to its application update that is in addition to the evidence to be filed, by written interrogatories filed with the OEB and served on all parties by **May 21, 2019**.
3. Toronto Hydro shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors and OEB staff by **June 11, 2019**.

**Oral Hearing**

4. The oral hearing will begin on **June 27, 2019** at 9:30 am at 2300 Yonge Street, 25th floor, Toronto. The oral hearing will continue as follows: **June 28, July 3-5, July 8-9, and July 11-12**. If necessary, the oral hearing will continue on **July 15-16, and July 18-19**.

**Argument**

5. Toronto Hydro shall file its argument-in-chief with the OEB and forward it to all parties by **August 2, 2019**.
6. OEB staff shall file any submissions with the OEB and forward them to all parties by **August 21, 2019**.
7. Intervenors shall file any submissions with the OEB and forward them to all parties by **August 26, 2019**.
8. Toronto Hydro shall file its reply submission with the OEB forward it to all parties by **September 13, 2019**.

All filings to the OEB must quote the file number, **EB-2018-0165**, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB flash drive in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Lawrie Gluck at [lawrie.gluck@oeb.ca](mailto:lawrie.gluck@oeb.ca) and OEB Counsel, Michael Millar at [michael.millar@oeb.ca](mailto:michael.millar@oeb.ca).

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**DATED** at Toronto, February 27, 2019

### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary