

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. 7
April 1, 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.

The OEB set out a number of procedural steps, including a technical conference and the filing of expert evidence.

On February 19 to 22, 2019, a technical conference was held at the OEB's offices. On March 29, 2019, Toronto Hydro filed undertaking responses related to questions that it received at the technical conference. Toronto Hydro requested confidential treatment of a number of undertaking responses.

On March 20, 2019, OEB staff filed expert evidence, prepared by Pacific Economics Group Research LLC (PEG). OEB staff requested confidential treatment of PEG's Working Papers^{1,2}

¹ Described as data, documentation and models. EB-2018-0165, OEB Staff Letter, March 12, 2019.

² EB-2018-0165, OEB Staff Cover Letter – PEG Evidence, March 20, 2019.

Decision on Confidentiality

Toronto Hydro - Undertaking Responses

Toronto Hydro filed certain information contained in its undertaking 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 undertaking responses listed below 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).

1. Information subject to an ongoing dispute resolution process

- JTC 1.5
- JTC 2.22 (Appendices G and H)

Toronto Hydro stated that certain information in the above noted undertaking responses pertains to the legal implications of Carillion Canada's insolvent status and Toronto Hydro's participation in an ongoing dispute resolution and claims adjudication process. Toronto Hydro submitted that, as the process is ongoing, the public disclosure of this information could affect Toronto Hydro's ability to successfully advance its position in the process, which would have a negative impact on ratepayers.

2. Information that can undermine the utility's competitive procurement process

- JTC 1.18 (Appendix A)
- JTC 2.7

Toronto Hydro stated that certain information in the above noted undertaking responses includes forecast budget and risk-based contingency values for the Copeland Phase II project. Toronto Hydro is currently in a Request for Proposals (RFP) process for the contract for Copeland Phase II. Toronto Hydro submitted that the public release of this information could harm its competitive procurement process.

3. Information related to construction projects executed by internal workforce and external contractors

- JTC 4.18 (Appendix A)

Toronto Hydro stated that Appendix A to the above noted undertaking response contains a detailed analysis of the calculation of the internal versus external contractor efficiency measure. Toronto Hydro stated that the information is commercially sensitive and its disclosure could interfere in Toronto Hydro's negotiations with construction contractors and impact its collective bargaining position.³

Findings

The OEB has reviewed the request by Toronto Hydro to have responses to certain technical conference undertakings treated confidentially. The OEB accepts Toronto Hydro's request with respect to categories 1 and 2. The OEB agrees with Toronto Hydro that were the information contained in the noted undertaking responses to be released publically this could have significant adverse impacts on Toronto Hydro's (and its ratepayers') position in the claims adjudication process (related to the insolvent status of Carillon Canada) and the competitive RFP process (related to the Copeland Phase II project).

With respect to category 3 (information related to construction projects executed by internal workforce and external contractors), the OEB finds that the information contained in the undertaking response shall be treated, on an interim basis, as confidential subject to further consideration by the OEB at the oral hearing as was previously decided by the OEB.⁴

OEB Staff – PEG Working Papers

OEB staff requested confidential treatment of the PEG working papers for the following reasons:

- PEG's working papers include information obtained from working papers provided by Toronto Hydro's consultant, Power Systems Engineering Inc. (PSE)
- PSE's working papers were previously determined by the OEB to be deemed as confidential⁵ and as such, the data has been used by PEG to develop alternative models

³ EB-2018-0165, Toronto Hydro - Confidentiality Request Letter re: Undertaking Responses, March 29, 2019.

⁴ EB-2018-0165, Decision on Confidentiality, December 14, 2018; EB-2018-0165, Decision on Issues List, Partial Decision on Confidentiality and Procedural Order No. 3, February 5, 2019.

⁵ EB-2018-0165, Decision on Confidentiality and Procedural Order No. 2, November 21, 2018.

- Providing a redacted public version of PEG's Working Papers would prove difficult due to the incorporation of PSE's data in PEG's Working Papers
- The information contained in PEG's Working Papers is proprietary in nature
- Public disclosure of PEG's Working Papers may have an adverse effect on the competitive positions of both PEG, PSE and any third party involvement.⁶

On March 26, 2019, OEB staff filed confidential un-redacted PEG Working Papers with the OEB, and with parties who had filed signed Declarations and Undertakings.

Findings

The OEB grants confidential treatment for the reasons identified by OEB staff. The OEB has granted confidential treatment for PEG's working papers in previous proceedings.⁷

Procedural Order

By letter, dated March 28, 2019, Toronto Hydro filed a request for an extension to the date for filing interrogatories on PEG's evidence.⁸

The requested extension for the filing of interrogatories on PEG's evidence is granted. An extension is also granted for the responses to the interrogatories.

The new dates will not affect the remaining timelines as set out in the Decision on Confidentiality and Procedural Order No. 4 and Procedural Order No. 5. The OEB may issue further procedural orders from time to time.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Toronto Hydro and intervenors that wish to file interrogatories on PEG's evidence shall file with the OEB and serve copies on all parties by **April 8, 2019**.

⁶ EB-2018-0165, OEB Staff Cover Letter – PEG Evidence, March 20, 2019.

⁷ For example: EB-2017-0049, Hydro One Networks Inc., Decision on Confidentiality and Procedural Order No. 6, May 18, 2018; EB-2017-0306/-0307, Enbridge Gas Distribution Inc. and Union Gas Limited Application for Amalgamation and Rate-Setting Mechanism, Transcript, Vol. 1 (Redacted) (May 3, 2018), p. 164/l. 25 to p. 165/l. 4; EB-2018-0218, Hydro One Sault Ste. Marie LP, Decision on Request for Confidential Documents and Procedural Order No. 4, February 15, 2019.

⁸ EB-2018-0165, Toronto Hydro – Interrogatory Extension Request Letter, March 28, 2019.

2. OEB staff shall file with the OEB complete written responses to the interrogatories on PEG's evidence and serve them on Toronto Hydro and all parties by **April 24, 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 and OEB Counsel, Michael Millar at michael.millar@oeb.ca.

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DATED at Toronto, April 1, 2019

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary