



**BY EMAIL and RESS**

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January 24, 2024  
Our File: EB20230195

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2023-0195 – Toronto Hydro 2025-2029 – SEC Submission on Confidentiality**

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 1, SEC writes to object to the request by Toronto Hydro-Electric System Limited ("Toronto Hydro") for confidentiality treatment over portions of the following exhibits: a) Exhibit 4, Tab 4, Schedule 2 (Appendix 2-K), b) Exhibit 2A, Tab 4, Schedule 2 (Appendix 2-D), c) Exhibit 4, Tab 4, Schedule 2, and d) Exhibit 2A, Tab 4, Schedule 2. The information pertains to aggregate compensation cost forecasts for each of the years between 2024 through to 2029, and calculations based on or including that information, such as the percentage of OM&A that Toronto Hydro seeks to capitalize. SEC also objects to the confidentiality treatment over the entirety of the completed OEB PEG benchmarking model and its results (Exhibit 1B, Tab 3, Schedule 3, Appendix B).

Toronto Hydro has requested confidential treatment pursuant to the Practice Direction on Confidential Filings ("*Practice Direction*") for this information, asserting that its disclosure would significantly prejudice its position in current and upcoming labor negotiations. While SEC is sensitive to the need to maintain confidentiality regarding information that could harm negotiations, the requested information, on its face, does not appear to do so. It is unclear on what basis this information could significantly prejudice Toronto Hydro's negotiation position with its two unions. The information, at its most detailed in Appendix 2-K, is not broken down by union (PWU or Society<sup>1</sup>) and is intermingled with non-union non-management positions. Furthermore, it is not clear why any of the management-level compensation information would need to be confidential.

Providing compensation costs year over year does not reveal, with much specificity, Toronto Hydro's expectations of outcomes in future rounds of collective bargaining. Total compensation costs, even if

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<sup>1</sup> In fact, Toronto Hydro has 2 separate collective agreements with the Society (engineers and IT employees).

broken down by union (which Toronto Hydro has not done), would involve consideration of various factors, including total wage increases negotiated, as well as progressions within various pay bands.

While Toronto Hydro is correct that labor-sensitive information is evidently confidential under the *Practice Direction*, SEC is not aware of a single proceeding where a utility has sought confidential treatment for this specific information, even when the test years are subject to ongoing or future negotiations.

As a comparison, in Hydro One's most recent 2023-2027 application, it did not seek confidential treatment over Appendix 2-K and Appendix 2-D (and similar information).<sup>2</sup> What it did seek was confidentiality over a specific appendix in its evidence where it provided detailed information about its labor negotiations strategy over the 5-year test period, as well as detailed information regarding specific compensation forecast assumptions.<sup>3</sup> Similarly, Ontario Power Generation has never sought confidentiality treatment over its Appendix 2-K.<sup>4</sup> What it has sought confidentiality treatment for are pieces of information that provide detailed forecasts and specific assumptions regarding forecast bargaining outcomes.<sup>5</sup> For each of those utilities, their Appendix 2-K information is provided at a more granular detail than Toronto Hydro, and in their view, did not warrant confidential treatment for the test years, even though they were not entirely covered by the existing collective agreement.

None of the decisions cited by Toronto Hydro at footnote 4 of its letter seek confidentiality over total compensation information, at the aggregate level, as well as at the category or bargaining unit level. Moreover, none of those utilities ever sought confidential treatment over the overhead capitalization amount or rate, even though an input to that calculation is compensation costs.

With respect to the OEB's PEG benchmarking model, Toronto Hydro seeks confidential treatment as the completed model includes its specific wage growth as a required input. Similar to our comments regarding Appendix 2-K, the number is meant to represent an aggregate change in average per-employee compensation across the company (including management and non-union employees), not a forecast outcome of collective bargaining.<sup>6</sup> Regardless, there is no reason that the result of the benchmarking model (the 'Results' tab), in which labor costs are just one component to the overall benchmarked costs, should be confidential.

Considering the importance of the information and the lack of any specificity on how the specific information it seeks confidential treatment for may cause significant prejudice if publicly disclosed, the OEB should deny the request.

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<sup>2</sup> EB-2021-0110, E-6-1, Attachment 2A (Appendix 2-K); C-8-2, Attachment 1 and 2 (Appendix 2-D)

<sup>3</sup> EB-2021-0110, E-6-1, Attachment 5; [Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2](#) (EB\_2021-0110), October 25, 2021, p.9; I-22-E-SEC-213 (approved in [Decision on Confidentiality Requests and Procedural Order No. 5](#) (EB-2021-0110), April 14, 2022, p.18)

<sup>4</sup> EB-2020-0290, F4-3-1, Attachment 1 (Appendix 2-K); EB-2016-0152, F-4-3, Attachment 1 (Appendix 2-K)

<sup>5</sup> For example, EB-2016-0152, L-6.6 15-SEC-70 (approved in [Decision and Order on Confidentiality](#) (EB-2016-0152, June 31, 2017), p.15-16); Also see EB-2020-0290, F4-03-SEC-149 Table 3 (approved in [Decision and Order on Confidentiality](#), (EB-2020-0290, June 7, 2021, p.13);

<sup>6</sup> SEC is not aware of any other utility who has sought confidentiality over the model. This includes Hydro One which filed the completed full model in its Joint Rate Application (See EB-2021-0110, Exhibit A, Tab 5, Schedule 2, Attachment 1).



Yours very truly,  
**Shepherd Rubenstein P.C.**

Mark Rubenstein

cc: Brian McKay, SEC (by email)  
Toronto Hydro and intervenors (by email)