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January 24, 2023

VIA RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Marconi:

Re: **Toronto Hydro-Electric System Limited (THESL)**
Board File No.: EB-2023-0195

request for Confidential Treatment of VECC Submissions

In accordance with Procedural Order No. 1 in the above noted proceeding we are writing to express our objection to the request of THESL to keep confidential certain information in its current rates application.

It is VECC's position that the Board should only provide confidential treatment for information in the most necessary of cases. It is also VECC's general practice to avoid signing non-disclosure agreements to view confidential documents unless absolutely necessary to our analytical needs.

In our view the Board should not overly rely on parties to sign "non-disclosure" agreements. Such agreements do not allow for public scrutiny of the material used as to justify the proposal. The OEB rate making provisions contemplate open and transparent proceedings to establish the public's confidence in the resulting regulated rates. Furthermore, the Board must remain cognizant of the impact of its own past practice of issuing significant sanctions where confidential material has been released and even where the exposure of such material is shown to be an error and where all parties acknowledge the actual harm as minimal. Such sanction policies result in significant potential liabilities for intervening parties and have a chilling effect on accepting access to confidential documents.

VECC does not make submissions on most request for confidentially. This is not because we usually believe there is merit in the Applicant's position, but rather because the redacted information is unlikely to have a material impact on our analysis. For example, we do not believe that THESL's request for confidential treatment of tax documents is merited based on unsubstantiated claims of possible fraud. However, in keeping with past practice we are not raising specific objections to that request or any of the other requests other than those related to compensation. However, the absence of submissions on these requests does not imply our acceptance of the rationale or validity of the claims put forth by the Applicant.

VECC is strenuously objecting to THESL's request for confidentiality of Appendix 2-K and Appendix 2-D and the information that can reasonably be compiled from those required filings (for example page 23 of Exhibit 4, Tab 1, Schedule 1). The offending material is set out in the table below which is extracted from THESL's correspondence of November 17, 2023.

Exhibit	Pages	Basis for Confidential Treatment
Exhibit 4, Tab 1, Schedule 1, Operations, Maintenance & Administration Overview	pp. 23 and 30	Presumptively Confidential: This information is presumptively confidential under Appendix B, item 8 of the Practice Direction. Furthermore, the disclosure of this information could significantly prejudice Toronto Hydro's position in current and upcoming labour negotiations.
Exhibit 4, Tab 4, Schedule 1, Workforce Staffing and Compensation Overview	pp. 7 and 9	
		Risk of Impacting Collective Bargaining Negotiations: This information (collectively, the "Labour Sensitive Information") consists of workforce compensation projections and
Exhibit	Pages	Basis for Confidential Treatment
Exhibit 4, Tab 4, Schedule 2, Appendix 2K, Employee Costs/Compensation Table	All pages	assumptions for the 2024-2029 period, the disclosure of which can interfere with current and upcoming rounds of collective bargaining negotiations during this period, which would be prejudicial to utility and ratepayer financial interests.
Exhibit 4, Tab 4, Schedule 4, Compensation Strategy and Workforce Governance	pp. 1-3, 14, 17-18	
Exhibit 2A, Tab 4, Schedule 2, Overhead Expense	pp. 4-5	Previous Treatment: Pursuant to Appendix A, item (e) of the Practice Direction, this type of information has been previously held as confidential by the OEB. ⁴
Exhibit 2A, Tab 4, Schedule 2, Appendix 2-D, Overhead Expense	All pages	

In our experience it is highly unusual, if not unprecedented, for the Board to grant confidentiality to such basic information. The reasoning provided by THESL for such treatment is the potential harm to labour negotiations. However, no explanation is provided as to how this might be so.

Specifically, no explanation is provided as to how knowledge of management compensation impacts that of unionized staff. It is not explained how the comingled non-management union and non-union labour costs can be dissected so as to derive pertinent information that might be of possible interest to union labour negotiators. Nor is it explained how information for future years is relevant to any ongoing negotiations. The request for confidentiality is supported by only brief unsubstantiated statements. Stating something does not make it true. The Applicant is required to substantiate their claim. We submit they have not.

In any event, we note that in no other cost of service proceeding can we find a request that sought to remove such fundamental information from the public's view. Our experience is that many utilities provide information in Appendix 2-D and 2-K that include years after which existing labour contracts expire. Nor is it unusual for labour negotiations to be concurrent with rate applications. The Board might consider both the recent Hydro One (EB-2021-0110) and Ontario Power Generation (EB-2020-0290) proceedings to see that ongoing labour issues do not require the need to redact basic compensation cost information. We would also note that in the ongoing proceeding for Orangeville Hydro, EB-2023-0045, the Utility filed information for both the bridge and test years (2023 and 2024) in September of 2023 and notwithstanding that it was in the midst of labour negotiations that ultimately concluded in December of 2023¹. No reasons have been provided by THESL as to why it should be treated differently than these other regulated utilities.

We have also had the opportunity to review the submissions of the School Energy Coalition on this matter. We are in agreement with their position.

The public acceptance of the Board decisions rests in large part on the ability to examine fundamental cost information that forms the reasons for the rates being sought. Scrutiny of the level at which employees are compensated is an essential part in determining the reasonableness of the rates being sought. THESL's request to redact information in and related to Appendices 2-D and 2-K frustrates the public's ability to make its own determination of the reasonableness of the Applicant's proposal. Furthermore, the claims of harm are unsubstantiated. For these reasons we submit the Board should deny the request to redact information related to Appendices 2-D and 2-K and any information derived there from.

Sincerely,



John Lawford
Counsel for VECC

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¹ See Orangeville Hydro Limited EB-2023-0045 Interrogatories 4.0-VECC-25.