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BY EMAIL

January 24, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Toronto Hydro-Electric System Limited
2025-2029 Custom Rate Application for Electricity Distribution Rates and
Charges
OEB File Number: EB-2023-0195**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Thomas Eminowicz
Senior Advisor

Encl.

cc: All parties in EB-2023-0195



ONTARIO ENERGY BOARD

OEB Staff Submission

Toronto Hydro-Electric System Limited

2025-2029 Electricity Distribution Rates

EB-2023-0195

January 24, 2024

Summary

On November 17, 2023, Toronto Hydro-Electric System Limited (Toronto Hydro) applied to the Ontario Energy Board (OEB) for approval of electricity distribution rates and other charges effective January 1, 2025 to December 31, 2029.

Toronto Hydro proposes to redact the following information from the public record:

- Personal information contained in corporate income tax returns
 - Exhibit 6, Tab 2, Schedule 3, Form T661
 - Exhibit 6, Tab 2, Schedule 3, T2 Summary
- Business numbers contained in corporate income tax returns
 - Exhibit 6, Tab 2, Schedule 3, Form T661
 - Exhibit 6, Tab 2, Schedule 3, T2 Summary
- Information posing security and safety-related risks
 - Exhibit 2B, Section E4, Appendix A
 - Exhibit 2B, Section E8.1
 - Exhibit 2B, Section E8.2
- Labour relations information
 - Exhibit 1B, Tab 3, Schedule 3
 - Exhibit 2A, Tab 4, Schedule 2
 - Exhibit 2A, Tab 4, Schedule 2, Appendix 2-D
 - Exhibit 4, Tab 1, Schedule 1
 - Exhibit 4, Tab 4, Schedule 1
 - Exhibit 4, Tab 4, Schedule 2, Appendix 2K
 - Exhibit 4, Tab 4, Schedule 4

In accordance with Part 10 of the OEB's [*Practice Direction on Confidential Filings*](#), OEB staff has reviewed the redactions for personal information to ensure the information qualifies as personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Following that review, OEB staff contacted Toronto Hydro to ask that it file further explanation as to how certain information qualifies as personal information given the business identity information exception in section 2(3) of FIPPA.

In terms of the other redactions, OEB staff does not object to the proposed redaction of: (i) business numbers contained in the corporate tax returns; or (ii) a significant portion for the redactions made for safety/security reasons.

OEB staff does not, however, support any of the proposed labour relations redactions. Toronto Hydro's request in that category is unprecedented and unnecessary. Moreover, such a request, if granted, would greatly complicate the public hearing of this application.

OEB Staff Submission

OEB staff makes the following submissions on the issues:

Business Number Redactions

Toronto Hydro requests confidential treatment for business numbers contained in the utility's corporate income tax return. It argues that disclosure of these numbers could expose the utility and other parties to the risk of fraud.

OEB staff supports Toronto Hydro's request to redact the business numbers. Redaction of such numbers, which are not relevant to Toronto Hydro's application, is consistent with previous decisions of the OEB.¹

Safety/Security Redactions

Toronto Hydro argues that disclosure of information in this category could adversely impact the safety and security of the distribution system, including related assets and facilities. Toronto Hydro states that the redacted information identifies vulnerabilities and locations of existing and proposed technological infrastructure including back up operations and data centres.

OEB staff supports the redaction of information which would identify the location of critical infrastructure such as data centres, assuming that information is not already in the public domain. That approach is consistent with previous OEB decisions which upheld requests to redact the location of utility control rooms from the public record.² OEB staff also supports redactions which identify specific tangible security risks.

However, OEB staff submits that the following redactions appear to be unnecessary or overly broad:

- Exhibit 2B, Section E8.1, page 4, footnote 3 – OEB staff is unclear how this footnote, which merely references other exhibits in evidence, would pose a safety/security risk.
- Exhibit 2B, Section E8.1, page 6, lines 14 and 19 – OEB staff does not support the two redactions of the square footage listed. Requiring the disclosure of square footage would be consistent with past precedent where the OEB upheld

¹ See, for example, EB-2019-0082, Decision on Confidentiality, September 11, 2019, pages 8-9; EB-2018-0165, Decision on Confidentiality and Procedural Order No. 2, page 3.

² See, for example, EB-2022-0049, Decision on Confidentiality and Issues List, June 29, 2022, page 3 and EB-2019-0261, Decision on Confidentiality, July 28, 2020, pages 2-3.

redactions of the location of critical infrastructure but required the disclosure of square footage.³

- Exhibit 2B, Section E8.1, page 8, line 5 – OEB staff is unclear how disclosing this high-level information of when infrastructure was commissioned poses a risk.
- Exhibit 2B, Section E8.1, pages 9 (all) -10 (lines 1-2) – OEB staff submits that the description of the space and equipment in the data centre should not be redacted. OEB staff, however, agrees that lines 3-4 on page 10 should be redacted as it identifies a specific location.
- Exhibit 2B, Section E8.1, page 13, line 1 – OEB staff submits that this redaction appears to be unnecessary and will not lead to the disclosure of specific locations.
- Exhibit 2B, Section E8.1, page 14, lines 12-17 – OEB staff submits that this redaction is overly broad and the only information that should be redacted is the street addresses and the years the buildings were built.
- Exhibit 2B, Section E8.1, page 15, lines 11-14 – OEB staff submits that this redaction is overly broad and the only information that should be redacted is the street addresses.
- Exhibit 2B, Section E8.1, page 17, lines 9-17 – OEB staff submits that redaction lists characteristics of a standard data centre and will not allow someone to ascertain the data centre's location.
- Exhibit 2B, Section E8.1, page 21, lines 9-12, 14 – OEB staff submits that this redaction is overly broad and the only information that should be redacted is the street addresses.
- Exhibit 2B, Section E8.1, page 27, line 4 – OEB staff does not support the redaction of the square footage. Requiring the disclosure of square footage would be consistent with past precedent where the OEB upheld redactions of the location of critical infrastructure but required the disclosure of square footage.⁴
- Exhibit 2B, Section E8.2, page 24, lines 1-15, 22-25 – OEB staff submits that this redaction is overly broad and the only information that should be redacted is names of the two substations (found on line 7).
- Exhibit 2B, Section E8.2, page 28, lines 6-7 – OEB staff submits that this redaction is not needed as information is of a general nature.

³ EB-2022-0049, Decision on Confidentiality and Issues List, June 29, 2022, page 3.

⁴ *Ibid.*

- Exhibit 2B, Section E8.2, page 29, Table 8 – OEB staff submits that this redaction is not needed as information is of a general nature.
- Exhibit 2B, Section E8.2, page 30, lines 6-10 – OEB staff submits that this redaction is not needed as information is of a general nature.
- Exhibit 2B, Section E8.2, page 31, lines 2-7, 26-28 – OEB staff submits that these redactions are not needed as information is of a general nature.

Labour Relations Redactions

Toronto Hydro seeks confidential treatment for high-level workforce compensation projections for the 2024-2029 period. It claims that disclosure of this information could interfere with current and upcoming rounds of collective bargaining negotiations.

OEB staff opposes confidential treatment for all proposed redactions in this category.

The placing of materials on the public record is the rule, and redactions for confidentiality are the exception.⁵ Toronto Hydro bears the onus of demonstrating that confidential treatment is warranted.⁶ For this category of information, it has failed to do so.

Contrary to Toronto Hydro's position, these redactions do not fall within the presumptively confidential category of "Information related to current or future collective bargaining negotiations".⁷ That category typically covers information that reveals labour relations strategies⁸, not high-level workforce compensation projections across a distributor.

Toronto Hydro also wrongly asserts that this type of information has been previously held as confidential by the OEB. None of the examples cited by Toronto Hydro involved a request to redact high level proposed compensation increases across a distributor. One of the examples cited by Toronto Hydro was a 2021 Decision of the OEB in Hydro One's Joint Transmission and Distribution Rate application. However, the document at issue in that proceeding contained: (i) an overview of Hydro One's objectives in upcoming rounds of collective bargaining; (ii) details on specific areas of focus in negotiations; and (iii) views and assumptions with respect to certain negotiating

⁵ Practice Direction, page 1

⁶ *Ibid.*

⁷ Practice Direction, Appendix B, item 8.

⁸ EB-2021-0110, Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2, October 25, 2021, page 4.; EB-2016-0152, Decision on Confidentiality, May 4, 2017, pages 1-2.

approaches.⁹ That is not the same type of information that Toronto Hydro seeks to redact here. Among other things, Toronto Hydro seeks to redact compensation projections for the bridge, test and forecast years, even though it filed compensation information for bridge and test years on the *public* record of its last rates application.¹⁰

By way of parallel, the Supreme Court of Canada articulated the following two-part test that must be met by a party seeking an order to redact information from public court filings:

- 1) an order is needed to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- 2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.¹¹

There is no serious risk to an important issue

On the first part of the test, OEB staff acknowledges the importance of the collective bargaining process and the need for parties to be able to develop strategies for that process. However, there is simply no basis to conclude that disclosure of the information in this case would reveal strategies of Toronto Hydro.

Toronto Hydro claims that if the unions representing Toronto Hydro employees have access to the compensation forecasts, they could rely on the projected compensation amounts and the relative changes in them (or rate of change) year to year to inform and bolster their positions in current and upcoming bargaining rounds with Toronto Hydro. There are several flaws with this position.

First, this position is based on the expectation that Toronto Hydro will get 100% of the amounts requested for both capital and OM&A expenditures.

Second, no one can reverse engineer, from the redacted information, Toronto Hydro's projections and/or expectations for future rounds of collective bargaining. The information is too high level. Even if someone knew the number of current staff at *each* step level in *each* collective agreement (which is not filed in this proceeding), there is no way to estimate the expected salary increases from a collective agreement as there are:

1. four collective agreements with overlapping timelines

⁹ EB-2021-0110, Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and

Procedural Order No. 2, October 25, 2021, page 4.

¹⁰ EB-2018-0165, Appendix 2-K.

¹¹ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, para. 53.

2. increased headcounts over the course of the five-year period with (i) no details of how many at what job positions, (ii) what step for each hire, and (iii) timing of hires per year or within the year
3. assumptions about overtime (which would vary for different jobs) included in the redacted amounts
4. assumptions about vacancies and turn over included in the redacted amounts
5. assumptions about the number and pay grade of employees on short term and long-term leaves (e.g. sick, paternal)
6. assumptions about summer students, co-ops etc. included in the redacted amounts

Third, forward looking workforce compensation projections were filed on the *public* record of several recent proceedings including the Hydro One application referenced above and the Ontario Power Generation (OPG) payment amounts application.¹² In fact, the information filed in those two proceedings was more detailed than the numbers that Toronto Hydro seeks to redact. There is no evidence that the collective bargaining of either OPG or Hydro One was tainted as a result of the public disclosure of high-level compensation projections.

Any salutary effects do not outweigh the harms of redacted information

Even if there was a possibility that the unions of Toronto Hydro employees could benefit from knowing this information, that remote possibility would not outweigh the harms from prohibiting public access to the information in this part of Toronto Hydro's application.

If the OEB were to accept Toronto Hydro's redactions in this category, the hearing of this application would be more complicated. Compensation projections will be the subject of significant scrutiny. A decision to uphold the redactions would likely result in the need for (i) further redactions in the interrogatory process (both questions and answers); (ii) parts of the technical conference to be held *in camera*; (iii) parts of the settlement conference to potentially exclude intervenors who are unwilling to sign the declaration and undertaking; (iv) parts of any settlement proposal to be redacted from the public record; (v) parts of any oral hearing to be held *in camera*; (vi) parts of party submissions to be redacted from the public record; and (vii) parts of the OEB's decision in this case to be redacted from the public record.

Accepting Toronto Hydro's position, distributors should be entitled to withhold any forward level compensation projections, no matter how high level. OEB staff cannot agree. Fundamentally, the public has a right to know the compensation increases that Toronto Hydro is asking its ratepayers to fund.

~All of which is respectfully submitted~

¹² EB-2021-0110, Exhibit E / Tab 6 / Schedule 1 / Attachments 2A and 2B; and EB-2020-0290, Exhibit F4 / Tab 3 / Schedule 1 / Attachment 1.