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January 29, 2024

Ms. Nancy Marconi, Registrar

Ontario Energy Board

PO Box 2319

2300 Yonge Street, 27th floor

Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: OEB File No. EB-2023-0195, Toronto Hydro-Electric System Limited ("Toronto Hydro") 2025-2029 Custom Rate Application for Electricity Distribution Rates and Charges – Confidentiality Request Reply Submission

In accordance with Procedural Order No. 1, Toronto Hydro provides these reply submissions regarding its confidentiality requests with respect to:

1. Labour sensitive compensation information;
2. Facilities-related information that poses a security threat; and
3. Personal information in the utility's corporate tax return that is not relevant to the proceeding.

In the sections that follow, Toronto Hydro addresses the issues raised by OEB Staff and intervenors regarding each of these confidentiality requests.

1. Labour Sensitive Compensation Information

Toronto Hydro's confidentiality request dated November 17, 2023 sets out the application evidence considered to be labour sensitive information, in respect of which the utility requested confidential treatment. This amounted to discrete portions of the evidence, primarily consisting of compensation cost forecasts (i.e. Appendix 2-K), labour capitalization forecasts (i.e. Appendix 2-D) that are tied to Appendix 2-K, and year-over-year wage growth and other economic assumptions.

On January 24, 2024, Toronto Hydro filed updated evidence narrowing its request by removing confidential treatment of the above-noted information for the 2024 bridge and 2025 test years. As

indicated in the cover letter for this update, the request was removed because, since filing its application in November 2023, Toronto Hydro has completed the collective bargaining process with the Society of United Professionals covering the years in question. With the conclusion of labour negotiations, the forecasted information for the 2024 bridge and 2025 test year is no longer labour sensitive information. Accordingly, all forecasted compensation, wage growth, and capitalization information for 2024 and 2025 is filed on the public record, which addresses some of the concerns raised by OEB Staff and intervenors in their submissions.¹

However, Toronto Hydro continues to require, and therefore seeks from the OEB, confidential treatment of forecasted compensation, wage growth and capitalization information for years 2026 through 2029. This information is highly sensitive information that must not be disclosed since Toronto Hydro will be engaging in multiple rounds of collective bargaining with its unions covering the years in question² and the forecasted figures represent Toronto Hydro's assumptions and expectations as to bargaining outcomes in those rounds. Disclosure of this information would prejudice Toronto Hydro's bargaining position, the consequences of which could harm the interests of ratepayers.

OEB Staff and some intervenors³ challenged the confidentiality of information that Toronto Hydro identified as labour sensitive. Their submissions converge around the following key issues:

- a) harm and prejudice of public disclosure;
- b) balancing of interests between public disclosure and maintaining confidentiality; and
- c) comparisons with other applications.

In the sections that follow, Toronto Hydro responds to the specific confidentiality challenges that have been raised by OEB Staff and intervenors under each of these issues. In Toronto Hydro's respectful submission, these challenges should be rejected by the OEB and confidentiality over the information should be granted.

a) Harm and Prejudice of Publicly Disclosing Labour Sensitive Information

In their submissions, OEB Staff, SEC,⁴ and VECC challenge the labour sensitivity of the redacted compensation, wage growth, and labour capitalization information, and question how the public disclosure of this information could be useful to unions and prejudicial to Toronto Hydro in upcoming

¹ Because the January 24, 2024 update was filed after OEB Staff and intervenors filed their submissions, their submissions did not have the opportunity to consider the narrowing of Toronto Hydro's confidentiality request.

² In 2025, Toronto Hydro will be in labour negotiations with the Society of United Professionals – IT, whose collective agreement expires December 31, 2025. In 2026, the utility will be in labour negotiations with the Power Workers' Union (PWU), whose agreement expires January 31, 2027.

³ School Energy Coalition (SEC), Vulnerable Energy Consumers Coalition (VECC), Association of Major Power Consumers (AMPCO), and Consumers Council of Canada (CCC).

⁴ AMPCO and CCC filed submissions indicating that they agree with the submissions of SEC.

rounds of collective bargaining. Respectfully, these assertions fail to appreciate: (i) the nature of collective bargaining; and/or (ii) the scope of the information and assumptions contained in Toronto Hydro's evidence which was necessary to provide a complete record for the OEB to adjudicate this application.

That the redacted information is highly sensitive from a collective bargaining perspective is demonstrated by looking to the way in which Toronto Hydro developed its 2025-2029 investment plan based on specific assumptions about its workforce needs and compensation costs. The forecasted compensation costs for the outer years include and reflect, among other inputs, *"the utility's projections of outcomes of future rounds of collective bargaining that will take place throughout the forecast period."*⁵

Unlike in previous Custom IR applications where Toronto Hydro brought forward compensation forecasts only for the test year (i.e. the first year of the five-year rate period), Toronto Hydro developed and filed a bottom-up compensation forecast *for all years of the plan*, reflecting its expected costs and year over year wage increases. The utility put forward a proposed rate-setting formula (i.e. the Custom Revenue Cap Index) that relies on these forecasts to determine how rates are set for 2026-2029. In their submissions, it appears that OEB Staff, SEC and VECC did not consider these important differences.

OEB Staff claims that the proposed redactions do not fall within the presumptively confidential category of *"information related to current or future bargaining negotiations."*⁶ Respectfully, and for the reasons noted above, this is demonstrably incorrect.

Further, in support of this position, OEB Staff asserts that prior OEB cases cited by Toronto Hydro in its November 17, 2023 confidentiality request dealt with information relating to the utilities' *strategies* for upcoming rounds of collective bargaining, and not compensation-related forecast information. For one, the information that Toronto Hydro is seeking confidential treatment of is at the heart of its *strategy* for upcoming rounds of collective bargaining. And what's more is that OEB Staff has incorrectly interpreted the principle of the cases Toronto Hydro cites. While the specific facts in those cases related in part to strategies for collective bargaining, the OEB's focus in those cases on what types of information should be protected was much broader. Specifically, the principle at issue in those decisions was protection of *information* relevant to and used by unions in negotiations. For example, in EB-2018-0014, the OEB found that information as to *"functional areas or initiatives from which potential synergy savings may be achieved"* was labour sensitive information

⁵ Exhibit 4, Tab 1, Schedule 1 at page 30; Tab 4, Schedule 1 at page 7; Tab 4, Schedule 4 at page 3.

⁶ OEB Practice Direction on Confidential Filings, Appendix B at page 8.

that warranted confidential treatment. In another case, assumptions as to potential outcomes of rounds of bargaining were treated confidentially.⁷

SEC and VECC allege the information is not specific enough to be useful to the unions in the negotiations process. SEC in particular notes that the information does not reveal specific assumptions by union, job type and other breakdown of the wage growth assumptions, and from this observation incorrectly concludes that the information cannot be useful to the union in the bargaining process.

Toronto Hydro respectfully submits that the submissions of OEB Staff, SEC and VECC either fail to appreciate what type of information is relevant to collective bargaining process or how this specific information is relevant. Collective bargaining is not an exercise in specificity regarding each job type. The unions do not need to be given full *specificity* as to Toronto Hydro's expectations for future rounds of bargaining in order to glean valuable insights from the forecasts. Rather, collective bargaining entails a top-level negotiation with respect to level of year-over-year wage increases subject to the collective agreements. And this is the very information that Toronto Hydro seeks to protect in its confidentiality request.

The redacted information would provide unions access to future compensation trend assumptions, management expectations, and financial tolerances for annual wage growth. A simple division of the total cash compensation by total number of employees set out in Appendix 2-K, and analysis of the year-over-year rate of growth in cost per employee will reveal valuable insights about future rounds of collective bargaining.⁸ Having access to wage growth assumptions would enable the unions to infer what management is prepared to accept in future rounds of bargaining and this information could alter both the strategy and the tactics of the unions in forthcoming negotiations. This interference would almost certainly prejudice Toronto Hydro's ability to secure the best possible outcome in future rounds of collective bargaining and harm ratepayers' interests in getting the best possible value for money in terms of compensation costs that will form part of future electricity distribution rates.

Disclosing the annual wage growth assumptions (which the unions can easily glean or deduce from the redacted information) is no different than a utility disclosing its expectations of annual cost increases for goods and services to be procured from the market under future agreements with

⁷ EB-2018-0014, Decision on Confidentiality and Procedural Order No. 2 (July 12, 2018); EB-2021-0110, interrogatory responses to E-Staff-258(a) (November 29, 2021), E-Staff-271 (November 29, 2021), E-SEC-205(a); HONI Confidentiality Request (November 30, 2021) noting that the interrogatory responses included information as to "Hydro One's assessment of potential bargaining outcomes that may be achieved in upcoming rounds of bargaining during the rate period"; Interim Decision On Confidentiality – Accenture Master Services Agreement, Labour Relations And Collective Bargaining Information, and 2021-2027 Integrated Business Plan (December 10, 2021), which accepted that this information was labour sensitive.

⁸ The top-level information is sensitive in this way, including information that relates to management employees as well as unionized employees. That information shows the rate and percentage level of expected future wage increases—which would be valuable information for the unions and which they could seek to use against Toronto Hydro.

external vendors. It would not be in the best interests of ratepayers to require the utility to disclose these commercially sensitive assumptions and compromise its ability to negotiate the best possible price with external vendors. Similarly, it is not in the best interest of ratepayers to require public disclosure of compensation cost forecasts that would enable the union to have access to the same assumptions.

In a number of prior decisions, the OEB has consistently recognized that labour sensitive information should be granted confidential treatment to protect utility and ratepayers' interests with respect to the bargaining process. For example, in EB-2012-0146 and EB-2013-0380, the OEB granted London Hydro's request for confidential treatment of compensation projections for the 2013 test year, stating "[the] 2013 compensation projections could interfere significantly with [London Hydro's] labour negotiations if they were made public."⁹ In affording confidentiality protection and ensuring appropriate protocols are in place for access to the information, the OEB has noted the important objective of giving "ratepayers the highest degree of confidence in the OEB's processes and treatment of highly sensitive information."¹⁰

For the reasons articulated above, Toronto Hydro respectfully submits that the information is labour sensitive and releasing this information on the public record would interfere with collective bargaining in a manner that causes prejudice to Toronto Hydro's interests in future negotiations, and results in a risk of harm to ratepayers in terms of higher future compensation costs. To protect ratepayers and maintain a high degree of confidence in its processes, the OEB should recognize the labour sensitivity of this information and grant Toronto Hydro the confidential treatment it seeks.

b) Balance of Interests: Potential for Harm and Prejudice vs. Public Disclosure and Procedural Convenience

OEB Staff's submissions refer to the balancing of interests between public disclosure and maintaining confidentiality. Specifically, Staff argues that even if "*there was a possibility*" that the unions could benefit from knowing the information, it would not outweigh the harms of (i) prohibiting the public's "*right to know*" compensation information, and (ii) "*hearing of this application [in a way that] would be more complicated.*"

Toronto Hydro respectfully disagrees with OEB Staff and submits that the appropriate balancing of interests in this case strongly favours protecting the confidential information in question. For the reasons described above, there is more than a mere "*possibility*" of the unions being able to glean valuable information from the public disclosure of the labour sensitive information. There is a notable

⁹ EB-2012-0146/EB-2012-0380, Decision on Confidentiality and Procedural Order No. 3, February 22, 2013.

¹⁰ See for example EB-2013-0321, EB-2016-0152 and EB-2018-0014 (Procedural Order Nos. 2 and 3); see also EB-2021-0110, Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2 (October 25, 2021), p.10.

likelihood of harm and prejudice to the utility and ratepayers' interests, which outweighs the public access and procedural convenience benefits asserted by Staff in its submission.

In terms of public access and complexity of the prosecution of the application, Toronto Hydro notes that there are numerous experienced consumer and public interest intervenors in this proceeding who can access the redacted information and test it during the hearing under the OEB's confidentiality protocols. Maintaining confidentiality over specific sensitive information is a routine matter in OEB proceedings. Furthermore, the redacted information does not in any way preclude the public from accessing the details of the capital and operational program budgets for which the utility seeks rate funding (i.e. *the distribution work that will be conducted and the services that will be funded through rates*). That information is on the public record and can be tested openly and transparently while continuing to protect the confidentiality of sensitive labour assumptions, to preserve the utility's ability to negotiate fairly with the unions and get the best possible price outcome for its ratepayers in future rounds of bargaining. Importantly, of an approximately 5,500-page record, Toronto Hydro is seeking confidential treatment of only 13 pages (approximately 0.2% of the entire record) in the matter at issue.

In terms of procedural considerations, Toronto Hydro submits that the noted inconvenience is not a sufficient reason to deny granting confidential treatment to labour sensitive information. While Toronto Hydro recognizes that there are additional procedural steps that would need to be taken to conduct a portion of the hearing *in camera*, it submits that this is no different than in respect of any other evidence that receives confidential treatment. There are practical and efficient ways of handling the confidentiality procedural logistics, including planning the examination of this evidence with the parties in advance in a way that avoids unnecessarily having to go *in camera* multiple times in respect of the same evidence. As noted above, the OEB and the parties that appear before it are deeply experienced at handling confidential information, and doing so is a routine matter in rate proceedings.

In summation, the balance of interests in this case strongly favors the protection of the labour sensitive information in question.

c) Comparison to Past Applications and Considerations for Future Applications

OEB Staff, SEC and VECC note that Toronto Hydro's past application and other utilities' applications have previously disclosed compensation, wage growth, and capitalization forecasts on the public record. They conclude, therefore, that confidential treatment is not warranted in this case.

Respectfully, this argument does not hold. Confidentiality requests must be decided with regard to the particular facts and circumstance of the case at issue. While past cases may be instructive, they are certainly not determinative. The facts in this case strongly favour confidential treatment. The

compensation information being filed in this case is of a fundamentally different nature than what was filed on the public record in past applications, and its disclosure would prejudice Toronto Hydro's collective bargaining position and ratepayer interests.

OEB Staff also refers to the fact that Toronto Hydro "*filed compensation information for bridge and test years on the public record of [EB-2018-0165]*" in Appendix 2-K. However, OEB Staff failed to include the key distinguishing fact. That is, that Toronto Hydro's pre-filed Appendix 2-K did not include any projections beyond the 2020 test year (i.e. for 2021-2024).¹¹ Through the discovery phase in EB-2018-0165, the utility was pressed to provide compensation information in respect of the outer years (i.e. 2021-2024). By way of undertaking response, it expressly provided information that was of a qualitatively and fundamentally different nature than the information the utility seeks to redact in this current application. Specifically, the 2021-2024 compensation projections Toronto Hydro provided in the last application were simply "*based on an extrapolation of the 2020 test year.*" Toronto Hydro also indicated that the figures provided did not represent a forecast of expected outcomes of future rounds of bargaining (and thus actual figures may differ in this regard) and simply assumed a flat headcount (when that may not be the case).¹²

By contrast, in this application Toronto Hydro has produced and filed a bottom-up compensation forecast beyond the bridge and test year, reflecting its actual expected costs, year over year wage rate increases, and capitalization for each of the outer years (2026 through 2029). Rather than being mere extrapolations from the rebasing year, this information is a forecast of what Toronto Hydro expects. As explained in Exhibit 4, the forecasted costs for those years include and reflect, among other inputs, "*the utility's projections of outcomes of future rounds of collective bargaining that will take place throughout the forecast period.*"¹³ Because of this fundamental difference in the information at issue, EB-2018-0165 cannot provide a relevant precedent in respect of labour sensitive information in this application.

In respect of other applications OEB Staff and intervenors refer to, as far as Toronto Hydro is aware any projections included in Appendices 2-K in those applications for outer years beyond the test year would not have been based on bottom-up compensation forecasts and annual wage growth assumptions based on expected outcomes of future rounds of collective bargaining. Case in point, in the recent Hydro One application (EB-2021-0110), the utility confirmed that its OM&A forecasts for the outer years of the rate period were based on an application of its proposed custom incentive rate-setting formula (i.e. extrapolations).¹⁴ But crucially, in that Hydro One application, when it put forward information as to its assumptions of outcomes of future rounds of collective bargaining (for purposes

¹¹ As of January 24, 2024, Toronto Hydro has similarly filed compensation information publicly for the bridge (2024) and test (2025) year in this application.

¹² EB-2018-0165, updated interrogatory response 4A-SEC-87 (February 12, 2019).

¹³ Exhibit 4, Tab 1, Schedule 1 at page 30; Tab 4, Schedule 1 at page 7; Tab 4, Schedule 4 at page 3.

¹⁴ EB-2021-0110, Exhibit A-3-1 at page 17, line 11.

of the forecast benchmarking report), that information was treated confidentially.¹⁵ Contrary to OEB Staff's assertions then, this case is consistent with Toronto Hydro's request.

In any event, a request for confidentiality in a particular case has to be decided based on its own circumstances and merit. Whether another utility in the context of its own application did or did not seek confidential treatment in respect of its evidence, the reasons it chose to do so or not, or what risks it might have been prepared to take in this regard cannot be determinative of Toronto Hydro's *specific* requests for confidential treatment in the *specific* circumstances of this application. Toronto Hydro cannot be bound by the determinations of other utilities, especially when information that was put on the public record in other cases was of a fundamentally different nature (and other information reflecting assumed collective bargaining outcomes was in fact treated confidentially in past cases). For all the reasons Toronto Hydro notes in the above sections, the information put forward in this application is unique compared to the public information in other applications, and its disclosure would harm the utility's bargaining position and ratepayer interests.

Importantly, Toronto Hydro respectfully submits that if the OEB were to deny the utility's confidentiality request and require the labour sensitive information to be put on the public record and disclosed to the unions, this could discourage utilities from bringing forward bottom-up compensation and wage growth forecast information in future rate applications. Without this information, OEB and intervenors would not have important information available to test the reasonability of the costs for which a utility seeks rate recovery. Toronto Hydro respectfully submits the OEB should avoid issuing a decision that would not only prejudice Toronto Hydro and harm ratepayers' interests, but also have a chilling effect on utilities that could compromise the quality of evidence put forward in future cases. Toronto Hydro submits that confidential treatment is important in these circumstances to maintain a high degree of confidence in the OEB's process —an important objective emphasized by the OEB in past cases.

2. Facilities Related Information that Poses a Security Threat

OEB Staff made submissions with respect to Toronto Hydro's request for the confidential treatment, and associated evidentiary redactions, of information that could pose security risks to the distribution system. Specifically, Staff provided a list of redactions that it has assessed to be unnecessary or overly broad. No other parties made submissions regarding this topic.

¹⁵ EB-2021-0110, Interrogatory responses to E-Staff-258(a) (November 29, 2021), E-Staff-271 (November 29, 2021), E-SEC-205(a); HONI Confidentiality Request (November 30, 2021); Interim Decision On Confidentiality – Accenture Master Services Agreement, Labour Relations And Collective Bargaining Information, and 2021-2027 Integrated Business Plan (December 10, 2021).

Having reviewed Staff's comments, Toronto Hydro agrees that the majority of the specified redactions may be removed, except for the following items, which in the utility's assessment should not be publicly disclosed, for the reasons specified:

- **Exhibit 2B, Section E8.1, page 8, line 5:** Toronto Hydro submits that this information should remain redacted, as disclosing the vintage of the infrastructure would allow a fairly accurate inference of its location, given that the dates of the acquisition, commissioning, or construction of most major Toronto Hydro properties and facilities currently in operation were placed on the public record through successive rate applications.
- **Exhibit 2B, Section E8.1, page 14, lines 12-17:** Toronto Hydro submits that the two dates when the enterprise data centre was added and its backup was established should remain redacted, for the reason outlined in the previous bullet.
- **Exhibit 2B, Section E8.1, page 15, lines 11-14:** Toronto Hydro submits that the first sentence in this paragraph should remain partially redacted from the comma in line 12 to the period in line 14, as the description of the facility currently housing the enterprise data centre would allow a fairly accurate inference of its location when cross-referenced with other facilities-related evidence.
- **Exhibit 2B, Section E8.2, page 24, lines 1-15, 22-25:** Toronto Hydro submits that these sections should remain partially redacted as follows:
 - from the first word "that" in line 2 to the end of line 5;
 - the numbers and names of the stations referenced in lines 6 and 7; and
 - from the word "by" in line 11 to the end of the sentence in line 13.

In the utility's assessment, the disclosure of these very specific improvements planned under the Facilities Management and Security capital program would reveal the security vulnerabilities that currently exist at Toronto Hydro's facilities.

- **Exhibit 2B, Section E8.2, page 28, lines 6-7:** Toronto Hydro submits that this information should remain redacted, as its disclosure would reveal the security vulnerabilities that currently exist at the utility's facilities.

3. Personal Information in Corporate Income Tax Return

OEB Staff reviewed the redactions for personal information in the corporate tax returns filed at Exhibit 6, Tab 2, Schedule 3 to ensure the information qualifies as personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA). In its submission, OEB Staff asked Toronto Hydro to file further explanation as to how certain information qualifies as personal information given the business identity information exception in section 2(3) of FIPPA. Staff also stated that it supports Toronto Hydro's request for the confidential treatment of business numbers contained in the utility's corporate income tax return. No other parties made submissions regarding this topic.

The redactions in the corporate income tax return other than business numbers relate to: (i) the name, contact information, professional qualifications, and work experience of specific Toronto Hydro employees; (ii) contract numbers for specific apprenticeships; and (iii) the names of co-op students who were in a qualifying work placement.

While acknowledging that the above information does not strictly qualify as personal information under FIPPA, Toronto Hydro respectfully submits that the disclosure of this information would a) yield no incremental benefit whatsoever to the adjudication of this rate application and b) create an unnecessary risk of harm to the individuals whose information appears in the redacted parts.

The disclosure of the above information would not benefit this proceeding because the information is not relevant to any of the issues under review. The information is strictly administrative and it is not obvious to Toronto Hydro how this information would help the OEB Panel, Staff, intervenors, or members of the public assess whether Toronto Hydro is exercising sound tax planning and maximizing available tax credits and tax deductions for rate-setting purposes.¹⁶

The disclosure of the above information creates a real and tangible risk of harm to Toronto Hydro, the named employees, and co-op students. The publication of this information, when combined with other data that may be available on the public record, could in the worst case facilitate fraud, identity theft, and security breaches. It could also lead to spam e-mails, phone calls, and other inconveniences that can affect the individual's productivity and/or enjoyment of personal downtime.

Toronto Hydro also notes that it requested confidential treatment for the exact same information in Exhibit 4B, Tab 2, Schedule 3 of its previous rate application, which the OEB granted.¹⁷ Although the OEB granted the request in that case on grounds of the information being personal information, in the utility's assessment there are good reasons to keep the above information redacted for essentially the same reasons as the redaction of business numbers (i.e. lack of relevance to the rate application and the risk of harm from disclosure).

All of which is respectfully submitted.

Daliana Coban
Director, Regulatory Applications & Business Support

¹⁶ Filing Requirements for Electricity Distribution Rate Applications, Chapter 2 – Cost of Service (December 15, 2022), section 2.6.2.

¹⁷ EB-2018-0165, OEB Decision on Confidentiality and Procedural Order No. 2, November 21, 2018.