



EB-2014-0116

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015 and for each following year effective January 1 through to December 31, 2019.

**DECISION ON CONFIDENTIALITY and
PROCEDURAL ORDER NO. 4
January 7, 2015**

Toronto Hydro-Electric System Limited (“THESL” or the “Applicant”) filed a Custom Incentive Rate (“CIR”) application (the “Application”) with the Ontario Energy Board (the “Board”) on July 31, 2014 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that THESL charges for electricity distribution, to be effective May 1, 2015 and each year thereafter January 1 until December 31, 2019. The Board has assigned the application file number EB-2014-0116.

Confidentiality Requests filed with THESL’s Application

As part of its Application THESL requested confidentiality for certain information which it filed in redacted form along with un-redacted versions in confidence. THESL requested that the un-redacted information in the areas listed below be maintained in confidence pursuant to Rule 10.01 of the Board’s *Rules of Practice and Procedure*:

- Forecast Proceeds from Sale of Properties;
- Cost Difference between Internal and External Construction of Projects;
- Personal Information; and
- Business Numbers.

THESL requested confidential treatment of the forecast proceeds from the disposition of two properties which it owns, 5800 Yonge and 28 Underwriters, and of the Net Present Value (“NPV”) and Base Case calculations of the proposed sale on the basis that the forecast proceeds may be deduced from these calculations. THESL proposes in the Application to record the gains of the proceeds of sale with respect to the subject properties in a deferral account and to return these amounts to ratepayers through the clearance of that account.

THESL submitted that confidential treatment should be granted with respect to this information because its disclosure would cause the following potential harms:

1. It would prejudice THESL’s ability to secure a competitive purchase price for the respective properties, as the forecasts may be used by potential buyers to undercut THESL’s asking price for the properties;
2. It would represent a significant interference in THESL’s future negotiations with potential buyers of the respective properties, as the forecast may be used by potential buyers to compromise THESL’s bargaining position; and
3. As THESL proposes to return gains on sale to ratepayers, disclosure of the information could harm ratepayers’ interests if it were to compromise THESL’s competitive or negotiating position regarding those properties.

THESL submitted that it is possible that disclosing the forecasted net proceeds on the public record could be seen as an upper bound on the sale price thereby hindering THESL’s ability to maximize the net proceeds available to ratepayers.

In response to THESL’s request for confidentiality Board staff filed a submission limited to THESL’s request for confidentiality regarding forecast proceeds from the sale of two properties, which THESL has proposed to credit to ratepayers in full. No other parties to the proceeding filed submissions in response to THESL’s Confidentiality Request. Board staff noted that it accepted THESL’s position on the other three confidentiality claims, as Board staff considers these to be claims in areas which have been previously accepted by the Board.

In its submission, Board Staff expressed two concerns with Toronto Hydro's Request for Confidentiality regarding the proceeds of sale of two properties: (a) Toronto Hydro's approach to confidentiality regarding proceeds of sale in past proceedings; and (b) Confidential treatment regarding the Tariffs of Rates and Charges.

- a. The first is that in the EB-2007-0680 proceeding, THESL forecast that it would sell two work centres, 28 Underwriters Road in 2008 and 60 Eglinton West in 2010, and provided the estimated proceeds on the public record with no apparent adverse effects. Board staff stated that it is unclear why information of this kind which has previously been placed on the public record by THESL now needs to be held in confidence.
- b. Board staff submitted that the Board should not issue a Tariff of Rates and Charges arising from this proceeding with a redacted tariff on it as had been proposed by THESL. In the event that the Board was to accept THESL's proposal for confidentiality, it was unclear to Board staff how, in the event the two buildings were not sold by the time a Decision was reached in this proceeding, the Board would be able to issue a Tariff of Rates and Charges incorporating a non-redacted rate rider to return the proceeds of the sales to ratepayers. Board staff asked THESL to address that issue in its reply submission.

In Reply, THESL withdrew its request for confidential treatment of the proposed rate rider.

Subsequently, THESL made further claims for confidentiality regarding interrogatory and undertaking responses in the area of cost differences between internal and external construction of projects. The Board considers that these claims raise the same issues as those included in THESL's original confidentiality claim and has determined that no further process on these additional claims is necessary.

As set out in the Board's *Practice Direction on Confidential Filings* (Practice Direction), it is the Board's general policy that all evidence should be on the public record unless disclosure is prohibited. This reflects the Board's view that its proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information properly designated as confidential. The onus is on the party requesting confidentiality to establish that it is necessary.

The Board has reviewed the submissions of THESL and Board staff, the documents and redactions for which THESL has claimed confidentiality and approves the confidentiality claims requests. The Board notes that for three of the areas confidentiality was requested there were no submissions made opposing the request. These are areas in which the Board has previously granted confidentiality. With respect to the request for confidentiality related to the proceeds from the sale of two properties, the Board is satisfied that THESL's economic interest may be prejudiced by making public the forecast value of the referenced properties. While the Board appreciates that THESL may not have made a request for confidentiality in respect of similar information in a previous proceeding, the Board considers the circumstances of each confidentiality request with fresh eyes, based upon the circumstances at the time. THESL makes the argument that disclosing the value of the two properties may create an upper limit which could dampen potential offers on the properties, thereby interfering significantly with negotiations and prejudicing THESL's competitive position. The Board accepts these arguments and will grant the request for confidentiality.

Additional Requests for Confidentiality

Toronto Hydro

1. In response to IRR-1B-Board staff-14a, filed November 5, 2014 THESL requested confidential treatment with respect to a proprietary Power System Engineering Inc. (PSE) Code. PSE is one of THESL's consultants in this proceeding.
2. Further, in response to IRRR-1A_CCC-1 THESL filed a confidential version of the Toronto Hydro Corporation Business Plan. THESL subsequently filed a redacted version of the Business Plan on November 24, 2014 requesting confidential treatment only for those portions of the Business Plan that were redacted.

THESL stated that the information contained in these responses is sensitive from both a commercial and labour relations perspective, and its disclosure could interfere significantly in THESL's negotiations with design and construction contractors, as well as in labour bargaining negotiations. Such interference could put upward pressure on contract prices and compensation costs and result in additional cost to the utility and, by extension, reduced value for rate payers. THESL submitted that this information should be kept confidential.

3. By letter dated December 19, 2014, THESL requested that certain data relating to the Power System Engineering Inc. ("PSE") cost and reliability benchmarking models be kept confidential. On behalf of PSE, Toronto Hydro seeks confidential treatment of the following information relating to PSE's cost and reliability benchmarking models:
 - a) Data used in the PSE study, in the form of a Microsoft Excel spreadsheet;
 - b) Excel files that made use of the source data and produced measures that were used, directly or indirectly, by the PSE benchmarking models;
 - c) Excel or other files used to produce the Tables and Figures in the PSE benchmarking report; and
 - d) The computer code used to generate results for the PSE benchmarking models

THESL submitted that this data consists of proprietary technical information, represents significant work by PSE and has considerable commercial value. THESL further submits that this information should be kept confidential as its public disclosure would likely result in financial and competitive harm to PSE.

Board Staff

4. By letter dated December 16, 2014 Board staff requested that certain information provided by Board staff's consultant Pacific Economics Group Research, LLC (PEG) in response to a request from THESL be treated as confidential.

There are three major components to the information. The reasons for the confidential treatment requested for each component is as follows:

The first component consists of computer programs which were developed by PEG and which represent a significant intellectual investment by PEG. The Board has previously granted confidential treatment to PEG's computer programs in both the 3rd Generation Incentive Regulation and Price Cap IR proceedings.

The second is reliability data which PEG personnel have spent hundreds of hours locating, downloading and compiling in a manner that provides value to those that have access to the information. This also constitutes a significant intellectual investment by PEG for which confidential treatment is requested.

The third component of information is cost data. The request for confidentiality stems from the fact that the data was procured from a data provider that does not allow its data to be made publicly available, although it can be shared confidentially. The Board has previously granted confidential treatment to data from SNL, a data provider that does not allow its data to be made publicly available, although it can be shared confidentially, in the proceedings referenced above.

Interim Treatment

As an interim measure, the Board will allow any counsel for intervenors, counsel for the applicant and certain regulatory staff from the applicant that wish to review the confidential documents to do so after signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board and serving it on THESL and Board staff.

If any party objects to any of the additional requests for confidentiality they shall file their submissions by January 12, 2015. THESL or Board staff shall file any reply submissions by January 16, 2015. If the Board ultimately decides that a document should not be afforded confidential treatment, it will be placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, THESL or Board staff request that the information be withdrawn.

Notices of Motion

On December 19, 2014, the School Energy Coalition (SEC) filed a Notice of Motion with the Board requesting an order requiring THESL to provide a full and adequate response to interrogatory 1B-SEC-8 and more specifically to produce benchmarking documents that THESL has participated in through the Canadian Electricity Association

On December 22, 2014, Energy Probe Research Foundation (Energy Probe) filed a Notice of Motion with the Board requesting an order requiring THESL to provide a full and complete/adequate response to Energy Probe Technical Conference Question j 1.2-Energy Probe-49.

On December 31, 2014, the Association of Major Power Consumers in Ontario (AMPCO) filed a Notice of Motion with the Board requesting an order requiring THESL to provide full and adequate responses to questions posed by AMPCO at the Technical Conference related to the provision of historical information on the total number of asset units replaced and associated spending by year for the period 2010 to 2014 related to

THESL's Capital Investment Plan and specific System Renewal Investment Programs, as outlined in the motion.

The Board has determined that it will hear the above-referenced motions on Monday January 19, 2015. Any party that has additional material related to any of these motions that it may wish to file should do so by January 13, 2015.

The Board considers it necessary to make provision at this time for the following procedural steps.

THE BOARD ORDERS THAT:

1. If any party objects to any of the additional requests for confidentiality, such parties shall file their submissions by **January 12, 2015**.
2. Any party that has additional material that it may wish to file related to any of the above-referenced motions should do so by **January 13, 2015**.
3. THESL or Board staff shall file any reply submissions related to the requests for confidentiality by **January 16, 2015**.
4. A motions day will be held **January 19, 2015** commencing at 9:30 am in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto.

All filings to the Board must quote the file number, EB-2014-0116, and be made electronically through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board'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.ontarioenergyboard.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 CD 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, Martin Davies at Martin.Davies@ontarioenergyboard.ca and Board Counsel, Maureen Helt at Maureen.Helt@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, January 7, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary