



Toronto Hydro-Electric System Limited

**Application for electricity distribution rates and other
charges beginning January 1, 2025**

**DECISION ON CONFIDENTIALITY, ISSUES LIST, AND
PROPOSED EXPERT EVIDENCE AND**

PROCEDURAL ORDER No. 3

February 5, 2024

Toronto Hydro-Electric System Limited (Toronto Hydro) filed an application with the Ontario Energy Board (OEB) on November 17, 2023, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, beginning January 1, 2025, and for each following year through to December 31, 2029.

In Procedural Order No. 1, issued January 15, 2024, the OEB set out a schedule of procedural steps and provided for submissions on the following matters: (i) Toronto Hydro's confidentiality requests made by letter dated November 17, 2023; (ii) the draft issues list for this proceeding; and (iii) plans from OEB staff or intervenors to file expert evidence.

Submissions regarding the confidentiality requests were filed by OEB staff, School Energy Coalition (SEC), Vulnerable Energy Consumers Coalition (VECC), Association of Major Power Consumers in Ontario (AMPCO), Consumers Council of Canada (CCC), and Toronto Hydro.

OEB staff filed a draft issues list agreed upon by all parties, which was the outcome of an issues conference held on January 22, 2024.

Finally, OEB staff and Building Owners and Managers Association (BOMA) filed submissions indicating intent to file expert evidence.

This decision deals with each of the three topics in turn.

1 CONFIDENTIALITY REQUESTS

With its application filed on November 17, 2023, Toronto Hydro included requests 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

OEB staff, VECC, and SEC filed detailed submissions while CCC and AMPCO filed submissions indicating their support of, and agreement with, SEC's submission.

On January 24, 2024, Toronto Hydro updated its confidentiality request to reflect the conclusion of bargaining with one of its unions, consistent with its intent as indicated on November 17, 2023. As a result, Toronto Hydro retracted its request for confidential treatment of compensation forecasts for 2024 to 2025. Since this was filed after submissions from OEB staff and intervenors, those submissions do not reflect this aspect of the revised confidentiality request.

1.1 Personal Information

Background

OEB staff filed a submission on the personal information confidentiality request and referenced the OEB's [Practice Direction on Confidential Filings](#), identifying the business identity exemption in section 2(3) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). OEB staff stated that it had requested Toronto Hydro to file further explanation as to how the requests would qualify while considering this section of FIPPA.

VECC submitted that the OEB should only provide confidential treatment for information in the most necessary of circumstances. VECC also noted that absence of submissions does not imply acceptance of the rationale or validity of the claims put forth by an applicant. VECC clarified that it does not make confidentiality submissions in cases where the redacted information is unlikely to have material impact on its analysis.

In its January 29, 2024 reply submission, Toronto Hydro acknowledged that this information does not qualify as personal information under FIPPA. Additionally, Toronto Hydro revised its position on this request. Toronto Hydro stated that it is now requesting confidentiality for this information on the basis of relevance to the proceeding and the perceived risk of harm to the employees. Toronto Hydro stated that this irrelevant information, when combined with other information that may be on the public record, could facilitate fraud, identity theft, and security breaches. Since Toronto Hydro revised the basis for the request after submissions from OEB staff and intervenors, there are no other submissions with respect to relevance or potential harm.

Findings

The OEB finds that the redacted names, phone numbers, job titles, qualifications, professional designations, etc. contained in the corporate income tax returns is not personal information in accordance with FIPPA. Section 2(3) of FIPPA states that “(p)ersonal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.”

However, the OEB also finds that this information does not provide any additional value to the adjudication of this rate application. The OEB notes that the corporate income tax returns are filed because they are relevant to assessing the PILs models and associated evidence, which is related to issue 6.3 on the issues list (6.3: Are Toronto Hydro’s proposed PILs and other tax amounts for 2025-2029 appropriate?). The names of employees in the tax returns are not relevant to issue 6.3.

Therefore, the OEB classifies this information as “confidential – not relevant” in this proceeding rather than “personal information.” This information shall remain redacted. The OEB, however, cautions that this finding should not be viewed as a precedent that provides that the names of employees can be redacted from other evidence filed in an application beyond corporate income tax returns. In fact, the OEB has rejected requests to redact the names of employees in other circumstances (see EB-2021-0110, Decision on Request to Withdraw Information to be placed on the public record, May 9, 2022).

1.2 Business Number Redactions

Background

OEB staff supported the redaction of business numbers as such numbers are not relevant to Toronto Hydro's application and the redaction of this information would be consistent with previous decisions of the OEB, including the decisions in the EB-2019-0082 and EB-2018-0165 proceedings.

Findings

The OEB finds that corporate business numbers of Toronto Hydro and other businesses, included in various schedules of the corporate income tax returns, is commercially sensitive, the disclosure of which could expose Toronto Hydro to the risk of fraud and other malicious acts. In addition, these business numbers are not relevant to this application. This information shall remain redacted.

1.3 Safety/Security Redactions

Background

OEB staff supported redactions of safety/security information that would identify the location of critical infrastructure, such as data centres, assuming that the information is not already in the public domain. OEB staff noted this is consistent with previous decisions of the OEB, citing decisions in the EB-2022-0049 and EB-2019-0261 proceedings. OEB staff also supported redactions that identified tangible security risks.

OEB staff, however, did not support several redactions on the basis that the redactions appeared to be unnecessary or overly broad. In its January 29, 2024 reply submission, Toronto Hydro agreed with the majority of OEB staff's positions. A summary of both positions follows:

Redaction not supported by OEB staff	Toronto Hydro's reply submission
Exhibit 2B, Section E8.1, page 4, footnote 3	Agreed. Not confidential
Exhibit 2B, Section E8.1, page 6, lines 14 and 19	Agreed. Not confidential
Exhibit 2B, Section E8.1, page 8, line 5	Should remain redacted
Exhibit 2B, Section E8.1, pages 9 (all) -10 (lines 1-2)	Agreed. Not confidential

Redaction not supported by OEB staff	Toronto Hydro's reply submission
Exhibit 2B, Section E8.1, page 13, line 1	Agreed. Not confidential
Exhibit 2B, Section E8.1, page 14, lines 12-17	Should remain redacted
Exhibit 2B, Section E8.1, page 15, lines 11-14	Should partially remain redacted
Exhibit 2B, Section E8.1, page 17, lines 9-17	Agreed. Not confidential
Exhibit 2B, Section E8.1, page 21, lines 9-12, 14	Agreed. Not confidential
Exhibit 2B, Section E8.1, page 27, line 4	Agreed. Not confidential
Exhibit 2B, Section E8.2, page 24, lines 1-15, 22-25	Should partially remain redacted
Exhibit 2B, Section E8.2, page 28, lines 6-7	Should remain redacted
Exhibit 2B, Section E8.2, page 29, Table 8	Agreed. Not confidential
Exhibit 2B, Section E8.2, page 30, lines 6-10	Agreed. Not confidential
Exhibit 2B, Section E8.2, page 31, lines 2-7, 26-28	Agreed. Not confidential

None of the intervenors specifically addressed these safety or security related confidentiality requests in their submissions.

Findings

The OEB finds that the redacted safety/security information, with some exceptions as described below, is confidential in accordance with the *Practice Direction on Confidential Filings*, the disclosure of which could adversely impact the safety and security of the distribution system. This information shall remain redacted.

The exceptions fall into two categories as summarized below:

- a) Exceptions identified by OEB staff in their January 24, 2024 submission which OEB staff claims that they either do not meet OEB's confidentiality criteria or are not relevant to this application (left column in the above table).
- b) Items identified by Toronto Hydro in its letter of January 29, 2024 where they agree with most of the items identified by OEB staff in (a) above with very few exceptions (right column in the above table).

The OEB finds that the information described in (a) above less the information described in (b) as being confidential shall be re-filed by Toronto Hydro with the OEB with these exceptions unredacted.

1.4 Labour Relations Redactions

Background

OEB staff and intervenor submissions addressed the labour relations confidentiality requests. None of the submissions supported Toronto Hydro's confidentiality request.

OEB staff noted that placing materials on the public record is the rule and that redactions for confidentiality are the exception, and that Toronto Hydro had failed to meet the onus of demonstrating that confidential treatment of the labour relations information was warranted. OEB staff submitted that the high-level workforce compensation projections do not fall within the presumptively confidential category of "information related to current or future collective bargaining negotiations". Similarly, SEC submitted that it is unclear that disclosure of this information would significantly prejudice Toronto Hydro's position in current and upcoming labour negotiations. SEC noted that at its most detailed format, the redacted information is not broken down by union and is intermingled with non-union non-management positions. SEC also questioned the confidential treatment of management-level compensation. VECC's submission was similar in nature.

OEB staff also noted that Toronto Hydro has wrongly asserted that this type of information has been previously held as confidential and that none of the examples cited by Toronto Hydro have involved high level proposed compensation increases across the workforce of a distributor. OEB staff noted that the type of information that was held as confidential in EB-2021-0110 differs from the information that Toronto Hydro is now seeking to redact. OEB staff also noted that Toronto Hydro provided compensation projections on the public record in EB-2018-0165. SEC similarly noted that the decisions cited by Toronto Hydro did not pertain to the same information. Furthermore, SEC noted that in recent proceedings, applicants did not seek confidential treatment for similar information, noting the uniqueness of Toronto Hydro's request for confidential treatment of this aggregated information. VECC submitted that in no other cost of service proceeding could it find a request that sought to remove such

fundamental information from the public's view.

Finally, OEB staff raised concerns that accepting these redactions would complicate the hearing of this application. SEC echoed the importance of this information to the hearing process, as did VECC.

In its reply submission dated January 29, 2024, Toronto Hydro disagreed with the submissions from OEB staff and intervenors and re-asserted its request for confidential treatment. In reply, Toronto Hydro addressed three considerations that arise from the submissions of OEB staff and intervenors: harm and prejudice of disclosing this information, balancing the interests of public disclosure and confidentiality, and comparisons with other applications.

Toronto Hydro re-asserted its claim that disclosure of this information would harm and prejudice Toronto Hydro in future labour negotiations. First, Toronto Hydro stated that this application differs from previous Custom IR applications. Toronto Hydro stated that unlike previous applications, Toronto Hydro developed and filed a bottom-up compensation forecast for all years of the plan. Toronto Hydro submitted that this five-year forecast reflects Toronto Hydro's expectations regarding labour costs and year-over-year increases, and that this bottom-up five-year forecast is integral to Toronto Hydro's proposed rate-setting formula. Toronto Hydro stated that this is an important consideration.

Second, Toronto Hydro clarified the nature of the information it seeks to keep confidential. Toronto Hydro stated that this information relates to the level of year-over-year wage increases that are subject to collective agreements.

Toronto Hydro stated that the redacted information would provide insight into year-over-year increases subject to any of its four collective agreements since the top-level, total aggregated cash compensation could be divided by the total number of Toronto Hydro employees. Toronto Hydro stated that this aggregated ratio would disclose wage growth assumptions regarding year-over-year increases subject to the collective agreements, and thus could be used by unions in collective agreement negotiations.

On the balancing of public disclosure and confidentiality, Toronto Hydro stated that consumer and public interest intervenors could access and test that information during the proceeding under the OEB's confidentiality protocols, that the public will still have access to the capital and operational program budgets for which Toronto Hydro seeks funding, and noted that the confidentiality request only relates to approximately 0.2% of the approximately 5,500 page public record. On this basis, Toronto Hydro stated that the balance of interest was incorrectly considered in OEB staff's submission.

The third area Toronto Hydro addressed was the comparison to past applications and considerations for future applications. Toronto Hydro stated that confidentiality requests must be decided with regard to the particular facts and circumstances of the case at issue. Toronto Hydro re-stated that, unlike previous applications, Toronto Hydro developed and filed a bottom-up compensation forecast for all years of the plan, reflecting Toronto Hydro's expectations regarding labour costs and year-over-year increases. Toronto Hydro emphasized that this application is unique in this respect, and therefore fundamentally different. Toronto Hydro re-affirmed that these aggregated total compensation figures would allow the unions to glean Toronto Hydro's expectations and assumptions regarding the outcomes of labour negotiations. Finally, Toronto Hydro stated its view that if the OEB were to deny this request, it would discourage future applicants from providing bottom-up compensation and wage growth forecast information in future rate applications.

Findings

The OEB denies Toronto Hydro's request to treat any of this information as confidential. The subject information does not reveal any labour relations strategy or information that is broken down by union. Although Toronto Hydro claims in its January 29, 2024 reply submission that this information was the result of a "bottom-up compensation forecast," the level of granularity of the information presented in the application does not, in the OEB's view, constitute a level of detail that would enable the unions to deduce information that would benefit them in ongoing or future labour negotiations.

Toronto Hydro, in its reply submission, draws an analogy between these circumstances and disclosure of the annual cost increase of goods and services from the market under future agreements with external vendors. The OEB's response to this is that Toronto Hydro's argument would only be valid if this information is broken down by service and/or vendor which is not the case in Toronto Hydro's example.

The OEB does not find that disclosure of this high-level consolidated information would prejudice Toronto Hydro's position in future negotiations. In addition, labour costs form a significant part of Toronto Hydro's revenue requirement and should be scrutinized in the public domain. Toronto Hydro shall re-file these parts of the application with this information unredacted.

2 ISSUES LIST

Background

On January 22, 2024, OEB staff held an issues conference with Toronto Hydro and intervenors to discuss the draft issues list submitted by Toronto Hydro on January 11, 2024. All intervenors, except the Power Workers Union, were present at the issues conference. On January 25, 2024, OEB staff submitted that parties came to agreement on a draft issues list and provided it as an attachment to that letter. One of the issues pertains to Toronto Hydro's request to finalize the performance targets in a second phase, in parallel with the draft rate order phase of the proceeding. OEB staff stated that, depending on the OEB's decision, parties would like to reserve the right to consider this as part of settlement or in argument if settlement is not achieved.

Also in the letter, OEB staff noted that the intervenors have requested to file interrogatories by exhibit number. Intervenors also indicated that, given the current issues list was prepared prior to the interrogatory process, parties may wish to raise additional matters for inclusion on the Issues List after the responses to the interrogatories are received.

Findings

The OEB approves the proposed issues list filed by OEB staff on January 25, 2024. The OEB agrees with the parties that Toronto Hydro's proposal to finalize the performance targets in a second phase of the proceeding will be addressed at a later stage.

As requested by the parties, the OEB waives the requirement under Rule 26.02(e)(ii) of the [Rules of Practice and Procedure](#) that the interrogatories correspond to the approved Issues List. Parties may file interrogatories according to the exhibit numbers in the application. The OEB also agrees that additional matters may be added to the approved Issues List after the responses to the interrogatories are received, subject to OEB approval.

The approved Issues List is attached as Schedule A to this decision.

3 PROPOSED EXPERT EVIDENCE

Background

By letter dated January 24, 2024, OEB staff provided notification of intent to file expert evidence. OEB staff retained Pacific Economics Group Research LCC (PEG) and indicated that PEG would file a report presenting a review of the evidence prepared by Clearspring Energy Advisors and UMS Group for Toronto Hydro with respect to total cost and unit cost benchmarking, and performance trends. OEB staff also indicated that PEG would file a report presenting a review of the evidence prepared by Scott Madden with respect to the jurisdictional review of performance-based regulation and the support for Toronto Hydro's Custom IR plan.

By letter dated January 26, 2024, BOMA provided notification of intent to file expert evidence. BOMA submitted that it would file expert evidence focused on Toronto Hydro's proposed load forecast methodologies and the resulting 2025-2029 load forecast with respect to the commercial building sector. BOMA's proposed evidence will present analysis of electricity consumption trends from different commercial building types based on the most recent empirical data. BOMA noted the work will focus on the potential for electrification of different commercial building types.

Findings

The OEB approves OEB staff's proposal to provide expert evidence by PEG, as described in the January 24, 2024 letter. The OEB also approves BOMA's proposal to provide expert evidence by Enerlife Consulting, as described in the January 26, 2024 letter. The OEB would find it beneficial for BOMA's evidence to include the number of Toronto Hydro customers by rate class and the associated volumes that BOMA represents.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Toronto Hydro shall, in accordance with the findings above, file revised evidence by **February 9, 2024**.
2. The approved Issues List is attached to this decision as Schedule A.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2023-0195** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 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, Thomas Eminowicz at Thomas.Eminowicz@oeb.ca and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca and Charlotte Kanya-Forstner at Charlotte.KanyaForstner@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **February 5, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

Schedule A

Approved Issues List

Toronto Hydro-Electric System Limited

EB-2023-0195

Toronto Hydro-Electric System Limited

Application for electricity distribution rates and other charges beginning January 1, 2025

EB-2023-0195

Approved Issues List

1.0 General

- 1.1 Has Toronto Hydro responded appropriately to all relevant OEB directions from previous proceedings?
- 1.2 Is the proposed effective date of January 1, 2025 appropriate?
- 1.3 Are the rates and bill impacts resulting from Toronto Hydro's application appropriate?
- 1.4 Did Toronto Hydro appropriately consider customer needs and preferences in the formulation of its proposed spending?

2.0 Custom Incentive Rate-setting

- 2.1 Are all elements of Toronto Hydro's Custom Incentive Rate-setting proposal for the determination of rates appropriate (including the Performance Incentive Mechanism)?
- 2.2 Subject to Issue 2.3, is Toronto Hydro's proposed custom scorecard (i.e. the performance metrics) appropriate?
- 2.3 Is Toronto Hydro's approach to defer the finalization of performance targets to a Phase 2 appropriate?

2.4 Is the proposed Innovation Fund appropriate?

3.0 Rate Base and Capital Plan

3.1 Are the proposed 2025-2029 rate base amounts (including the working capital allowance amounts) reasonable?

3.2 Is the level of 2025-2029 capital expenditures and capital in-service additions arising from the Distribution System Plan appropriate?

3.3 Is the proposed treatment of renewable enabling improvement investments appropriate?

3.4 Are Toronto Hydro's proposed depreciation methodology and resulting expenses (including decommissioning provision and derecognition) for 2025-2029 appropriate?

3.5 Has Toronto Hydro appropriately considered measures to cost effectively reduce distribution losses in its planning processes and included such measures where appropriate?

4.0 Load and Other Revenue Forecast

4.1 Are Toronto Hydro's proposed load forecast methodologies and 2025-2029 resulting load forecast reasonable?

4.2 Are Toronto Hydro's 2025-2029 other revenue and shared services forecasts reasonable?

4.3 Is the proposed shared services cost allocation methodology and the quantum appropriate?

5.0 Operations, Maintenance and Administration (OM&A) Costs

- 5.1 Are the proposed 2025-2029 OM&A expenditures appropriate?
- 5.2 Are the compensation related costs (including, FTEs, wages, salaries, benefits, incentives, overtime, pension and OPEB costs) appropriate?

6.0 Revenue Requirement, Taxes, and Payments in Lieu of Taxes (PILs) Amounts

- 6.1 Have the impacts of any changes in accounting standards, policies, estimates, and adjustments been properly identified and recorded, and is the rate-making treatment of each of these impacts appropriate?
- 6.2 Is the proposed calculation of the Revenue Requirement appropriate?
- 6.3 Are Toronto Hydro's proposed PILs and other tax amounts for 2025-2029 appropriate?

7.0 Cost of Capital and Capital Structure

- 7.1 Are Toronto Hydro's proposed 2025-2029 cost of capital amounts (interest on debt and return on equity) and capital structure appropriate?

8.0 Cost Allocation

- 8.1 Are Toronto Hydro's cost allocation and revenue-to-cost ratio proposals appropriate?

9.0 Rate Design

- 9.1 Are Toronto Hydro's proposals for rate design (including, but not limited to, fixed / variable split, loss factors, retail transmission service rates, specific and other service charges, and rate mitigation proposals) appropriate?

10.0 Deferral and Variance Accounts

- 10.1 Are Toronto Hydro's proposals for the disposition of balances in existing deferral and variance accounts and other amounts appropriate?
- 10.2 Are Toronto Hydro's proposals for the establishment of new accounts, closing of existing accounts or continuation of existing accounts appropriate?