



Ombudsman
Toronto

April 12, 2024

Ombudsman Toronto Investigation Report

An Investigation into
Toronto Hydro's Processes for
Customer-Owned Infrastructure

Ombudsman Toronto acknowledges that we are on the traditional territory of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples, and that this land is now home to many diverse First Nations, Inuit, and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 signed with the Mississaugas of the Credit, and the Williams Treaties signed with multiple Mississaugas and Chippewa bands. We are here because this land has been colonized, and we recognize the ongoing harm done to Indigenous communities by this colonial system, including the effects of broken treaty covenants.

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Ombudsman Toronto is committed to continually acting in support of and in solidarity with Black communities seeking freedom and reparative justice in light of the history and ongoing legacy of slavery that continues to impact Black communities in Canada. As part of this commitment, we would also like to acknowledge that not all people came to these lands as migrants and settlers. Specifically, we wish to acknowledge those of us who came here involuntarily, particularly those brought to these lands as a result of the Trans-Atlantic Slave Trade and Slavery. We pay tribute to those ancestors of African origin and descent.

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At Ombudsman Toronto, we know we have a responsibility to uphold and ensure fairness in our local government. We understand that this must be done with a respectful and culturally responsive approach, and we commit to ongoing learning, engagement, and relationship-building in order to do so.



Ombudsman

Kwame Addo

Deputy Ombudsman

Ciarán Buggle

Ombudsman's Note: This investigation involved efforts by staff in all parts of our office, including Investigators, Complaints Analysts, Investigations Counsel, as well as research, communications, and operations staff, and was led by Lead Investigator, Alaina Alexander.



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Executive Summary

Overview

In 1980, Mr. A. purchased a commercial property in Toronto. Unbeknownst to him, the property came with a pricey obligation that the average property owner does not have.

In 2015, some 35 years after he purchased the property, Mr. A. learned that he was financially responsible for maintaining an underground vault that provides electricity to him and his eight neighbors. His responsibility for the maintenance of the vault was outlined in an agreement between Toronto Hydro and the Developer who sold the property to him in 1980. When Toronto Hydro informed him of the vault, it also advised him that it needed repairs. An inspection identified repairs estimated at \$20,000 – a figure amounting to half of Mr. A.'s annual salary. There were no signs, written agreements or easements that would have alerted Mr. A. to the existence of this vault before he purchased the property.

Toronto Hydro generally provides residential and small business customers with electricity from transformers located on poles on public roads. If more power is needed, then the customer's only option is to place a transformer on their property. In these cases, the transformer may be housed within a vault, which is a form of customer-owned infrastructure. Toronto Hydro owns the transformer, but the vault is owned by the customer.¹

Typically, these types of vaults are owned by developers, corporations, or large companies. In fact, Toronto Hydro acknowledged that among its 790,000² customers, Mr. A. is the only individual responsible for a vault providing electricity for other customers.

After assessing Mr. A.'s concerns, my office launched an investigation, focussing on Toronto Hydro's process for managing related customer-owned infrastructure.

My office made thirteen recommendations. Once implemented, the recommendations set out in this report will allow Toronto Hydro to improve the administration and oversight of customer-owned infrastructure, spanning from their inception to inspection.

¹ In some instances, Toronto Hydro will own the transformer and the vault. Additionally, there are instances where the customer will own both the vault and the transformer. The scenario relevant to our investigation, however, is one where the customer owns the vault while Toronto Hydro owns the transformer.

² Toronto Hydro's website states that it has approximately 790,000 residential, commercial, and industrial customers in the city of Toronto.

What We Did

On July 19, 2023, my office launched an investigation into the process for managing Toronto Hydro's customer-owned infrastructure and how it was applied in Mr. A.'s case. The investigation focused on the following issues:

- Did Toronto Hydro have a clear and defined process for establishing and maintaining customer-owned infrastructure?
- Did Toronto Hydro apply this process fairly and consistently with respect to Mr. A.?
- Did Toronto Hydro fairly and transparently notify Mr. A. about his obligations concerning his vault?
- Did Toronto Hydro provide adequate notice to Mr. A. about its inspections of his vault?

Ombudsman Investigators conducted 16 interviews with Toronto Hydro staff familiar with Toronto Hydro's practice concerning customer-owned infrastructure and Mr. A.'s circumstances. We also reviewed documents either provided by Toronto Hydro or available on its website.

What We Found

We found that the lack of a cohesive internal process outlining the establishment, inspection, maintenance, and enforcement of customer-owned infrastructure meant that different divisions understand the customer's responsibilities differently. This allowed a case, like Mr. A.'s, to slip through the cracks.

Toronto Hydro has a Conditions of Service that contains information about a customer's responsibility for customer-owned infrastructure. However, this is a general document that is not tailored to each customer. We found that Toronto Hydro did not clearly tell Mr. A. about his obligations concerning the vault. When Mr. A. activated his account in 1980, Toronto Hydro staff failed to notify him about the vault on his property or his responsibility for it. The standard Conditions of Service would not assist a customer in informing them of their responsibilities if they are not aware that they own such infrastructure.

Our office found that Toronto Hydro did not notify Mr. A. before entering his property for inspection, despite being required by law to do so. Further, we found a lack of continuity in the way Toronto Hydro conducts its annual inspections. Inspectors conduct fresh inspections each year without taking the results from the previous year's inspection into

account. Together with inspectors' discretion in identifying necessary repairs, this may result in customers receiving inconsistent information regarding required repairs.

Additionally, we found Toronto Hydro gives the public inconsistent information about the cost of and the process for required repairs. While Toronto Hydro's Conditions of Service document offers customers one free vault access within a twelve-month period, its website indicates a free visit of only four hours within the same period.

It is for these reasons that we find that Toronto Hydro treated Mr. A. unfairly.

Our Recommendations

I made 13 recommendations in this report. My recommendations will improve the fairness, consistency, and transparency of how Toronto Hydro administers and manages customer-owned infrastructure and specifically, will improve its treatment of Mr. A.

My recommendations include a call for Toronto Hydro to:

- Assume responsibility for the cost of the vault on Mr. A.'s property, specifically, by maintaining and repairing the vault on Mr. A.'s property at Toronto Hydro's expense.
- Establish an internal process for customer-owned infrastructure that clearly outlines the roles of the respective divisions involved. Once implemented, this process can serve as a roadmap for determining staff responsibilities and promoting effective information exchange between departments.
- Require customers to notify it of decisions to subdivide property if the subdivision was not previously agreed to with Toronto Hydro.
- Provide notice to its customer of their ownership of and responsibilities for customer-owned infrastructure. Notice prior to inspections should also be provided to customers.
- Update its public information about vault access to ensure it is consistent across all its communication platforms.

Toronto Hydro's Response

In response to my report, Toronto Hydro indicates that it accepts and will readily implement 11 of my 13 recommendations. Specifically, it has committed to taking immediate steps to implement Recommendations 1-4 and 7-13 in full. However, Toronto Hydro told my office that while it acknowledges the spirit of Recommendation 5, it is only prepared at this time to assume the current remediation costs associated with the vault on Mr. A.'s property. However, it will review future costs as they arise.

Toronto Hydro says it worries about opening the floodgates for other customers to make similar requests. At the same time, it acknowledges Mr. A. is the only customer in this situation. Toronto Hydro's reluctance to commit to paying for future repairs reveals a failure to understand the intent behind Recommendation 5. Mr. A. may have made a different decision about the purchase had he known about the responsibilities that came with the property he now owns. By treating Mr. A. like its other customers, Toronto Hydro fails to recognize that it is not treating him fairly.

With respect to Recommendation 6, Toronto Hydro has accepted this recommendation. However, there are limitations with Toronto Hydro's current system that prevents it from notifying customers about the existence of customer-owned infrastructure on their property when an account is activated. I encourage Toronto Hydro to consider approaches that are not solely dependent on its system, but may achieve the same goal in the meantime.

Ombudsman Toronto Follow-Up

Toronto Hydro will provide my office with a status on its implementation of my recommendations by September 30, 2024. My office will follow-up quarterly thereafter until we are satisfied that Toronto Hydro has completed recommendation implementation.

History of the Complaint

1. Mr. A. owns a unit in a commercial plaza in Toronto.
2. Before Mr. A. purchased his unit, Toronto Hydro placed two transformers inside an underground vault,³ dug into the parking lot at the back of his unit. Mr. A. did not know that the vault was on his property, let alone that he was responsible for the vault in any way.
3. The transformers supply electricity to the entire plaza, consisting of nine units. (See **Picture 1: concrete sheets in the parking lot that cover the vault behind the building**)

Picture 1:



4. Thirty-five years after his purchase, Mr. A. received a notice from Toronto Hydro telling him that the vault needed repairs. The list of required repairs included correcting the cracked concrete and installing a smoke detector in the vault, which would need the assistance of a qualified electrician.
5. When Mr. A. called Toronto Hydro about this notice, Toronto Hydro staff told him that he was responsible for maintaining and repairing the vault because it was on his property. Mr. A. escalated his complaint within Toronto Hydro.

³ A reinforced concrete structure used for the purpose of housing transformers, switchgear, and other electrical distribution equipment as defined in [Toronto Hydro Requirements for the Design and Construction of Customer - owned Structures](#).

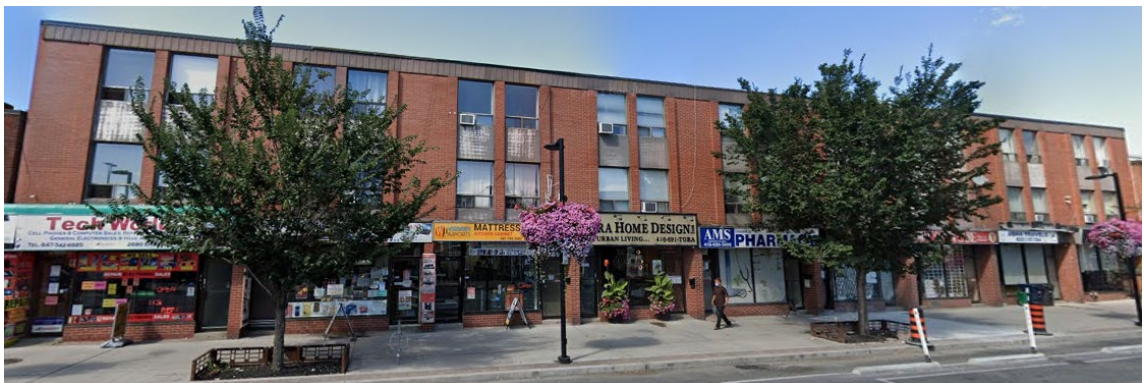
However, at every avenue, he was told the same thing: the vault is on your property, so it is your responsibility.

6. Mr. A. believes it is unfair that he bears the expense of maintaining and repairing a vault that he was unaware of. This vault houses Toronto Hydro equipment and benefits not only himself but also eight other Toronto Hydro customers in the plaza.

Background

7. The vault on Mr. A.'s property has a complicated history which starts in the 1970s.
8. Toronto Hydro maintains that by purchasing his property, Mr. A. became responsible for maintaining and repairing the vault. This is because of an agreement between the property developer and Toronto Hydro made in 1976.
9. In the mid 1970s, the developer contacted Toronto Hydro about supplying electricity to the plaza. Upon mutual agreement, it was determined that power would be supplied to the plaza by transformers located on the property as a single property. (See **Picture 2: street view of the plaza**)

Picture 2:



10. Toronto Hydro worked with the developer to design a vault to store the transformers. Since the vault would be on the developer's property, the developer would be responsible for maintaining the vault to Toronto Hydro's standards. In turn, Toronto Hydro would be responsible for maintaining the transformers within the vault.

11. In 1977, the developer subdivided⁴ the building into nine separate units but did not tell Toronto Hydro about this decision.
12. When the property was subdivided, the vault was now located on the property of one of the nine units. As a result, any future owner of that unit would bear the responsibility for maintaining and repairing the vault.
13. The transformers within the vault remained Toronto Hydro's responsibility and the only source of electricity for all nine units.
14. In 1980, Mr. A. bought the property on which the vault was situated.
15. There was no information available to Mr. A. when he bought the unit that would have allowed him to discover his responsibility for the vault. Toronto Hydro does not have a registered or unregistered interest on the property. There is no signage on the property to indicate that there is a vault or Toronto Hydro equipment on the property. It was not until three decades later that Toronto Hydro first issued a notice to Mr. A. informing him of deficiencies it identified in the vault.
16. Mr. A. told my office that he called Toronto Hydro in 2015 and again in 2016 about the notice, however, no one returned his calls. Mr. A. was not aware that the deficiencies or the vault were his responsibility. It was not until he was able to speak to Toronto Hydro staff in 2021 that he learned he owned the underground vault on his property and was responsible for maintaining and repairing it.
17. Between 2021 and 2022, Mr. A. disputed his ownership of and responsibility for the vault. He voiced these concerns at various levels within Toronto Hydro's team. Toronto Hydro told him that the vault was situated on his property, making him responsible for the vault including its repair. The cost of these repairs is estimated to be upwards of \$20,000, which is half Mr. A.'s annual salary.
18. Toronto Hydro staff also told him that he was bound by a publicly available document that binds all its customers, called the Conditions of Service. The Conditions of Service outlines the responsibilities for customers that own infrastructure,⁵ like Mr. A.
19. Mr. A. brought these concerns before the Ontario Energy Board (OEB) for further review.
20. The OEB found that Toronto Hydro met its requirement to have a Conditions of Service and that the Conditions of Service "appears to be in-line with good

⁴ Toronto Hydro confirmed this information through property records, particularly Fields Notes and Plan of Survey dated November 9, 1977.

⁵ Toronto Hydro uses the term "infrastructure" to refer to vaults, padmounts, and cable pull rooms. The focus of my investigation was civil infrastructure, specifically, vaults.

industry practices and current rules, codes, guidelines and legislation.” The OEB also found that Toronto Hydro’s Conditions of Service has specific provisions with respect to customer-owned infrastructure that apply to Mr. A. The OEB decided that Toronto Hydro is following its Conditions of Service in determining that Mr. A. is responsible for repairing the vault.

21. In August 2022, Mr. A. turned to my office for help.

Introduction

About Toronto Hydro

22. Toronto Hydro is a corporation owned by the City of Toronto. Toronto Hydro is responsible for maintaining an electrical distribution system to service its customers. It also seeks to provide its customers with high-quality customer service.⁶ Toronto Hydro’s management is overseen by a Board of Directors comprised of nine members of the public and four City Councillors. As Toronto Hydro is a City Corporation, Ombudsman Toronto has jurisdiction to receive complaints and investigate administrative fairness issues about Toronto Hydro.

23. The key Toronto Hydro departments relevant to this investigation include:

- Customer Connections Planning and Technical Analysis
- System Planning
- Design and Construction
- Business Law
- Regulatory Applications
- Maintenance Planning
- Standards
- Grid Maintenance Programs
- Call Centre and Customer Relations Management

⁶ <https://www.torontohydro.com/about-us/company-overview>. Accessed January 16, 2024.

- Government Relations

About Ombudsman Toronto

24. Ombudsman Toronto is an independent and impartial accountability office with the authority to review and investigate complaints about the administration of the City of Toronto, its divisions, agencies, boards, and corporations, such as Toronto Hydro. While most complaints are resolved through informal enquiries, my office may conduct investigations where warranted. If we find instances of unfairness or maladministration in how the City's agencies, boards, corporations, or divisions handled a matter, we can make recommendations for improvement.

Preliminary Information Gathering

25. Between October 2022 and May 2023, Ombudsman Toronto conducted informal enquiries with Toronto Hydro. My office sought to learn more about how Toronto Hydro addressed concerns about customer-owned infrastructure and its interactions with Mr. A.
26. Through informal enquiries, we identified concerns with Toronto Hydro's practice concerning customer-owned infrastructure practice and their handling of Mr. A.'s unique situation, prompting an in-depth review by my office.
27. We spoke with Toronto Hydro's Customer Advocate. While the Customer Advocate provided my office with general information, my office needed to better understand Toronto Hydro's entire practice regarding customer-owned infrastructure. This would involve examining the practice from the infrastructure's establishment and extending to Toronto Hydro's authority to either disconnect service or imposes charges on the customer. That said, we determined that the Customer Advocate could not provide these details as they fell outside the scope of her role.
28. My office attempted to speak with additional Toronto Hydro staff that interacted with or administered customer-owned infrastructure as part of their role and function at Toronto Hydro. However, Toronto Hydro denied this request and told my office that we could only speak with the Customer Advocate.
29. By May 2023, my office had reached an impasse with Toronto Hydro. We could not get the information we needed from Toronto Hydro.

The Investigation

30. On July 19, 2023, I notified Toronto Hydro of my intention to initiate a formal investigation into Toronto Hydro's process for customer-owned infrastructure and their application of that process to Mr. A.

31. My investigation focused on the following issues:
- Does Toronto Hydro have a clear and defined process for establishing and maintaining customer-owned infrastructure?
 - Did Toronto Hydro apply these fairly and consistently with respect to Mr. A.?
 - Did Toronto Hydro fairly and transparently notify Mr. A. about his obligations concerning his vault?
 - Did Toronto Hydro adequately notify Mr. A. about inspections of his vault?
32. My investigation of Toronto Hydro's process for customer-owned infrastructure was limited to Mr. A.'s circumstances. My investigation did not include a review of the OEB's decision regarding Mr. A.'s complaint.
33. As part of this investigation, Ombudsman Toronto investigators conducted 16 interviews with employees at different levels within Toronto Hydro. We also reviewed documents provided by Toronto Hydro staff familiar with Mr. A.'s circumstances. We further reviewed information available on its website.

Investigation Challenges

34. As noted above, informal enquires resulted in my office reaching an impasse with Toronto Hydro. Despite subsequently launching a formal investigation, we continued to experience roadblocks that hindered our review.
35. Toronto Hydro challenged my office's jurisdiction, citing the previous review of Mr. A.'s complaint by the OEB. Toronto Hydro also questioned the need for an investigation. Senior Toronto Hydro staff requested that we rescind the Notice of Investigation and revert to informal enquiries once again.
36. In addition to the Notice of Investigation, my office requested documentation from Toronto Hydro that we believed to be relevant to the investigation. My office gave Toronto Hydro a deadline to produce these documents. However, the deadline came and went with only some of the documents received.
37. My office reiterated our request by highlighting what remained outstanding. In particular, my office requested a staff list. This would have allowed my Investigators to understand Toronto Hydro's structure, identify relevant staff and preserve the confidentiality of Toronto Hydro employees who participated in the investigation. Toronto Hydro staff repeatedly told my office that it had neither a staff list nor an organizational chart.
38. Instead, Toronto Hydro selected the staff it wanted us to speak with and arranged the time for us to do so. Toronto Hydro stated that the complexity of

its organizational structure would be difficult for us to understand on our own. We later learned that Toronto Hydro does have an organizational chart with the full names and pictures of its staff.

39. The Deputy Ombudsman and I met with senior Toronto Hydro staff on at least eight occasions and had numerous email exchanges. Through these efforts, we outlined our investigative process, our expectations for the investigation, the importance of fulfilling our document request, and the importance of my office being able to identify, communicate with, and interview Toronto Hydro staff whom we believed to have information relevant to our investigation.
40. Despite these efforts, my office was still met with resistance. Toronto Hydro did not provide my office with all the documents we asked for in a timely manner. Whenever my Investigators sought contact information or contacted staff directly to schedule interviews, the requests were redirected to the Customer Advocate. Toronto Hydro's actions initially impeded my team's ability to conduct an impartial and fair investigation.
41. We do not believe Toronto Hydro's actions were intended to be obstructive, but rather stemmed from a lack of understanding of my office and the work we undertake in a formal investigation. We continued to educate Toronto Hydro staff about our role, function, and process. Investigators met with staff in the days leading up to their respective interviews to share general information about my office, what to expect from investigators and to answer any questions staff may have. For many individuals, this was their first interaction with my office.
42. Two months after we launched the investigation, we found staff more willing to engage with my office. They readily accepted invitations to be interviewed. Toronto Hydro, insofar as it was able, ultimately provided the documents we requested.

Energy Sector Regulation

43. The regulation of the energy sector involves several key players and a myriad of legislation. For this investigation, OEB, which regulates Toronto Hydro's distribution services, was relevant. Additionally, we found the *Electricity Act* to be the relevant legislation for our investigation. The relevance of the OEB and the *Electricity Act* is outlined below.

Electricity Act

44. The *Electricity Act 1998*,⁷ guides the safe and reliable delivery of electricity in Ontario. The *Electricity Act* is one of several statutes that govern the Energy Sector in Ontario and provide consumer protections.
45. Toronto Hydro must comply with the *Electricity Act*. Of relevance to our investigation is Section 40 of the *Electricity Act* which governs an electricity distributor's ability to enter a customer's property. Specifically, subsection (8) outlines that when a distributor is exercising its powers of entry under the *Electricity Act*, the distributor is required to provide the customer with reasonable notice. This requirement applies to Mr. A.'s property.

The Ontario Energy Board

46. The OEB is relevant to the investigation in two ways. First, it requires electricity distributors such as Toronto Hydro to create and implement a document referred to as Conditions of Service. Second, the OEB received a complaint from Mr. A. about the vault on his property and conducted its own review of this complaint.
47. The OEB is an independent regulatory body that oversees the energy sector in the province. The OEB makes decisions and sets rules, codes, and standards to protect customers and ensure that electricity distributors operate in a safe, reliable, and sustainable way.⁸ Energy providers, such as Toronto Hydro, are required to comply with these rules, codes, and standards.
48. The OEB established the Distribution System Code, which sets out the minimum obligations that an electricity distributor must meet in carrying out its obligations in the distribution of electricity.⁹ The Distribution System Code requires each electricity distributor to “document its operating practices and connection policies”¹⁰ through a Conditions of Service document.
49. The OEB also accepts and investigates complaints from the public about the energy companies it oversees.
50. The OEB conducted a review of Mr. A.'s complaint and found that Toronto Hydro complied with the OEB's requirement to implement its Conditions of Service and

⁷ <https://www.ontario.ca/laws/statute/98e15/v8#BK1>. Accessed on January 16, 2024.

⁸ <https://www.oeb.ca/about-oeb/what-we-do>. Accessed on October 31, 2023.

⁹ <https://www.oeb.ca/regulatory-rules-and-documents/rules-codes-and-requirements/distribution-system-code-dsc>. Accessed on October 31, 2023.

¹⁰ Section 2.4 of the Distribution System Code.
<https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2023-08/Distribution-System-Code-DSC-20230802.pdf>. Accessed on January 16, 2024.

that Toronto Hydro's Conditions of Service outlined Mr. A.'s responsibilities with respect to the vault.

51. My investigation did not focus on the OEB's oversight of Toronto Hydro or its review of Mr. A.'s complaint. The OEB falls outside my jurisdiction. However, my power to investigate Mr. A.'s concerns is not limited by the OEB's decision.

Toronto Hydro Conditions of Service

52. Toronto Hydro's Conditions of Service is a document available on Toronto Hydro's website that explains to its customers how it delivers its services as required by the OEB. It is supplemented by several reference documents that further outline Toronto Hydro's procedures.
53. Toronto Hydro's Conditions of Service document contains 113 pages. It clearly outlines the customers' obligations when they own infrastructure as well as Toronto Hydro's enforcement powers under that document. We did not investigate the terms or the sufficiency of Toronto Hydro's Conditions of Service.
54. Rather, our investigation centred on the fairness of Toronto Hydro's processes for customer-owned infrastructure and how it treated Mr. A.

Establishing Customer-Owned Infrastructure

55. During my investigation, we identified that Toronto Hydro's practice with regards to customer-owned infrastructure can be divided into the following three key components:
 - i. Creating customer-owned infrastructure and division of responsibilities
 - ii. Inspecting customer owned infrastructure and
 - iii. Maintaining customer-owned infrastructure

Each component of Toronto Hydro's practice had an impact on Mr. A.

Creating Customer-Owned Infrastructure

56. Toronto Hydro acknowledged that it does not have a process for customer-owned infrastructure that is accessible and followed by all its divisions. However, it recognized that customer-owned infrastructure is still very relevant today and the general practice of using customer-owned infrastructure has not changed for decades.
57. Toronto Hydro has material available on its website that outlines how it connects different categories of customers to electricity, namely residential,¹¹ small business,¹² and large developments.¹³
58. When a customer wishes to connect a property to power for the first time, they submit a new connection service request to Toronto Hydro.¹⁴ Toronto Hydro requires the customer's address and the amount of electricity the customer anticipates that they will need. These details allow Toronto Hydro's engineering and design teams to determine the type of connection that will satisfy the customer's power needs.
59. One of the main considerations for Toronto Hydro when designing a new connection is the amount of power required. Toronto Hydro explained that residential and small business customers are generally supplied with power directly from transformers on public roads.
60. If more power is needed than can be supported by transformers on the public road, then the customer's only option is to place a transformer on their property. In these cases, the transformer may be housed within a vault, which is a form of customer-owned infrastructure. Toronto Hydro owns the transformer, but the vault is owned by the customer.¹⁵
61. Toronto Hydro confirmed¹⁶ that it owns and is solely responsible for 10,130 vaults. On the other hand, 8,491 vaults are customer-owned and therefore the responsibility of those customers.

¹¹ <https://www.torontohydro.com/documents/20143/187146748/how-to-power-up-your-home.pdf/>. Accessed on November 22, 2023.

¹² <https://www.torontohydro.com/documents/20143/187146748/how-to-power-up-your-small-business-customer-connection-guide.pdf>. Accessed on November 22, 2023.

¹³ <https://www.torontohydro.com/documents/20143/185118906/how-to-power-up-with-toronto-hydro-developer-manual.pdf> Accessed on November 22, 2023.

¹⁴ <https://www.torontohydro.com/start-stop-move-account>. Accessed on November 6, 2023.

¹⁵ In some instances, Toronto Hydro will own the transformer and the vault. Additionally, there are instances where the customer will own both the vault and the transformer. The scenario relevant to our investigation, however, is one where the customer owns the vault while Toronto Hydro owns the transformer.

¹⁶ Toronto Hydro provided us with these figures.

62. Toronto Hydro decides if a vault is required to service the customer, usually at the time of design and construction. While Toronto Hydro typically uses vaults for residential condominiums, they may be used for any customer with large power needs.
63. There are two ways that Toronto Hydro might proceed once it and the customer agree on the design and cost of the electrical connection. It might enter into an agreement with the customer called an Offer to Connect, or it might require the customer to grant Toronto Hydro an easement.¹⁷
64. An Offer to Connect is generally used for new connections when a Toronto Hydro transformer is servicing one property. The Offer to Connect will outline how Toronto Hydro will supply electricity to that customer and set a specific amount of power the customer commits to using. It also outlines Toronto Hydro's authority to enter the property and to withdraw its services. The Offer to Connect process involves Toronto Hydro's Intake, Legal, and Design teams as well as the customer. Once signed, the agreement binds Toronto Hydro and the customer.
65. An easement is a right to use and occupy land. Toronto Hydro generally requires an easement when its transformer is servicing multiple properties. Toronto Hydro uses easements to prevent problems with accessing its equipment, as an easement grants Toronto Hydro the right to enter onto the customer's property to service its transformer.
66. After an agreement or easement is in place, Toronto Hydro designs and constructs its connection up to the customer's property line.¹⁸ In turn, the customer will design and construct the vault and connections on their property. Toronto Hydro will review and approve the customer's construction to ensure that it meets Toronto Hydro's standards.
67. Once the customer and Toronto Hydro have completed construction, Toronto Hydro will install its transformer within the vault and supply it with power. The customer assumes ongoing responsibility for the vault and Toronto Hydro assumes ongoing responsibility for the transformer, as discussed below.

¹⁷ An easement is the right to use real property for a specific purpose other than for general use and occupation of land. Toronto Hydro. Conditions of Service. <https://www.torontohydro.com/conditions-of-service>. Accessed on January 16, 2024.

¹⁸ Also known as the ownership demarcation point. Toronto Hydro's Conditions of Service defines the ownership demarcation point as the physical location at which a distributor's ownership of distribution equipment including connection assets ends at the customer.

Dividing Responsibilities for Customer-Owned Infrastructure

68. Toronto Hydro and the customer's responsibilities can be found in an Offer to Connect, if one was signed, and Toronto Hydro's Conditions of Service.
69. The Offer to Connect outlines the responsibilities the customer must fulfill to have a Toronto Hydro connection. In some cases,¹⁹ the Offer to Connect will give the customer five years to use an agreed amount of power.
70. Toronto Hydro provided us with its standard Offer to Connect template that is currently in use. It could not say if the language contained in this version of the template was consistent with the document used decades ago and, if not, what changes were made over time.
71. The Offer to Connect we reviewed states that "based on the plans and information provided to Toronto Hydro...an easement will not be required to connect the Project, but may be required if the information, [or] plans of design of the Project changes." However, Toronto Hydro staff told us that customers are not required to report any changes such as property subdivisions or sales, even if these changes could impact, for example, Toronto Hydro's access to their transformer.
72. The Offer to Connect identifies who owns what between the customer and Toronto Hydro. Further, it describes how Toronto Hydro agrees to provide power to the customer and what the customer agrees to do to facilitate this. However, the Offer to Connect does not speak to ongoing responsibilities past the point of connection. Ongoing responsibilities are set out in Toronto Hydro's Conditions of Service.
73. The Conditions of Service outlines Toronto Hydro's practices and policies. It applies to all Toronto Hydro customers and is available on Toronto Hydro's website. The Conditions of Service is also updated annually.
74. Section 1.7.5 of the Conditions of Service notes that customers are responsible for "providing, inspecting, maintaining, repairing, and replacing in a safe condition satisfactory to Toronto Hydro all equipment and infrastructure that is owned by the customer."
75. Although the Conditions of Service is updated annually, Toronto Hydro staff did not know if changes had been made to section 1.7.5 in the past. Additionally, staff were unsure what this section of the Conditions of Service said in 1980

¹⁹ This applies to circumstances where Toronto Hydro has expanded its capital infrastructure to connect the customer to its grid.

when Mr. A. purchased his property. There are no records of changes dating back to 1980 available for staff to refer to.

76. Toronto Hydro told our office that customers are informed of the Conditions of Service at the time of connection, but no one could tell us exactly how. Additionally, staff also told us that customers receive reminders about the Conditions of Service when it is updated annually. Toronto Hydro told us that customers are notified via email regarding upcoming changes to the Conditions of Service.
77. Toronto Hydro told our office that it advises new customers to consult the Conditions of Service. However, staff could not tell us how this was accomplished. Further, Toronto Hydro does not highlight to its customers which sections of the Conditions of Service, spanning over one hundred pages, apply to them.
78. Toronto Hydro told our office that when a customer activates a new account, it does not tell customers about any customer-owned infrastructure, such as vaults, that may be on their property, or their related responsibilities that are outlined in the Conditions of Service. Toronto Hydro said that its current operating systems cannot prompt its Call Centre and Customer Relations Management staff that there is a customer-owned infrastructure on the customer's property.
79. Toronto Hydro staff shared that Toronto Hydro receives 400,000 calls annually, and 7,000 requests for new connections or upgrades. Therefore, it would not be feasible for its staff to read out all the customer's responsibilities over the phone. Staff felt, however, that it was important for customers to somehow be aware of their responsibilities.

What Happened in this Complaint?

80. Toronto Hydro was unable to confirm with certainty what happened when the property developer submitted a new connection request for the plaza. Toronto Hydro staff shared what they believed happened, based on an approved connection design they found amongst its records, but they could not find an Offer to Connect signed by the developer and the distributor on file.
81. Toronto Hydro believes that in 1975, the developer told Toronto Hydro that it was connecting one property. Toronto Hydro recommended placing two transformers on the developer's property in this case because it was intended to power the entire property as a whole and the amount of power needed was high. Toronto Hydro told us that this decision is consistent with its current practice.

82. The developer would have had to build a vault for the transformers. Toronto Hydro shared the original drawings it approved for the developer to build a vault on the property. Because Toronto Hydro has a connection design in its file, it believed that it must have entered into an agreement with the developer.
83. Toronto Hydro believes that it signed an Offer to Connect with the developer but could not find this agreement. Toronto Hydro says it would not have required an easement in this case, because it was supplying power to only one property.²⁰
84. Although Toronto Hydro has no record of a signed Offer to Connect, it believes one was signed given that it was only intended to service a single property. Signing an Offer to Connect rather than requiring an easement in these circumstances is consistent with its current practice.
85. In 1976, the developer completed the construction of the property and vault. The next year, in 1977, the developer subdivided the property into nine properties to be sold individually. This was inconsistent with its connection request to Toronto Hydro. Toronto Hydro told us that this would not have been contemplated in the Offer to Connect it would have signed with the developer.
86. Toronto Hydro said that the developer did not tell it about its decision to subdivide the property. Toronto Hydro said it could not find any information showing that it knew about the subdivision at the relevant time.
87. While reviewing Mr. A.'s complaint, Toronto Hydro obtained a copy of the 1977 survey of the property. Through this, Toronto Hydro confirmed Mr. A.'s ownership.
88. When our office reviewed the title to Mr. A.'s property, we noticed that, after the property was subdivided, the unit with the vault was purchased and sold twice before Mr. A. purchased it in 1980.
89. Mr. A. was not told about the vault or his responsibilities to maintain the vault when he contacted Toronto Hydro to activate his account in 1980. Toronto Hydro says that it was the responsibility of Mr. A. or his representative to enquire about easements and inspect the property. Toronto Hydro said that when purchasing property, buyers should be aware of what they are purchasing. However, the documents available to Mr. A. at the time of purchase did not include any information about the vault. Toronto Hydro has no easements for this property that could have been discovered.

²⁰ Prior to 1998, Toronto Hydro was not required to register its easements. As a result, there is also a category of unregistered easements. However, Toronto Hydro confirmed that there was no registered or unregistered easement for either this property or the unit with the vault.

90. My office conducted a site visit to Mr. A.'s property and could not identify any Toronto Hydro signage indicating that a vault or Toronto Hydro equipment was on the premises. Mr. A. would not have known what he was getting into.
91. Toronto Hydro believes that in this case, the problem arose when the developer subdivided the property without notifying it. Toronto Hydro said that if this situation occurred today and if it knew about the change, it would require an easement.
92. The Offer to Connect we reviewed states that Toronto Hydro can require an easement and therefore anticipates that circumstances may change which necessitate an easement being registered. However, Toronto Hydro does not require customers to disclose any information about significant changes.
93. After learning about Mr. A.'s situation, Toronto Hydro shared that it would not have designed the connection this way if it had known the developer intended to subdivide the property. Instead, it would have individually powered each unit by connecting it to a transformer on the street.
94. Toronto Hydro told us that it is typical for a developer upon completion of construction to transfer ownership and responsibility of the vault to a condominium corporation or a property management company. Toronto Hydro staff told us that they had never heard of a situation like Mr. A.'s., where an individual, rather than a condominium corporation or property management company, is responsible for a vault that supplies power to multiple customers.
95. Toronto Hydro has not pointed to any other similarly situated customer. In fact, Toronto Hydro staff told us that Mr. A. was the only customer in this circumstance. Nonetheless, when we asked whether Toronto Hydro could assume responsibility for the vault, staff said they worry about opening the floodgates for other customers to make similar requests. Toronto Hydro believes that as a corporation funded by its customers, it cannot make exceptions for individuals because it becomes "a very difficult proposition and a slippery slope."

Analysis and Findings

96. Toronto Hydro does not have a clearly defined process for establishing and dividing responsibilities for customer-owned infrastructure. Rather, it relies on a practice. Throughout my investigation, Toronto Hydro staff shared varying and at times inconsistent information about what they believed to be the practice for customer-owned infrastructure.
97. Toronto Hydro's practice for customer-owned infrastructure does not appear to require a developer to give Toronto Hydro notice of a change that could affect its Offer to Connect agreement with Toronto Hydro, such as subdividing the

property. In this case, it appears that Toronto Hydro did not know, in a timely manner, that the developer subdivided the property or that Mr. A. had come to own a vault containing transformers servicing multiple customers.

98. Toronto Hydro's practice for customer-owned infrastructure does not have a clear communication procedure. Through my investigation, we confirmed that Toronto Hydro could have learned about the subdivision had the developer been required to disclose it.
99. If Toronto Hydro and the developer had communicated about the subdivision, Toronto Hydro could have considered altering the method of connection such as powering the nine properties individually from the street. This would have meant one property owner would not have been left with sole ownership and responsibility for a vault that they did not know existed.
100. Toronto Hydro should require customers who sign an Offer to Connect to notify it of substantial changes such as the subdivision of a property. Toronto Hydro staff acknowledged that the lack of notice and transparency around subdivision presents a gap in Toronto Hydro's practice. This may lead to future problems, as shown by Mr. A.'s case.
101. During my investigation, Toronto Hydro staff stated that if Mr. A. or his legal representative had completed their due diligence when he bought the property, he would have known about the vault and his obligations. We found that no amount of due diligence by Mr. A. or his representative would have alleviated his situation. Toronto Hydro did not have any signage that indicated there was a vault under the property, there are no easements registered on title, and Toronto Hydro staff did not tell Mr. A. that he owned a vault on his property when he first activated his account. This is still not a part of Toronto Hydro's practice today. There was no reasonable way for Mr. A. to know about the vault or the related responsibilities that come with vault ownership. It wasn't discovered until 35 years after purchasing his property.
102. If Toronto Hydro had required the developer to notify it of its plan to subdivide, Toronto Hydro could have obtained an easement. Mr. A's lawyer would have learned of the easement as part of the due diligence searches, they conducted before Mr. A. purchased the property. However, this did not happen and there was no search that his lawyer could have performed that would have alerted him to the existence of the vault.
103. Toronto Hydro believes Mr. A.'s circumstances are unique. Vaults housing Toronto Hydro transformers generating electricity for multiple customers are typically owned by a company, condominium corporation, or managed by a property management company; never just one individual. Toronto Hydro staff told us that other properties along this section of the street are supplied by a Toronto Hydro transformer within a vault owned by Toronto Hydro. In Mr. A.'s case, the costs are borne by him.

104. While Toronto Hydro recognizes that Mr. A.'s case is an outlier, it argues that should it make an exception and transfer ownership and responsibility of the vault from Mr. A. to the corporation, it could result in other customers coming forward with similar requests. Toronto Hydro says it is a slippery slope and what it does for Mr. A., it will have to do for others. However, this reasoning is flawed. By taking this approach, Toronto Hydro fails to recognize that treating Mr. A. like its other customers, it is not treating him fairly. Further, it fails to account for the uniqueness of Mr. A.'s situation. The failures of Toronto Hydro's practices resulted in Mr. A. unknowingly accepting responsibility for his vault.
105. Toronto Hydro staff consistently shared that Toronto Hydro should improve the way customers are educated about their ownership of customer-owned infrastructure and the responsibilities that flow from this ownership. I agree.
106. During Toronto Hydro's review of this report, it explained that there are limitations with its system that impact its ability to notify customers at the time of account activation about the existence of a vault on their property. As such, they would not be able to tell customers about their responsibilities with respect to that vault and that Section 1.7.5 of the Conditions of Service applies to them.
107. We encourage Toronto Hydro to find creative solutions to its system limitations. For example: consider creating a Word document which is reviewed and updated annually and contains the addresses of customer-owned vaults. At the time of account activation, Call Centre and Customer Relations Management staff could cross reference this document and where applicable, advise a new customer about Section 1.7.5. While this is an example, we believe that Toronto Hydro can find similar, simple, cost-effective, and creative solutions to address this concern.

Recommendations

Recommendation 1

Toronto Hydro should establish a clearly defined customer-owned infrastructure process and, when finalized, ensure that it is followed by all divisions and departments that are involved with customer-owned infrastructure.

Recommendation 2

Toronto Hydro should amend its Offer to Connect to include a requirement for customers to notify it of a decision to subdivide a property. Failure to notify Toronto Hydro should trigger rights or remedies under the Offer to Connect.

Recommendation 3

Toronto Hydro should consider whether to amend its Offer to Connect to address circumstances that would trigger a requirement to notify Toronto Hydro of the change.

Recommendation 4

Toronto Hydro should amend its Conditions of Service to include a provision that requires a customer to notify it of a decision to substantially change their property, including by subdivision, so that Toronto Hydro can determine if this change impacts the supply of electricity to the customer.

Recommendation 5

Toronto Hydro should assume cost responsibility for the vault on Mr. A.'s property, in perpetuity. The method to achieve this should be negotiated between Toronto Hydro and Mr. A.

Until Toronto Hydro assumes responsibility for the vault, Toronto Hydro should:

- Notify Mr. A.'s eight neighbours that they are being supplied with electricity from a vault owned by Mr. A. and,
- Post clear and visible signage to indicate that there is a vault on Mr. A.'s property.

Recommendation 6

Toronto Hydro should provide notice to new customers upon account activation about the existence of a customer-owned vault on their property and highlight the related sections of the Conditions of Service that apply to them.

Inspecting Customer-Owned Infrastructure

Inspection Process

108. The Distribution System Code²¹ sets guidelines that electricity distributors like Toronto Hydro need to follow when inspecting their equipment, including transformers. The Distribution System Code governs inspection frequency and timelines. In urban areas like Toronto, the Distribution System Code

²¹ Ontario Energy Board. Appendix C Minimum Inspection Requirement. <https://www.oeb.ca/documents/dscappc.pdf>. Accessed on November 7, 2023.

recommends inspections occur every one to three years. Toronto Hydro told us that it adheres to this schedule.

109. Toronto Hydro inspections are conducted by Toronto Hydro employees, contractors, and subcontractors.²² When Toronto Hydro has an easement, inspectors may access Toronto Hydro's equipment on private property freely. If there is no easement, Section 40²³ of the *Electricity Act* allows Toronto Hydro to enter a customer's property with reasonable notice to the customer.²⁴ Toronto Hydro acknowledged that it is bound by this section of the *Electricity Act*.
110. Toronto Hydro staff have a common understanding of how inspecting Toronto Hydro owned equipment and infrastructure works. However, we noted inconsistencies in the information staff shared with us about inspecting customer-owned infrastructure, including vaults. Some Toronto Hydro staff said that Toronto Hydro inspectors do not inspect customer-owned vaults, as that responsibility lies with the customer. Other Toronto Hydro staff told my office that inspectors cannot tell whether they are inspecting customer-owned or Toronto Hydro-owned infrastructure until after they enter identified deficiencies into their system.
111. Toronto Hydro staff shared that when inspectors conduct inspections of infrastructure and equipment, each inspection starts anew. Inspectors do not consider deficiencies that were identified in previous inspections. Although an inspection questionnaire provides some structure to inspections, inspectors use discretion to decide what is a deficiency. A deficiency identified by one inspector may not be identified as such by another inspector.

Customer Action Forms

112. When inspectors identify deficiencies with customer-owned infrastructure, Toronto Hydro issues a customer action form to the customer. The customer action form outlines the deficiencies, the repairs the customer must make and the timeframe to complete the repairs.
113. Each year Toronto Hydro issues approximately 2000 customer action forms. Toronto Hydro told us that it tracks customer action forms issued from 2011 to

²² We will broadly refer to the employees, contractors, and subcontractors as "inspectors."

²³ Section 40(a) of the *Electricity Act* provides that a distributor (such as Toronto Hydro) "may at reasonable times, enter land on which its transmission or distribution system is located to inspect, maintain, repair, alter, remove, replace or disconnect wires or other facilities used to transmit or distribute electricity."

²⁴ Section 40(8) of the *Electricity Act* provides that "if a person exercises a power of entry under this section, the person shall (a) provide reasonable notice of the entry to the occupier of the property."

present. It sends follow up notices to customers who have not confirmed that they have done the repairs set out on a customer action form.

114. Since the start of 2023, Toronto Hydro has sent 5,000 follow-up notices²⁵ to customers with outstanding customer action forms. Toronto Hydro explained that if a customer does not complete required repairs, the integrity of Toronto Hydro's electricity supply and public safety is at risk.
115. Toronto Hydro's customer action form team is responsible for mailing customer action forms to the customer, responding to customer enquiries and mailing follow up notices to customers to ensure that the customer completes the repairs noted in the customer action form.
116. Toronto Hydro sends follow up notices to customers with outstanding customer action forms at the 2-week and 2-month mark. However, beyond that timeframe, customer action forms are classified as dormant, and no further action appears to be taken.
117. Toronto Hydro told us that it does not currently have a formal process for managing customer action forms, but that practice documents are being developed.

What Happened in this Complaint?

118. Toronto Hydro could not confirm when it began inspecting its transformers or the vault on Mr. A.'s property.
119. Toronto Hydro shared its inspection records with my office. The first documented inspection occurred in 2011, 35 years after the developer built the vault. Although Toronto Hydro staff could not confirm that Toronto Hydro completed inspections before 2011, they believed that inspections had taken place, given that this is required under the Distribution System Code. (See **Picture 3: photos taken by Toronto Hydro inspectors showing access to the vault.**)

²⁵ Toronto Hydro's workflow indicates that at least four follow-up notices should be sent to the customer.

Picture 3:



- 120. Toronto Hydro has never given prior notice to Mr. A. before entering his property to conduct inspections of its transformers or the vault. It continues not to do so. For this reason, Mr. A. did not know about Toronto Hydro’s inspections until 2015, when Toronto Hydro issued him the first customer action form.

- 121. Between 2015 and 2023, Toronto Hydro issued Mr. A. at least twelve customer action forms identifying concerns such as trip hazards, the existence of gaps, grounding issues, cracked concrete and missing heat and smoke detectors. Although Toronto Hydro’s records suggest that repairs were completed regarding one form in 2018, this seems to be an error. Mr. A. confirmed with my office that he has not made any repairs to date. (See **Figure 1: Completed Customer Action Form**)

Figure 1:

CAF SUMMARY REPORT - 2682 DANFORTH AVE	
2682 DANFORTH AVE	
COMPLETED CAFS	
ADDRESS	2682 DANFORTH AVE
VAULT ID	4265
CAF #	183488
DATE CAF ISSUED	23 - AUGUST - 2018
CAF STATUS	DEFECT CORRECTED
IDENTIFIED DEFICIENCIES	TRIP HAZARD VAULT PERIMETER TO GRADE HEAT DETECTOR MISSING SPALLING ON TOP OF ROOF SLAB 60MM BY 60MM

- 122. Despite having outstanding customer action forms since 2015, Toronto Hydro only began sending follow-up notices for the vault on Mr. A.’s property in October 2020. Furthermore, these notices are not sent to Mr. A.; instead, they

are addressed and sent to a business located in the unit next to his. The customer action forms, however, are directed to Mr. A.²⁶

Analysis and Findings

123. Given the inconsistent responses we received about this problem, it appears that Toronto Hydro's staff are uncertain about whether Toronto Hydro inspects customer-owned infrastructure. Some staff believed that customers were responsible for inspecting their own infrastructure and if Toronto Hydro's inspectors happen to notice a deficiency, Toronto Hydro would alert the customer through a customer action form. However, other staff explained that Toronto Hydro does a thorough inspection of both customer-owned infrastructure and Toronto Hydro equipment because inspectors are unable to differentiate ownership.
124. My investigation confirmed that Toronto Hydro does not have a clear internal process that outlines and differentiates between Toronto Hydro and customer inspection responsibilities. As such, Toronto Hydro staff have inconsistent information and varying understandings about the process and responsibilities.
125. Based on the records Toronto Hydro shared with my office, Toronto Hydro began annual inspections of its equipment on Mr. A.'s property in 2011. The question of whether inspections were conducted before 2011 remains uncertain. However, Toronto Hydro believes that inspections likely occurred on Mr. A.'s property before 2011 but do not have any records to confirm it. Unfortunately, as no notice was provided to Mr. A., he cannot confirm whether these inspections took place either.
126. To inspect its equipment on Mr. A.'s property, Toronto Hydro relies on the powers of entry granted by Section 40 of the *Electricity Act*. Toronto Hydro should be giving the property owner notice which is required by the *Electricity Act*. By failing to provide notice to Mr. A., Toronto Hydro is contravening this provision of the *Electricity Act*.
127. Toronto Hydro continues to enter Mr. A.'s property, without notice, contrary to the *Electricity Act*. It appears from our interviews that Toronto Hydro accesses Mr. A.'s property based on an incorrect assumption that an easement exists when there is none.
128. Mr. A. was not allowed to be present during the inspections and learn about his responsibility concerning the vault, as inspectors came and went without his knowledge. Further, Toronto Hydro continues to issue customer action forms that have an adverse financial impact on Mr. A.

²⁶ Mr. A. and his neighbour share the same tenant and the notices are addressed to the tenant.

129. Toronto Hydro staff shared that allowing customers to be present for inspections would be beneficial. This practice would help educate customers about the type and degree of repairs to anticipate. Toronto Hydro staff explained that this type of engagement would allow even those customers who, unlike Mr. A., already know that they are responsible for a vault, to budget in advance for the cost of repairs. This way, they would avoid being blindsided by an exorbitant repair estimate as in Mr. A.'s case.
130. During my investigation, we found a lack of consistency and continuity in how inspections are conducted. Inspectors do not refer to previous inspections and instead start a fresh inspection each time. A staff member told us that although inspectors use a questionnaire as a guide, they also exercise discretion in determining what qualifies as a deficiency. As a result, identified deficiencies vary over time. For example, in Mr. A.'s case, a 2020 customer action form noted that the vault was missing a heat/smoke detector. However, in 2021, another customer action form made no mention of a missing heat/smoke detector even though Mr. A. did not install one. Yet, in 2022 the customer action form once again identified a missing heat/smoke detector as a deficiency. In addition, Toronto Hydro's records indicated that Mr. A. completed the repairs related to a 2018 customer action form, despite both Mr. A. and Toronto Hydro confirming that these repairs did not happen.
131. Even if Toronto Hydro conducts a fresh inspection each time, inspectors should be turning their minds to previously completed inspections. This ensures that customer action forms are consistent, and customers are informed about the necessary repairs, given the safety and financial implications.
132. Toronto Hydro's schedule of sending follow-up notices at the two-week and two-month mark was not followed in Mr. A.'s case. The first notice he received in 2020 indicated that it was a "final notice." The process of following up with customers on outstanding customer action forms does not appear to be consistently applied to all customers.

Recommendations

Recommendation 7

As part of Toronto Hydro's customer-owned infrastructure process, Toronto Hydro should always provide Mr. A. with reasonable notice of inspections as it is a legislative requirement under the *Electricity Act*. Further, doing so will facilitate customers having an opportunity to be present for the inspection.

Recommendation 8

Toronto Hydro should review its inspection practice to ensure there is continuity between each inspection and consistency over what is and is not considered a deficiency.

Recommendation 9

As part of Toronto Hydro’s ongoing review of the customer action form process, Toronto Hydro should:

- Verify that follow-up notices are sent to the address where the customer-owned infrastructure is located.
- Confirm that its staff comply with follow-up notice timelines.

Maintaining Customer-Owned Infrastructure

Customer Responsibilities and Requirements

133. Toronto Hydro requires that customers always maintain and repair any customer-owned infrastructure. According to the Conditions of Service, a customer is responsible for rectifying any deficiencies in their vaults that have been identified by Toronto Hydro. Further, Toronto Hydro requires the customer to ensure that all repairs identified on the customer action form are completed to Toronto Hydro’s standards.
134. Where the repairs are electrical²⁷ in nature, customers must use a “Toronto Hydro-approved electrical contractor.”²⁸ Toronto Hydro’s website refers customers to the Electrical Safety Authority “Contractor Locator” which provides a list of electrical contractors who are approved under the Electrical Safety Authority. Toronto Hydro staff told my office that a customer is not required to hire an approved contractor for nonelectrical repairs, but Toronto Hydro’s website states that for “major civil or structural” repairs, “a Toronto Hydro-approved civil contractor must be retained.” Toronto Hydro’s website does not provide a list of approved civil contractors.
135. As previously mentioned, if repairs remain outstanding or are completed unsatisfactorily, this poses a risk to the safety of the customer, other residents,

²⁷ Toronto Hydro’s website specifies that it is “major electrical work.”

²⁸ Information about Toronto Hydro’s customer action form: <https://www.torontohydro.com/contractors-and-developers/customer-action-form>. Accessed on November 13, 2023.

and to the integrity of Toronto Hydro’s electricity supply. The customer is responsible for any damage that results from incomplete or improper repairs.

Vault Access

136. In order to conduct any repairs, the customer has to have access to the vault. However, access is not entirely within the customer’s control. Toronto Hydro staff explained that vaults are typically divided into a main section and another section referred to as the “vault room.” Toronto Hydro stores its transformer in the vault room, and it retains a key for this area of the vault for safety reasons. The customer has access to the main vault area at any time, however where the customer is required to complete repairs in the vault room, Toronto Hydro’s vault access program is triggered.
137. Toronto Hydro may charge the customer to access the vault, but it provides inconsistent information about the cost. Toronto Hydro explained that a customer must request and schedule vault access when making repairs within the vault room.
138. Toronto Hydro’s Conditions of Service notes that “Toronto Hydro will provide a customer with one vault access every 12 months at no charge.”²⁹ However, Toronto Hydro staff shared that customers have free vault access for up to four hours before charges are applied.³⁰
139. Vault access charges stem from Toronto Hydro’s requirement that a vault safety agent must be present when a customer accesses a vault. Toronto Hydro requires a vault safety agent to be present during repairs to ensure the safety of the contractors and Toronto Hydro’s equipment. If the repairs take more than four hours, the customer is required to pay Toronto Hydro an hourly rate of \$200.³¹

Toronto Hydro’s Authority if Customer does not Complete Repairs

140. The Conditions of Service outlines Toronto Hydro’s authority, including that: “Toronto Hydro may disconnect the supply of electricity to the Customer or may correct the deficiencies at the Customer’s expense...” Toronto Hydro staff shared that Toronto Hydro has never exercised its authority under Section 1.7.5

²⁹ Section 1.7.5 Conditions of Service.

³⁰ <https://www.torontohydro.com/contractors-and-developers/vault-access>. Accessed on November 13, 2023.

³¹ This hourly rate is based on the quote Toronto Hydro provided to Mr. A.

of the Conditions of Service but in recent times has considered enforcing outstanding customer action forms in this way.

What Happened in this Complaint?

141. In 2020, after receiving his first follow-up notice of required repairs from Toronto Hydro (marked as a final notice), Mr. A. contacted Toronto Hydro and expressed his willingness to facilitate the repairs. Mr. A. scheduled access to the vault on his property, but when he learned that he would be financially responsible for all the repairs as well as charges connected to Toronto Hydro's vault safety agent, he began to question this obligation.
142. On December 30, 2020, Toronto Hydro sent Mr. A. a job quotation for \$1,557.23, citing two³² free hours of vault access and six paid hours. This amount only applied to Toronto Hydro's fees and not the cost of materials or the labour costs of the approved electrical or civil contractor Mr. A. would be required to hire.
143. During my initial enquiries into Mr. A.'s complaint, my office contacted a civil contractor who is familiar with conducting vault repairs. The contractor explained that based on the deficiencies cited by Toronto Hydro, repairs would cost Mr. A. upwards of \$20,000. Mr. A. told my office that this would be half of his annual salary.
144. Toronto Hydro staff explained that it offered Mr. A. eight hours of free access on a one-time basis, but once he understood that repairs would be his ongoing financial responsibility, Mr. A. was not willing to proceed with the repairs to the vault. Toronto Hydro explained that Mr. A.'s concerns sparked an internal review to determine the legal ownership of the vault. Its review determined that Mr. A. was the legal owner of the vault and was therefore obligated to complete the repairs at his own expense.
145. Toronto Hydro staff told us that it cannot waive Mr. A.'s charges on principle because they would have to do so for all their customers who own vaults. Toronto Hydro staff instead suggested that Mr. A. recover his repair costs from the owners of the eight other units in the plaza even though his neighbours are not obligated to share this cost. Toronto Hydro staff acknowledged that this was not truly feasible because no one would have "coughed up the money." Staff expressed hope that Mr. A.'s neighbours would be "reasonable," since they benefit from the transformers and by extension, the vault on Mr. A.'s property.
146. Toronto Hydro acknowledged that incomplete repairs could affect the safety and reliability of their system and reserves the right to disconnect service. Mr. A. has not completed any repairs to date. Toronto Hydro staff told us that disconnecting

³² In 2020, Toronto Hydro only offered two free hours of vault access. Toronto Hydro increased this to four hours in 2021.

the electricity supply to the transformers within the vault on Mr. A.'s property will not only impact Mr. A. but his neighbours.

Analysis and Findings

147. Toronto Hydro requires that customers maintain and repair customer-owned infrastructure. However, as discussed below, it appears that little information and support is available to customers to guide them through the maintenance and repair process. Toronto Hydro staff even confirmed that it would be difficult for a customer to know how to maintain a vault that they cannot generally access and are locked out of.
148. When Toronto Hydro identifies that major repairs are required in customer-owned infrastructure, it is up to the customer to find and retain Toronto Hydro approved personnel. However, Toronto Hydro only provides a list of approved electrical contactors. It does not provide a list of civil contractors.
149. There is inconsistency between Toronto Hydro's website and its Conditions of Service with respect to vault access. Toronto Hydro points customers to Section 1.7.5 of the Conditions of Service which states that customers are permitted to access their customer-owned vault for free once in a twelve-month period. There is no qualifying language. The Conditions of Service does not restrict the length of time a customer has within the vault. This conflicts with the information on Toronto Hydro's website which states that a customer is offered four free hours within a twelve-month period. This messaging was echoed by Toronto Hydro staff and when asked to reconcile this with section 1.7.5 of the Conditions of Service, staff could not do so.
150. We learned that the free vault access time has increased from two hours to four hours since Mr. A. raised his concerns with Toronto Hydro, but this time limit has not been reflected in the Conditions of Service, although it is updated annually.
151. Besides paying for an electrician's and or contractor's labour and materials, the customer is also required to pay an hourly rate for a vault safety agent, a Toronto Hydro employee.
152. Unfortunately, since inspectors do not refer to an inspection history and exercise discretion when identifying deficiencies, a later inspection might note a deficiency which could have been repaired if it had been identified earlier. This could cost the customer more by having to access the infrastructure again after completing earlier repairs. In Mr. A.'s case, a deficiency Toronto Hydro identified seemed to have resolved itself only to reappear the following year.
153. Toronto Hydro could not confirm whether there are other individual customers among their approximately 790,000 customers who are solely responsible for a

vault that supports multiple customers; in fact, some staff told us that he was the only customer in this situation.

154. Even if there are other individual customers solely responsible for a vault, what makes Mr. A.'s circumstances unique is that he did not know about the vault or his responsibilities concerning it until 35 years after he purchased his property. Fairness requires that his unique circumstances be recognized and treated appropriately.
155. Despite Toronto Hydro's acknowledgement of Mr. A.'s "unfortunate" circumstances, Toronto Hydro offered him the untenable and impractical solution of seeking financial support from his neighbours, knowing that his neighbours are under no obligation to assist. Toronto Hydro staff even shared that Mr. A.'s neighbours likely do not know that they are benefiting from the vault on Mr. A.'s property.
156. Although Toronto Hydro has the authority to disconnect the supply of electricity or complete the outstanding repairs and charge the customer back, it has never exercised its discretion to do so. If Toronto Hydro opted to exercise this discretion to disconnect, it would impact all of Mr. A.'s neighbours.
157. Toronto Hydro staff could not explain under what circumstances it may opt to exercise its discretion under section 1.7.5 of the Conditions of Service. In Mr. A.'s case, the notices he received do mention Toronto Hydro disconnecting his electricity supply or completing the repairs on his behalf, and subsequently charging him.

Recommendations

Recommendation 10

Toronto Hydro should create a guide to assist customers conduct their own inspections and maintenance of the areas of the vault that are accessible without the need for a Toronto Hydro staff member to be present.

Recommendation 11

Toronto Hydro should ensure that its public-facing information about vault access is consistent. This includes references in its Conditions of Service and on its website, especially concerning details about free access.

Recommendation 12

As part of Toronto Hydro's customer-owned infrastructure process, Toronto Hydro should include direction and guidance about when it will exercise its discretion to disconnect or charge the customer for outstanding repairs to customer-owned infrastructure.

Recommendation 13

Toronto Hydro should provide Ombudsman Toronto with an update on the status of the implementation of these recommendations by September 30, 2024, and quarterly thereafter.

Conclusion

158. Mr. A.'s ownership of the vault on his property is not in dispute. We understand the circumstances that led him to become responsible for the vault. Toronto Hydro maintains that when Mr. A. purchased his unit, he became liable for everything within the four corners of his property, including the underground vault which supplies electricity to him and his neighbours. Legally, Toronto Hydro's position may be sound, but it is not fair.
159. For 35 years Mr. A. was unaware of his responsibility for maintaining the vault due to Toronto Hydro's failure to inform him. He had no way of knowing of the additional obligations that came with the ownership of his property prior to finalizing his purchase. Toronto Hydro did nothing to inform him until it was much too late. Mr. A. became bound by an agreement of which he had and could have had no prior knowledge.
160. Toronto Hydro and the developer of the property purportedly signed an Offer to Connect which outlined that the vault and the transformers within it would facilitate the provision of electricity to the entire plaza. The developer later subdivided the property into nine separate units. This represented a significant change to the Offer to Connect, which Toronto Hydro did not learn about until Mr. A.'s purchase. However, Toronto Hydro did not and still does not require a developer to disclose information that could significantly impact the Offer to Connect agreement, such as the subdivision of a property. This could result in a hefty price tag for an unsuspecting purchaser, as was the case with Mr. A.
161. It was within Toronto Hydro's ability to require the developer to notify it of the subdivision. Toronto Hydro had the power to obtain and act on that information: Mr. A. did not.
162. Had Toronto Hydro known of the developer's plans to subdivide the property, it would have insisted that the developer provide it with an easement as per

standard practice. Then, when Mr. A.'s lawyer conducted their due diligence, they would have learned about Toronto Hydro's easement, the vault, as well as the additional financial obligations attached to the purchase. Mr. A. would have had the necessary details to make an informed decision. This opportunity was not afforded to him.

163. When he signed the purchase agreement, Mr. A. unknowingly signed up for additional expenses in the tens of thousands of dollars. This is unfair.
164. At the time he activated his account with Toronto Hydro, Toronto Hydro staff did not tell him about the vault because their system did not (and currently does not) have the capability to display this information to customer service representatives. Toronto Hydro unfairly placed the risk on Mr. A. for a situation that was within Toronto Hydro's control.
165. When my investigators visited Mr. A.'s property, they found it difficult to identify the vault. By simply looking around his property, Mr. A. could not have known he would be responsible for maintaining and repairing an underground structure. Mr. A. remained unaware of the vault and his obligations for 35 years. All the while, Toronto Hydro knew of its existence.
166. Section 1.7.5 of Toronto Hydro's Conditions of Service contains information relevant to customers who, like Mr. A., own infrastructure such as vaults. Most customers do not need to pay attention to this section as they do not own a vault. However, Toronto Hydro should prompt or alert customers who own infrastructure that Section 1.7.5 of the Conditions of Service applies to them. Staff at many levels of Toronto Hydro stated that it was important for customers to know what their responsibilities are when they accept service. For Mr. A., Toronto Hydro's failure to tell him that Section 1.7.5 applied to him was another missed opportunity to learn of his ownership and responsibilities before 2015.
167. In the absence of an easement, the *Electricity Act* requires Toronto Hydro to give Mr. A. notice before entering his property, something that it acknowledges that it has failed to do. In over three decades of housing its equipment on Mr. A.'s property, and over the course of multiple inspections, Toronto Hydro has not provided notice to Mr. A. before accessing his property. By doing so, Toronto Hydro has contravened and continues to contravene Section 40 of the *Electricity Act*. This has been yet another failed opportunity, entirely within Toronto Hydro's control, for Mr. A. to learn of his ownership of and responsibility for the vault.
168. Toronto Hydro comes and goes as it pleases on Mr. A.'s property, leaving notes about what repairs he is required to complete to the vault. Between 2015, when Mr. A. began receiving customer action forms, and his most recent customer action forms in 2023, the deficiencies that Toronto Hydro staff have identified have been inconsistent. In fact, in 2018, Toronto Hydro's records confirm that he completed repairs, which he never did.

169. Inspectors are allowed to exercise discretion when determining what is deficient, which means deficiencies that could have been identified and rectified under one customer action form, but were not, may be identified in a subsequent one, resulting in additional costs for the customer each time. In Mr. A.'s case, one customer action form required him to install a heat/smoke detector while a subsequent form did not. Mr. A. explained that installing a heat/smoke detector is an extensive project that requires him to complete electrical and general contracting work within the vault but also within his own and his neighbours' units, at his expense. The inconsistent identification of deficiencies resulting from Toronto Hydro's inspection practices for customer-owned infrastructure has been unfair to Mr. A.
170. Before 2020, Mr. A. received no follow up notices for his outstanding customer action forms. Toronto Hydro is currently improving its mechanisms for following up on outstanding customer action forms and working on internal practice documents. While these notices potentially go a long way in notifying customers of their responsibilities, Toronto Hydro needs to ensure that the customer receives the notice. In Mr. A.'s case, the customer action forms are mailed to him while the follow up notices are mailed to a neighbouring business in the plaza.
171. To complete vault repairs, customers need to make arrangements with Toronto Hydro, but are faced with conflicting information posted on Toronto Hydro's website and set out in the Conditions of Service. Since there is a price attached to vault access, customers should know what is available to them, whether it be free access under the Conditions of Service or limited free access based on Toronto Hydro's website.
172. Toronto Hydro should implement an internal process with respect to the establishment, inspection, and maintenance of customer-owned equipment to guide its staff.
173. Through my investigation, we recognized how large of a corporation Toronto Hydro is. The staff we interviewed work hard and have very intricate responsibilities integral to providing safe and reliable electricity within the city.
174. Although Toronto Hydro's divisions are interconnected, they sometimes work in silos. Consequently, staff had a division-specific understanding of customer-owned infrastructure and could only discuss it in a narrow context. Unfortunately, anomalies like Mr. A. go undetected until an issue is identified.
175. According to Toronto Hydro, its treatment of Mr. A. is no different from how it treats other customers responsible for customer-owned infrastructure. However, the findings of my investigation suggest otherwise. Toronto Hydro confirmed that Mr. A. is the only customer to have been saddled with a responsibility that he had no way of knowing about before purchasing his property. Mr. A. remained unaware of his responsibilities and was deprived of

the opportunity to take remedial action in the vault until he was confronted with an estimated repair bill of \$20,000.

176. Toronto Hydro's practice for governing customer-owned infrastructure will be enhanced by implementing a comprehensive process with notice provisions. My report also includes recommendations to Toronto Hydro that are specifically aimed at ameliorating its treatment of Mr. A.
177. Despite Toronto Hydro's assertions, the adage "buyer beware" is not applicable in this case. Mr. A. had no ability to protect himself from the unfairness he experienced. That was within Toronto Hydro's control. It is up to Toronto Hydro to address the unfairness experienced by Mr. A. and prevent it from happening to another customer in future.

Recommendations

Recommendation 1

Toronto Hydro should establish a clearly defined customer-owned infrastructure process and, when finalized, ensure that it is followed by all divisions and departments that are involved with customer-owned infrastructure.

Recommendation 2

Toronto Hydro should amend its Offer to Connect to include a requirement for customers to notify it of a decision to subdivide a property. Failure to notify Toronto Hydro should trigger rights or remedies under the Offer to Connect.

Recommendation 3

Toronto Hydro should consider whether to amend its Offer to Connect to address circumstances that would trigger a requirement to notify Toronto Hydro of the change.

Recommendation 4

Toronto Hydro should amend its Conditions of Service to include a provision that requires a customer to notify it of a decision to substantially change their property, including by subdivision, so that Toronto Hydro can determine if this change impacts the supply of electricity to the customer.

Recommendation 5

Toronto Hydro should assume cost responsibility for the vault on Mr. A.'s property, in perpetuity. The method to achieve this should be negotiated between Toronto Hydro and Mr. A.

Until Toronto Hydro assumes responsibility for the vault, Toronto Hydro should:

- Notify Mr. A.'s eight neighbours that they are being supplied with electricity from a vault owned by Mr. A. and,
- Post clear and visible signage to indicate that there is a vault on Mr. A.'s property.

Recommendation 6

Toronto Hydro should provide notice to new customers upon account activation about the existence of a customer-owned vault on their property and highlight the related sections of the Conditions of Service that apply to them.

Recommendation 7

As part of Toronto Hydro's customer-owned infrastructure process, Toronto Hydro should always provide Mr. A. with reasonable notice of inspections as it is a legislative requirement under the *Electricity Act*. Further, doing so will facilitate customers having an opportunity to be present for the inspection.

Recommendation 8

Toronto Hydro should review its inspection practice to ensure there is continuity between each inspection and consistency over what is and is not considered a deficiency.

Recommendation 9

As part of Toronto Hydro's ongoing review of the customer action form process, Toronto Hydro should:

- Verify that follow-up notices are sent to the address where the customer-owned infrastructure is located.
- Confirm that its staff comply with follow-up notice timelines.

Recommendation 10

Toronto Hydro should create a guide to assist customers conduct their own inspections and maintenance of the areas of the vault that are accessible without the need for a Toronto Hydro staff member to be present.

Recommendation 11

Toronto Hydro should ensure that its public-facing information about vault access is consistent. This includes references in its Conditions of Service and on its website, especially concerning details about free access.

Recommendation 12

As part of Toronto Hydro's customer-owned infrastructure process, Toronto Hydro should include direction and guidance about when it will exercise its discretion to disconnect or charge the customer for outstanding repairs to customer-owned infrastructure.

Recommendation 13

Toronto Hydro should provide Ombudsman Toronto with an update on the status of the implementation of these recommendations by September 30, 2024, and quarterly thereafter.

Toronto Hydro's Response to My Recommendations

178. Toronto Hydro's formal response (see Appendix A) indicates that it accepts and will readily implement 10 of my 13 recommendations. Specifically, it has committed to taking immediate steps to implement Recommendations 1-4 and 7-12 in full. However, Toronto Hydro told my office that while it acknowledges the spirit of Recommendation 5, at this time, it is only prepared to assume the current remediation costs associated with the vault on Mr. A.'s property. Toronto Hydro explained that it will review future costs as they arise. Additionally, Toronto Hydro told us that limitations with its system impact its ability to implement Recommendation 6, and that it will give further consideration to this.
179. While Toronto Hydro is committed to paying for the current repairs to the vault on Mr. A.'s property, its reluctance to commit to paying for future repairs reveals a failure to understand the intent behind my recommendation.
180. As I have noted in my report, this is not a case of a buyer failing to do his due diligence. Without an easement, signage, or some other instrument to alert Mr. A. to the vault and the obligations that come with ownership of the property, it is unfair to blame him for the situation he finds himself in. That is at the heart of the matter. How can someone be expected to assume responsibility for something they could not and did not know about?

181. Although Mr. A. is now aware of his obligations under Toronto Hydro's customer-owned infrastructure program, Toronto Hydro's position does not consider that Mr. A. may have made a different decision about the purchase had he known about the responsibilities that came with the property he now owns.
182. Toronto Hydro has committed to work with Mr. A. to find a solution that will work for the parties moving forward. Toronto Hydro agrees that it is not in either party's best interest to have this issue resurface in a few years. My office will continue to monitor the situation and encourages Toronto Hydro to continue working towards finding a permanent solution that works for all concerned.
183. Recommendation 6 urges Toronto Hydro to notify new customers of the existence of customer-owned infrastructure on their property. The onus would rest on Toronto Hydro to highlight the relevant sections of its Conditions of Service that apply to these customers. While Toronto Hydro has agreed to adopt this recommendation, it also acknowledged that currently, there are limitations with its system that prevent it from notifying customers about the existence of customer-owned infrastructure on their property when an account is activated. That said, I encourage Toronto Hydro to consider approaches in the interim that are not solely dependent on its system, but may achieve the same goal, while a permanent solution is under development.
184. My office is committed to working with Toronto Hydro to find a cost-effective solution to Recommendation 6. As such, there needs to be a plan developed with associated timelines to ensure that any remedy is not seen as aspirational, but rather, one that can be developed and implemented within a specified period of time.
185. My office will continue to monitor Toronto Hydro's progress with the implementation of Recommendations 5 and 6 as well as the other 11, until I am satisfied that they have been successfully applied.

Ombudsman Toronto Follow-up

186. My office will follow up with Toronto Hydro on a quarterly basis until we are satisfied that the implementation of my recommendations is complete.

Appendix A

Toronto Hydro-Electric System Limited
14 Carlton Street
Toronto, Ontario M5B 1K5



Kwame Addo
Ombudsman, City of Toronto
375 University Ave, Suite 203
Toronto, ON M5G 2J5

March 8, 2024

Dear Mr. Addo,

Toronto Hydro has reviewed a draft of your report titled *Investigation into Toronto Hydro's Processes for Customer-Owned Infrastructure*. We appreciate your efforts in developing this report, acknowledge its findings, and agree with its recommendations, subject to the comments below.

Toronto Hydro is committed to a culture of exceptional performance, through the delivery of safe and reliable power, and through the setting of high customer service standards. We engage with hundreds of thousands of customers and members of the public each year in a professional manner regarding all aspects of electricity distribution. Such outreach includes issues surrounding the safe distribution of electricity – including as it relates to the rights and responsibilities of both the utility and its customers – as the safety of our crews and the general public is of paramount importance. We regret that [REDACTED]'s experience fell short of the high standards we set for ourselves. The recommendations set out in your report identify opportunities for improvements that can be made to our processes and communications strategies in respect of customer-owned infrastructure going forward. We are committed to continuous improvement and appreciate the opportunity to demonstrate that commitment.

In the spirit of continuous improvement, Toronto Hydro has considered your 12 recommendations and is committed to implementing actions in response to those recommendations. Of course, in so doing, Toronto Hydro must ensure that improving one outcome – for example, customer service – does not unacceptably affect other outcomes – for example public safety, grid reliability, or affordability. We are pleased to advise that we are confident we will be able to successfully implement the majority of your recommendations, subject to the following observations:

- Recommendation 5 – While it is not standard practice to assume cost responsibility for customer-owned infrastructure, in these exceptional circumstances and as a gesture of goodwill to [REDACTED], Toronto Hydro will assume the remediation costs associated with the deficiencies noted in the customer action forms that were previously issued for this location. As for future costs, if any, Toronto Hydro will review any such situation as it arises, having regard to the circumstances at that time.
- Recommendation 6 – As your report correctly identifies, there are technological limitations that preclude Toronto Hydro from being able to notify customers about the possible existence of customer-owned infrastructure on their property at the time of account activation. However, we acknowledge and appreciate your comments on seeking creative solutions to those technological limitations and will take that away for further consideration.

Subject to these two comments, Toronto Hydro will take immediate steps to implement your recommendations and are confident that we will be able to provide a satisfactory outcome for [REDACTED]. We appreciate the opportunity to reflect on our customer-owned infrastructure processes and to make improvements that will assist customers going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheikha".

Sheikh Nahyaan
Executive Vice-President and Chief Operating Officer