



EB-2010-0142

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

AND IN THE MATTER OF an application by Toronto
Hydro-Electric System Limited for an order approving
just and reasonable rates and other charges for
electricity distribution to be effective May 1, 2011.

PROCEDURAL ORDER NO. 7

Toronto Hydro-Electric System Limited ("Toronto Hydro") filed an application, dated August 23, 2010, with the Ontario Energy Board under section 78 of the *Ontario Energy Board Act, S.O. 1998, c.15, Schedule B*, seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2011.

The Board issued a Notice of Application and Hearing dated September 15, 2010.

On October 18, 2010, Procedural Order No.1 was issued establishing, among other items, the dates for which interrogatories were to be filed with the Board and responded to by Toronto Hydro.

On November 11, 2010, the Board issued its Issues List Decision and Procedural Order No. 2. In it, the Board approved a Final Issues List and confirmed the schedule for filing interrogatories and responses to interrogatories as set out in Procedural Order No. 1.

On December 6, 2010, Toronto Hydro filed its responses to interrogatories from parties.

On December 13, 2010, the Board issued Procedural Order No. 3 outlining further steps in this proceeding.

On January 12, 2011, the Board issued Decision on Confidentiality and Procedural Order No. 4 (the "Confidentiality Decision") which dealt with confidentiality issues raised by Toronto Hydro and the scope of the settlement conference.

On January 14, 2011, the Smart Sub-metering Working Group ("SSMWG"), an intervenor in the proceeding, filed a Notice of Motion (the "Motion") requesting, among other things, that the Board direct Toronto Hydro to provide full and complete answers to specified interrogatories of the SSMWG.

On January 18, 2011, the Board issued Procedural Order No.5 establishing that it would hear the Motion orally on January 19, 2011.

On January 20, 2011, Toronto Hydro filed a letter with the Board which noted that on January 7, 2011, it had filed a prior letter with the Board, along with responses to SSMWG and Vulnerable Energy Consumers Coalition ("VECC") interrogatories. SSMWG interrogatory #8 asked that Toronto Hydro provide, subject to confidentiality, detailed meter costs for the Quadlogic meter. Toronto Hydro noted that it had stated in its January 7, 2011 letter that it intended to provide the requested information pursuant to the Board's Practice Direction on Confidential Filings.

Toronto Hydro indicated that with its January 20, 2011 letter it was including an additional envelope marked "confidential" which contained the capital cost per suite and the installation cost per suite for the Quadlogic systems installed in 2009 as requested in SSMWG #8.

Toronto Hydro asked the Board to limit disclosure of this information to counsel who execute the Board's Declaration and Undertaking, given the highly commercially sensitive nature of the information requested. Toronto Hydro noted that in providing suite metering services it is doing what it is required to do by law and in discharging its obligations in this regard, Toronto Hydro sources technologies on a competitive basis. Toronto Hydro stated that its suppliers have the right to have their commercially sensitive pricing information protected. Toronto Hydro further stated that to disclose unit pricing, capital cost and installation cost per suite for Quadlogic equipment to anyone who signs the Declaration and Undertaking runs the risk of disclosing sensitive pricing

information to direct competitors of its suppliers. Toronto Hydro also noted that in this proceeding, the Board has received submissions from other of its suppliers, such as PowerlinePlus Ltd., Aecon and Entera Utility Contractors which underscored the commercially sensitive nature of pricing. Toronto Hydro submitted that the same arguments applied to the suppliers of Quadlogic equipment as well.

The Board notes that in accordance with section 5.1.5 of the the Practice Direction on Confidential Filings, Toronto Hydro has provided in the above-referenced letters, information which identifies the documents which are being filed in confidence, together with a description of the basis on which confidentiality is claimed.

The Board asks for submissions from parties on two matters related to Toronto Hydro's response to SSMWG #8: first, whether Toronto Hydro's request that this information be kept confidential should be granted, and if so, whether or not the Board should also accept Toronto Hydro's proposal that only counsel for the various intervenors be permitted access to this interrogatory response.

As an interim measure, the Board accepts the reasons provided by Toronto Hydro as to why access to this material should be more restricted for the purpose of determining whether or not its confidentiality claim should be granted. Accordingly, at this time, the Board will restrict access to Toronto Hydro's response to SSMWG #8 to counsel who will execute the Board's Declaration and Undertaking.

Parties that wish to make submissions on whether or not the Board should ultimately treat the interrogatory response as confidential may do so in accordance with the steps set out below.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Parties wishing to make a submission on the confidentiality of the proposed confidential documents shall file such submissions with the Board and deliver them to Toronto Hydro by **January 26, 2011**.

2. If Toronto Hydro wishes to respond to any submissions on the confidentiality of the proposed confidential documents, it shall file such submissions with the Board and deliver them to the intervenors by **January 28, 2011**.
3. Toronto Hydro shall provide all unredacted confidential materials to counsel to all intervenors that have executed a Declaration and Undertaking pursuant to the Board's Practice Direction on Confidential Filings, if it has not done so already. Where possible, counsel to intervenors shall frame cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.
4. To the extent possible, counsel to intervenors shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If counsel to intervenors are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.
5. Counsel in receipt of confidential information shall, in accordance with the signed Declaration and Undertaking, either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to the Applicant.

All filings to the Board must quote file number EB-2010-0142, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

Address

The Ontario Energy Board:

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Ontario Energy Board

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Attention: Board Secretary

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ISSUED at Toronto, January 21, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli

Board Secretary