



EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

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

AND IN THE MATTER OF an application pursuant to section 60(1) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking an electricity distribution licence;

AND IN THE MATTER OF an application pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets as an entirety or substantially as an entirety to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(b) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets necessary in serving the public to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(c) by Toronto Hydro-Electric System Limited and 1798594 Ontario Inc. seeking leave to amalgamate;

AND IN THE MATTER OF a request pursuant to section 77(5) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking the cancellation of the distribution licence applied for in a separate application under section 60 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application pursuant to section 18(2) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited for an order assigning Toronto Hydro-Electric System Limited's electricity distribution licence to a proposed amalgamated entity consisting of 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER ON COST AWARDS

On June 15, 2009, Toronto Hydro Corporation's subsidiaries, 1798594 Ontario Inc. ("NewCo"), Toronto Hydro Energy Services Inc. ("THESI") and Toronto Hydro-Electric System Limited ("THESL") collectively referred to as the "Applicants" filed applications with the Ontario Energy Board (the "Board") under sections 60(1), 86(1)(a)(b)(c) and 77(5) of *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act"). The applications were later amended to include a request for an order under section 18(2) of the Act and to withdraw the request which had been made under section 77(5) of the Act. The Board assigned the applications file numbers EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183.

The applications collectively sought a declaration by the Board that streetlighting assets in the City of Toronto, owned by THESI, are deemed to be a distribution system and, ultimately, to make those assets part of a new amalgamated distribution company consisting of THESL and NewCo.

The Board issued its Decision and Order on the applications on February 11, 2010 (the "February Decision"). In the Decision, the Board approved the transfer of assets that it considered to be distribution assets. Those assets were specifically identified in the Decision. The approval was conditional on the Applicants' filing additional evidence setting out the revised transactions including an asset valuation within 90 days. The filing date was later extended to January 31, 2011.

In accordance with the Board's Decision and the Board's letter of March 9, 2010, the Applicants filed additional evidence with the Board on January 31, 2011 (the "Additional Evidence").

On April 19, 2010, the Board issued a Decision and Order on Cost Awards with respect to intervenors' cost claims incurred up to and including the date of the February Decision. The Board in the present process is determining appropriate cost awards for the Additional Evidence phase of this proceeding only.

On August 3, 2011, the Board issued its Decision and Order with respect to the Additional Evidence. The Board noted that only the Electrical Contractors Association of Ontario/Greater Toronto Electrical Contractors Association ("ECAO/GTECA") and the School Energy Coalition ("SEC") participated in this phase of the proceeding. The Board set out the process for ECAO/GTECA and SEC to file their cost claims and to respond to any objections raised by THESL.

ECAO/GTECA filed cost claims by the deadline of August 24, 2011 as specified in the Decision and Order. SEC's cost claim was received by the Board on September 7, 2011. THESL raised no objections to the ECAO/GTECA cost claim.

In a letter dated September 8, 2011, THESL raised a number of concerns regarding SEC's cost claim. THESL submitted that the Board relied on responsible participation by parties in a proceeding to inform the record and submitted that in this respect the Applicants continued to rely on their July 4, 2011 reply submissions, in which they urged the Board to reject the submissions of SEC. THESL argued that SEC did not participate responsibly in the Additional Evidence phase of the proceeding and had not contributed to a better understanding by the Board of issues in this proceeding. THESL also noted that SEC's cost claim has been filed 14 calendar days past the Board-ordered due date for filing cost claim submissions and argued that SEC ought to have informed THESL prior to August 24 that there would be a delay in submitting its cost claims.

On September 8, 2011, SEC filed a response to THESL's submission arguing that its cost claim should be approved as filed. SEC submitted that it had a long record of responsible participation in Board proceedings and it was not appropriate for an Applicant to label an intervenor as irresponsible on the basis that the intervenor had disagreed with the Applicant and ultimately the Applicant's application was granted. SEC noted that the Applicant's evidence and arguments are also not always accepted by the Board. SEC argued that responsible intervenors must propose to the Board alternative ways of looking at the evidence, and assessing the just and reasonable response, which is why intervenors add value to the process.

Board Findings

The Board finds the claims of ECAO and SEC to be reasonable. THESL has objected to SEC's claim, primarily on the grounds that SEC's arguments were not adopted by the Board. The Board does not agree that this is a determinative factor. The determinative factor is whether the intervenor's participation provided value to the Board. Intervenor arguments, even if not adopted, may well add value to the process. The Board has concluded that SEC provided value to the process which was commensurate with the level of costs claimed.

THE BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, THESL shall immediately pay:
 - Electrical Contractors Association of Ontario/Greater Toronto Electrical Contractors Association \$6,185.56; and
 - School Energy Coalition \$4,950.00

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, THESL shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, September 26, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary