



EB-2014-0116

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

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

PROCEDURAL ORDER NO. 5

January 13, 2015

Toronto Hydro-Electric System Limited (“THESL” or the “Applicant”) filed a Custom Incentive Rate (“CIR”) application (the “Application”) with the Ontario Energy Board (the “Board”) on July 31, 2014 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that THESL charges for electricity distribution, to be effective May 1, 2015 and each year until December 31, 2019. Commencing in 2016, rates will be effective January 1.

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

The Board also received two other motions with respect to requests for provision of full and adequate responses to other information requests in this proceeding. On December 22, 2014, Energy Probe Research Foundation (Energy Probe) filed a Notice of Motion with the Board (the Energy Probe Motion). On December 31, 2014, the Association of

Major Power Consumers in Ontario (AMPCO) filed a Notice of Motion with the Board (the AMPCO Motion).

On January 7, 2015, Decision on Confidentiality and Procedural Order No. 4 (Procedural Order No. 4) was issued which established, among other things, that a motions day would be held on January 19, 2015 to hear the above-referenced motions.

On January 8, 2015, SEC wrote to the Board stating that it was prejudiced in its ability to make submissions at the motions day on January 19, 2015 due to the lack of information provided by THESL as to the nature of the CEA benchmarking studies which were the subject of the SEC Motion. SEC therefore asked the Board to order THESL to prepare a list of the studies that are described in the SEC Motion and for each to provide the subject of the study, the date and the study period and to file that list on or before January 13, 2015, the date for filing further materials on the motions.

On January 9, 2015, THESL responded to SEC's letter, stating that it had had the opportunity to further discuss SEC's request with CEA and that CEA had advised THESL that it was prepared to consent to production of the list of CEA studies and the relevant dates of those studies. THESL stated that this information would be provided to SEC on or before the date requested by SEC. THESL further stated that it was its understanding that it is CEA's position that the information to be provided is confidential and, at the time it is submitted, THESL would seek an order from the Board requesting that the information be designated as such on an interim basis.

On January 10, 2015, CEA filed a late intervention request with respect to the SEC Motion on the basis that the SEC Motion seeks to compel the disclosure and reproduction by THESL effectively of confidential benchmarking data and reports and data models owned by CEA. As such, CEA stated that it had an interest in the SEC Motion. CEA requested that the Board determine that it is eligible for an award of costs under s. 3.03 of the *Practice Direction on Cost Awards*, stating that its proposed intervention primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost eligibility is sought.

CEA stated that its request for leave to intervene was for the sole purpose of responding to the SEC Motion and that, if granted leave to intervene, CEA would deliver a Notice of Constitutional Question pursuant to the Board's *Rules of Practice and Procedure* and section 109 of the *Courts of Justice Act*.

CEA requested that the timeframes outlined in Procedural Order No. 4 related to delivery of materials with respect to the SEC Motion be amended to provide for substantially more time so that CEA could provide a fair and full response to the SEC Motion after consulting with its members. CEA requested that the Board schedule a hearing of the SEC Motion in April 2015 with CEA's motion materials due by March 16, 2015.

The Board will proceed with the hearing of the AMPCO Motion and the Energy Probe Motion on Monday January 19, 2015, as established by Procedural Order No. 4. The Board will modify the process for hearing the SEC Motion as outlined subsequently.

The Board will grant intervenor status to CEA for the sole purpose of responding to the SEC Motion and making submissions, both with respect to the request for production of the benchmarking reports requested by the SEC Motion and also, in the event these reports are ordered produced, whether they should be treated as confidential in whole or in part.

The Board finds that CEA is not eligible for a cost award as it is an association of entities that are not normally eligible for cost awards under the Board's *Practice Direction on Cost Awards* and the Board does not consider there to be any extenuating circumstance that would alter the application of its standard practice.

With respect to CEA's advice that it would be filing a Notice of Constitutional Question pursuant to section 38.01 of the Board's *Rules of Practice and Procedure*, the Board notes that 15 days must be allowed between when CEA files its Notice of Constitutional Question and the hearing of this matter. The Board accordingly expects CEA to file its Notice of Constitutional Question, which has already been filed with the Board in draft form, no later than the end of the day Wednesday January 14, 2015, as the SEC Motion will now be heard on Friday January 30, 2015.

The Board notes that THESL has not yet provided SEC with the list of CEA benchmarking studies and the dates of those studies, as was indicated would be done in THESL's letter of January 9, 2015. The Board directs THESL to provide such information no later than the end of the day Wednesday January 14, 2015.

The dates for the Settlement Conference established in Issues List Decision and Procedural Order No. 3 of December 2, 2014 are confirmed. The Settlement

Conference will be convened on January 22, 2015 and may continue until January 26, 2015 if needed.

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

THE BOARD ORDERS THAT:

1. CEA is directed to file with the Board and deliver to all parties its Notice of Constitutional Question by **January 14, 2015**.
2. THESL is directed to file with the Board and deliver to all parties the list of CEA benchmarking studies and the dates of such studies by **January 14, 2015**.
3. A motions day will be held **January 19, 2015** commencing at 9:30 am in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto to hear the Energy Probe Motion and the AMPCO Motion.
4. A motions day will be held **January 30, 2015** commencing at 9:30 am in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto to hear the SEC Motion.

All filings to the Board must quote the file number, EB-2014-0116, and be made electronically through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at Martin.Davies@ontarioenergyboard.ca and Board Counsel, Maureen Helt at Maureen.Helt@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, January 13, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary