



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

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## **DECISION AND ORDER**

**EB-2018-0118**

### **LONDON HYDRO INC.**

**Application for an order to approve business activities other than  
the distribution of electricity**

**By Delegation, Before: Ceiran Bishop  
Director, Strategic Policy**

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**September 6, 2018**

## 1. INTRODUCTION AND SUMMARY

London Hydro Inc. (London Hydro), a licensed electricity distributor that serves approximately 155,000 mostly residential and commercial customers in the London area, has applied to the Ontario Energy Board (OEB) for approval under section 71(4) of the *Ontario Energy Board Act, 1998* (the Act) to carry on certain business activities other than the distribution of electricity.

Section 71(1) of the Act generally prohibits a distributor from carrying on a business activity other than the distribution of electricity, unless the business activity is carried out through one or more affiliates.<sup>1</sup> Under section 71(4), the OEB may authorize a distributor to carry out additional activities “if in its opinion special circumstances of a particular case so require”.

The proposed business activities relate to London Hydro’s “Green Button” services. London Hydro proposes to undertake the activities directly, rather than through an affiliate.

The Green Button (GB) initiative is an industry-driven effort, begun in 2012, to provide utility customers with easy and secure access to information about their electricity, natural gas or water consumption. According to the United States Department of Energy, as of 2015 more than 150 utilities and service providers were already involved in Green Button data provision, covering a potential customer base of more than 60 million households in North America,<sup>2</sup> including more than 3 million in Ontario, with potential for further growth.<sup>3</sup> A GB data standard has been created, which facilitates the development by utilities and others of “apps” for customers. London Hydro has developed GB apps which it claims are “extremely popular” with its customers.

London Hydro already provides GB services to its own distribution customers, as a component of its distribution service. London Hydro also provides GB services to other

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<sup>1</sup> Certain exceptions are provided for in sections 71(2) and 71(3) of the Act, and in O. Reg. 161/99.

<sup>2</sup> “Green Button Initiative Makes Headway with Electric Industry and Consumers”, July 22, 2015. <https://www.energy.gov/eere/articles/green-button-initiative-makes-headway-electric-industry-and-consumers>

<sup>3</sup> In late 2017, the *Green Energy Act, 2009* was amended to provide a framework for the mandatory province-wide implementation of technology regarding the provision of energy data. A regulatory proposal posted by the then Ontario Ministry of Energy confirmed GB as the technology in question and identified electricity distributors as among the entities that would be required to implement GB. However, no such regulation has been made to date.

electricity distributors in Ontario and their customers, which is allowed under section 71(2) of the Act because it relates to the Province's electricity conservation objectives.<sup>4</sup>

London Hydro now wishes "to expand the scope of the Company's GB Services to include services relating to utilities other than electricity, to expand the customer base to whom the Company provides expanded GB Services to include non-electricity utilities and customers as well as customers outside of Ontario, and to provide Green Button Directory Services to enable customers/service providers/utilities of all kinds to access and share utility related data." The proposed expansion goes beyond what is permitted by section 71(2). An order of the OEB authorizing the activities is therefore required. London Hydro does not seek any change to distribution rates.

For the reasons that follow, the OEB authorizes London Hydro to carry on the activities on a temporary basis until London Hydro's next cost of service rate application is decided.

## 2. PROCESS

This Decision and Order is being issued under delegated authority without a hearing pursuant to section 6(4) of the Act.

London Hydro submitted its application on March 2, 2018. OEB staff submitted a number of written questions on the application to London Hydro, which London Hydro

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<sup>4</sup> The relevant provisions read:

**Restriction on business activity**

**71** (1) Subject to subsection 70 (9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity.

**Exception**

(2) Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the *Electricity Act, 1998* that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

- (a) the promotion of electricity conservation and the efficient use of electricity;
- (b) electricity load management; or
- (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.

London Hydro currently provides GB services to two other Ontario electricity distributors: Festival Hydro and Whitby Hydro. In London Hydro's last cost of service rate case, it credited to ratepayers 100% of the forecast net revenue from those two customers as an offset in rates.

answered. The OEB received a letter from Utilismart Corporation (Utilismart) objecting to the application, to which London Hydro responded; both letters have been taken into consideration.

### 3. DECISION

#### Special circumstances

The OEB is satisfied that in this case there are “special circumstances” warranting an exemption from the general rule against carrying on non-distribution activities except through an affiliate.

The three special circumstances identified below are not intended as exhaustive; different factors may be considered as constituting special circumstances in other cases. In this case, these three factors together support granting the approval London Hydro requests:

**1. *The proposed business activities are in keeping with the OEB’s commitment to promoting innovation in the energy sector***

In its Strategic Blueprint for 2017-2022,<sup>5</sup> the OEB identified the continued development of a regulatory framework that “incentivizes and enables utilities to adopt innovative solutions” as a strategic objective. The OEB reaffirmed its commitment to utility innovation in its LTEP Implementation Plan<sup>6</sup> and its most recent Business Plan.<sup>7</sup>

London Hydro claims to be an early leader in the development of GB services in Ontario and reports that its initial GB implementation was partially funded by the Ministry of Energy. GB services are designed to provide consumers with the tools and information to make more informed energy choices; such an objective is consistent with the OEB’s Strategic Blueprint, which includes a focus on enhancing consumer choice and control through innovation.

London Hydro is of the view that establishing an affiliate for this particular business activity would be inefficient. The OEB notes that a comparison of the costs of establishing an affiliate relative to maintaining the business activity within the distribution

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<sup>5</sup> *Strategic Blueprint 2017-2022: Keeping Pace with an Evolving Energy Sector.*

<sup>6</sup> *The Ontario Energy Board’s Implementation Plan in Response to the Minister of Energy’s Directive in respect of the implementation of Ontario’s Long-Term Energy Plan 2017: Delivering Fairness and Choice.*

<sup>7</sup> *2018-2021 Business Plan.*

business would typically constitute evidence to support such a claim; London Hydro offered no such evidence and reported that it had not conducted such an analysis.

Nevertheless, the OEB agrees that the proposal appears to be a logical means of expanding service opportunities in a phased manner. The OEB sees merit in this case in waiving the requirement to establish an affiliate given that the innovative proposal contemplates improvements in service to London Hydro customers, among others, and there remains a plausible prospect that costs to London Hydro customers may be reduced over the longer term as a result of such innovation. A further consideration is the fact that a current level of GB service, with related infrastructure and associate staffing and other costs, is already embedded in its distribution activity.

## ***2. The proposed business activities will be undertaken on a temporary basis***

London Hydro describes an “incubation period” during which it will explore the viability of expanding its GB services. The incubation period will end when London Hydro’s current price cap incentive rate-setting term ends, i.e., in 2022. London Hydro plans to file a cost of service rate application in the fall of 2021 for rates to take effect on May 1, 2022. The application explains:

It will be at this juncture that London Hydro will be in a position to make a decision as to the next step for GB services. It is anticipated that the rate application process would conduct a review to ensure an appropriate sharing of any future benefits from expanded GB Services between London Hydro’s customers and the shareholder. In the meantime, during the interim IRM period, any net loss or gain from the above proposed venture would accrue to London Hydro’s shareholders.

In a response to a question from OEB staff, London Hydro indicates that at the end of the incubation period, it might determine that there is a business case for providing GB services (other than to its own distribution customers) through an affiliate.<sup>8</sup>

In light of London Hydro’s commitment to re-evaluate its GB strategy at the end of the current IRM term, the OEB is of the view that the section 71(4) relief it requests now should expire at that time. London Hydro may include in its cost of service application, if it so wishes, a request for a section 71(4) authorization beyond the incubation period.

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<sup>8</sup> For the time being, London Hydro says, when the proposed activities are not expected to be financially material and the viability of the activities are unknown, it would be inefficient to create an affiliate to run the GB business.

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**3. *There is a low risk of harm to ratepayers from the proposed business activities***

The OEB is satisfied, based on the evidence, that the application presents a low risk of harm to London Hydro's ratepayers.

London Hydro does not expect the annual costs of providing GB services to third parties (i.e., other than to its own distribution customers) to be material in any year during the incubation period.<sup>9</sup> Any income or loss arising from the expansion of GB activities during the incubation period would accrue to London Hydro's shareholder, rather than ratepayers. London Hydro says that any such income or loss would be immaterial. In accordance with section 72 of the OEB Act, London Hydro proposes to "ring-fence" the accounting for its non-distribution activities. This will mean that there is "no risk that those costs will be recovered from London Hydro ratepayers." The application does not include a request for any mechanism to track the GB costs for future recovery from ratepayers. London Hydro further argues that if its expansion of GB services is successful, its ratepayers would benefit after the incubation period, when revenue from other customers would be included as an offset in distribution rates.

In response to a question from OEB staff, London Hydro advised that in none of the scenarios it considered (best case, worst case, and expected case) would its GB activities, prior to ring-fencing, have a significant impact on its return on equity. London Hydro provided the following information:

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<sup>9</sup> In its 2017 cost of service application (EB-2016-0091), London Hydro calculated its materiality threshold, in accordance with the OEB's filing guidelines, to be \$357,000 for 2017. London Hydro advises that the threshold for 2018 would not be significantly different.

**Table 1: Scenario Analysis: GB Expansion Impact on Return On Equity**

	2016	2017	2018	2019	2020	2021
Deemed Equity (\$'000s)	132,367	129,935	142,019	151,976	158,132	166,259
<b>Expected Case</b>						
Income/(Loss) from GB expansion (\$)	-	-	(244)	213	81	100
Return on Deemed Equity impact from GB (%)	0.0	0.0	-0.2	0.1	0.1	0.1
<b>Best Case</b>						
Income/Loss from GB expansion (\$)	-	-	(244)	578	327	347
Return on Deemed Equity impact from GB (%)	0.0	0.0	-0.2	0.4	0.2	0.2
<b>Worst Case</b>						
Income/Loss from GB expansion (\$)	-	-	(244)	15	(45)	(19)
Return on Deemed Equity impact from GB (%)	0.0	0.0	-0.2	0.0	0.0	0.0

London Hydro further advised that it considers the risk of exposure to litigation by GB clients inside and outside Ontario to be low, and that its insurance provider has given reasonable assurance of liability coverage for the GB activities.

Although the information provided by London Hydro supports its contention that the expanded GB activities will have only a minor financial impact, the OEB will monitor the actual impact on utility earnings. To that end, the OEB will require London Hydro to file its annual report on return on equity (under section 2.1.5.6 of the OEB's *Electricity Reporting and Record-Keeping Requirements*) in two ways: both before and after ring-fencing.<sup>10</sup>

This approach will allow the OEB both to measure the contribution of GB services to the utility's performance and to trigger a regulatory review of distribution rates in the unlikely event the expanded GB activities cause London Hydro's return on equity, before ring-fencing, to fall outside the 300 basis point deadband that is an element of OEB's incentive rate-setting policy.<sup>11</sup>

<sup>10</sup> In its application, London Hydro indicated that it would report on a post-ring-fencing basis, i.e. that it would identify the ring-fenced items as "non-rate regulated items and other adjustments".

<sup>11</sup> The October 18, 2002 *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* explains on p. 15 that "a regulatory review may be initiated if the distributor performs outside of the  $\pm 300$  basis points earnings dead band or if its performance erodes to

The OEB grants that for the purposes of regulatory reporting, it would be customary that return on equity performance be calculated after ring-fencing – that is, based on the distribution business alone, omitting the effects of non-distribution activities such as generation ownership. However for present purposes it is appropriate to include the financial impact of the expanded GB activities in the calculation because London Hydro's ratepayers contributed to the initial development costs of the GB services. They therefore should retain the prospect of benefits from service expansion, even in the current rate term, should it prove lucrative.

However, this interest must also be balanced with the provision within the current Price Cap IR framework that allows a utility to retain earnings above (or below) the target return on equity embedded in its rates as an incentive toward continuous improvement. Consequently, the threshold for a regulatory review in respect of this application should not be distinct from the regulatory threshold for review of performance overall. This approach will ensure that ratepayers have the same protection in respect of the GB activities that they have now in respect of the countless other business decisions the distributor's management needs to make on a regular basis during the rate term.

In the OEB's view, although the financial risk associated with the proposed GB activities during the incubation period is not zero, it is acceptably low. The design of London Hydro's Price Cap IR rate term means that the shareholder will bear the consequences of losses within scenarios evaluated. The risk of a catastrophic loss, which could endanger the company, seems remote during the incubation period. The temporary nature of this approval will ensure that any potential risks to ratepayers beyond the incubation period will be examined in the course of London Hydro's next cost of service application. Finally, by requiring London Hydro to report on its earnings both before and after ring-fencing, the OEB will be able to check that the financial impact of the proposed activities during the incubation period does not cause return on equity to fall outside the permitted deadband, and to intervene in the unlikely event it does so as a result of the regulatory relief being granted by this Decision.

### **Utilismart Correspondence**

Finally, the OEB wishes to address the unsolicited letter from Utilismart dated July 26, 2018.

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unacceptable levels." The policy allows a distributor to earn more or less than the target return on equity embedded in its rates over the course of the rate term as a means of incenting better performance. A deadband provides a means of correcting over or underperformance if warranted.

Utilismart is a data service provider with a reported customer base numbering more than 140, including 50 Ontario utilities. In its correspondence, Utilismart objects to London Hydro's application arguing that allowing London Hydro to provide the expanded GB services would give it an unfair competitive advantage over unregulated service providers such as Utilismart. Utilismart requests that the OEB either reject the application or hold a hearing on it.

Section 6(4) of the Act provides that delegated decisions may be made without a hearing, and in this case the OEB determined that a hearing is not necessary. The OEB is satisfied that there are special circumstances that justify London Hydro's request to carry out the expanded GB services within its utility business during the incubation period. The proposal features an innovative, phased approach to expand services with which it already has some experience; the arrangement is temporary, and intended to test the viability of its service offerings; there is minimal risk of harm to the utility's ratepayers, and even potential for cost reductions for them over the longer term. To Utilismart's concern over competition, the OEB notes that the opportunity for a utility to carry out new services that are competitively provided is, in the OEB's view, implicitly contemplated in section 71(4). That section allows distributors to conduct non-distribution activities – which are, save for other monopoly activities such as transmission, competitive by definition – without establishing an affiliate, provided that the OEB is of the opinion that special circumstances so require. With regard to this proposal, the OEB is of this opinion.

#### **4. ORDER**

##### **IT IS ORDERED THAT:**

1. London Hydro's application for authorization to carry on the GB services other than through an affiliate is granted.
2. For the purpose of its annual reporting on return on equity under section 2.1.5.6 of the *Electricity Reporting and Record-Keeping Requirements*, London Hydro shall report on both a ring-fenced basis (with the impact of the GB services excluded) and a non-ring-fenced basis (with the impact of the GB services included).
3. This authorization shall expire:
  - (a) in the event London Hydro files (as currently anticipated) a cost of service application for the 2022 rate year, on the effective date of the approved 2022 rate order; or

(b) in the event London Hydro does not file a cost of service application for the 2022 rate year, on May 1, 2022.

**DATED** at Toronto September 6, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Ceirán Bishop  
Director, Strategic Policy