



EB-2009-0139

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, 2010.

**ISSUES LIST DECISION
and
PROCEDURAL ORDER NO. 2**

Toronto Hydro-Electric System Limited ("Toronto Hydro", the "Company" or the "Applicant") filed an application, dated August 28, 2009, 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, 2010.

The Board issued a Notice of Application and Hearing dated September 16, 2009. In Procedural Order No.1, issued on October 19, 2009, the Board approved 10 intervention requests.

Issues List Decision

Procedural Order No. 1 contained a draft issues list. Submissions on the draft issues list were received from the following parties:

Vulnerable Energy Consumers Coalition ("VECC")
Association of Major Power Consumers in Ontario ("AMPCO")
Consumers Council of Canada ("CCC")
Pollution Probe ("PP")
School Energy Coalition ("SEC")
Canadian Union of Public Employees, Local One ("CUPE One")
Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
Smart Sub-metering Working Group ("SSWG")

Toronto Hydro provided two submissions, dated October 26, 2009 and October 30, 2009, respectively.

The Board has considered all submissions in establishing a final issues list which is attached as Appendix A. The parties were generally satisfied with the draft issues list, however several changes and clarifications were requested. These are reviewed below along with the Board's rationale in addressing each of these requests.

1. GENERAL

- 1.1 Has Toronto Hydro responded appropriately to all relevant Board directions from previous proceedings?
- 1.2 Are Toronto Hydro's economic and business planning assumptions for 2010 appropriate?
- 1.3 Is service quality, based on the OEB specified performance indicators, acceptable?
- 1.4 Is the overall increase in the 2010 revenue requirement reasonable given the impact on consumers?

Pollution Probe stated that it supported proposed Issue 1.1 in light of the distributed generation study previously required by the Board. Pollution Probe also proposed two new additional issues related to distributed generation and combined heat and power (“CHP”) implementation. The first of these issues was: “Are Toronto Hydro’s proposed programmes and budgets to reduce its distribution system constraints to the installation of distributed generation appropriate?”

Pollution Probe argued that this additional issue should be included as it was one of the next logical steps as a result of the Board’s previous direction, Toronto Hydro’s responding studies, and other recent developments.

Pollution Probe stated that in the alternative to placing this issue on the Issues List, if the Board was of the view that this proposed issue is covered by other issues on the Issues List, it would accept a clear statement by the Board to that effect in lieu of placing this issue on the issues list.

Toronto Hydro opposed the inclusion of this issue, arguing that the Board’s issue no. 1 was appropriate and covered Pollution Probe’s theme of being permitted to ask questions about Toronto Hydro’s pre-filed study on distributed generation. Toronto Hydro also stated that Pollution Probe and others were entitled to ask Toronto Hydro about proposed 2010 budget expenditures in connection with distributed generation.

The Board finds that it is unnecessary to place this issue on the Issues List. The Board is of the view that this issue is subsumed under issue 1.1. Pollution Probe and other parties may raise questions and issues related to distributed generation, legitimately arising from the distributed generation report filed by Toronto Hydro in the present application in compliance with the requirement of the Board in its EB-2007-0680 Decision.

The second issue proposed by Pollution Probe was: “Should Toronto Hydro’s policies with respect to recovering its costs of adding CHP generation to its distribution grid be amended to encourage the development of CHP?”

Pollution Probe argued that this additional issue was another logical step as a result of the Board’s previous direction and Toronto Hydro’s responding studies regarding distributed generation. Pollution Probe added that a key practical question arising as a result is who should pay for the costs of connecting CHP to Toronto Hydro’s distribution system.

Pollution Probe stated that, as with the first issue, in the alternative to placing this issue on the Issues List, if the Board was of the view that this proposed issue is covered by other issues on the Issues List, it would accept a clear statement by the Board to that effect in lieu of placing this issue on the issues list.

Toronto Hydro objected to the inclusion of this proposed issue on the grounds that it presupposes a policy change of the Province of Ontario which did not exist to its knowledge, and otherwise constituted a generic issue for the broader Ontario electricity sector.

The Board finds that it is unnecessary to place this issue on the Issues List. The Board is of the view that to the extent that there are issues identified in the distributed generation report that pertain to barriers to distributed generation connection this issue is also subsumed under issue 1.1 of the Final Issues List and that Pollution Probe and other parties may ask questions related to CHP which legitimately arise from Toronto Hydro's filed distributed generation report.

2. LOAD and REVENUE FORECAST

2.1 Is the load forecast and methodology appropriate and have the impacts of Conservation and Demand Management initiatives been suitably reflected?

2.2 Is the proposed amount for 2009 other revenues appropriate?

Toronto Hydro proposed that in Issue 2.2, "2009" should be replaced with "2010". The Board accepts this change.

Pollution Probe proposed that a new issue be added to the Issues List, which was "Are Toronto Hydro's proposed CDM programmes and budgets appropriate?"

Pollution Probe submitted that it was important for the Board to know what CDM is being done now and whether more should be done, particularly in light of various recent developments such as the passage of the *Green Energy and Green Economy Act, 2009*.

Pollution Probe further argued that the fact the OPA may fund some or all of the CDM programs does not determine or preclude the Board's review of a distributor's CDM programs to ensure that they are appropriate and that it is the Board's fundamental role

to evaluate whether proposed CDM programs are appropriate and if more should be required.

As was the case with its other proposed additions, Pollution Probe stated that if the Board was of the view that this proposed issue was covered by other issues on the issues list, it would accept a clear statement by the Board to that effect in lieu of placing this issue on the issues list.

Toronto Hydro opposed the addition of this issue as it stated its application contains no budgeted expenditures for CDM for 2010. Toronto Hydro noted that like other LDCs, it was awaiting the Minister's announcement on mandatory CDM targets for Ontario distributors and that once it received its target, it would then formulate an approach to achieving it. Thereafter, Toronto Hydro stated it intended to file an application with the Board on its plan to achieve the Minister's conservation requirements, at which time intervenors would have an opportunity to review and test the plan and its associated costs. On this basis, Toronto Hydro submitted that the issue proposed by Pollution Probe was premature and should not be accepted for this proceeding.

The Board finds that that Pollution Probe's proposed issue will not be added to the Issues List. The Board is in agreement with Toronto Hydro that once it has filed its CDM plan, parties will have an opportunity to review and test its proposed CDM programs and costs at that time.

3. OPERATIONS, MAINTENANCE and ADMINISTRATION COSTS

3.1 Are the overall levels of the 2010 Operation, Maintenance and Administration budgets appropriate?

3.2 Is the proposed level of 2010 Shared Services and Other O&M spending appropriate?

3.3 Are the methodologies used to allocate Shared Services and Other O&M costs to the distribution business for 2010 appropriate?

3.4 Are the 2010 Human Resources related costs (wages, salaries, benefits, incentive payments, labour productivity and pension costs) including employee levels, appropriate? Has Toronto Hydro demonstrated improvements in efficiency and value for dollar associated with its compensation costs?

3.5 Is Toronto Hydro's depreciation expense appropriate?

3.6 Are the amounts proposed for capital and property taxes appropriate?

3.7 Is the amount proposed for income taxes, including the methodology, appropriate?

Toronto Hydro argued that the words "labour productivity" should be deleted from the first sentence of Issue 3.4 as labour productivity is not a cost. Toronto Hydro also submitted that labour productivity is already reflected in the second sentence of Issue 3.4.

The Board directs the words "labour productivity" be removed from the first sentence of this issue and placed in the second sentence so that the issue will read:

"Are the 2010 Human Resources related costs (wages, salaries, benefits, incentive payments, and pension costs) including employee levels, appropriate? Has Toronto Hydro demonstrated improvements in efficiency, including labour productivity, and value for dollar associated with its compensation costs?"

Toronto Hydro submitted that the words "income taxes" in Issue 3.7 be replaced with the word PILS to reflect the provincial Payment-in-Lieu of Taxes regime which exists in Ontario.

The Board accepts this change and directs that issue 3.7 will read: "Is the amount proposed for PILs, including the methodology, appropriate?"

4. CAPITAL EXPENDITURES and RATE BASE

4.1 Are the amounts proposed for Rate Base appropriate?

4.2 Are the amounts proposed for 2010 Capital Expenditures appropriate including the specific Operational and Emerging Requirements categories?

4.3 Are the inputs used to determine the Working Capital component of the Rate base appropriate and is the methodology used consistent with the methodologies approved by the Board in previous Toronto Hydro rate applications?

- 4.4 Does Toronto Hydro's Asset Condition Assessment information and Investment Planning Process adequately address the condition of the distribution system assets and support the O&MA and Capital expenditures for 2010?

There were no specific comments received regarding this section.

5. CAPITAL STRUCTURE and COST OF CAPITAL

- 5.1 Is the proposed Capital Structure, Rate of Return on Equity, and Short-Term Debt Rate appropriate?

- 5.2 Is the proposed Long-Term Debt Rate appropriate?

There were no specific comments received regarding this section.

6. DEFERRAL and VARIANCE ACCOUNTS

- 6.1 Is the proposal for the amounts, disposition and continuance of Toronto Hydro's existing Deferral and Variance Accounts appropriate?

- 6.2 Are the proposed new Deferral and Variance Accounts appropriate?

- 6.3 Is Toronto Hydro's proposal to record variances between the approved levels of capital contributions to Hydro One and the actual levels in USOA 1508 appropriate?

Toronto Hydro suggested that Issue 6.2 should be removed because it was not proposing any new deferral or variance accounts. The Board agrees with Toronto Hydro and accepts this change

Toronto Hydro suggested that the words "and the actual levels in USOA 1508" should be deleted from Issue 6.3 since a variety of costs originating from different drivers are recorded in this account and are not exclusive to the subject contributions to Hydro One.

The Board finds that this issue will be clarified to address Toronto Hydro's concern by inserting the word "contributions" in the segment which Toronto Hydro proposed be removed so that the issue will read: "Is Toronto Hydro's proposal to record variances

between the approved levels of capital contributions to Hydro One and the actual contribution levels in USOA 1508 appropriate?”

7. COST ALLOCATION and RATE DESIGN

7.1 Is Toronto Hydro's cost allocation appropriate?

7.2 Are the proposed revenue to cost ratios for each class appropriate?

7.3 Are the fixed-variable splits for each class appropriate?

7.4 Are the proposed Retail Transmission Service rates appropriate?

7.5 Are the proposed Distribution Loss Factors appropriate?

There were no specific comments received regarding this section.

8. SMART METERS

8.1 Is the 2010 smart meter O&M and Capital budget appropriate?

8.2 Are the amounts for Smart Meter related variance accounts appropriate?

8.3 Is Toronto Hydro's regulatory treatment of Smart Meter costs appropriate including the smart meter funding adders proposed for 2010?

Toronto Hydro argued that this entire section should be removed because it is not seeking approval of either a smart meter budget, or to clear any smart meter-related costs tracked in variance or deferral accounts.

The Board accepts this change. The Board finds that if parties have questions or concerns related to the smart meter evidence which Toronto Hydro has filed in the present application, these are subsumed under other issues already on the Issues List.

9. SMART GRID PLAN

9.1 Does Toronto Hydro's Smart Grid Plan meet the Board's filing guidelines and the objectives set out in the Green Energy and Green Economy Act, 2009?

9.2 Has Toronto Hydro appropriately addressed the Smart Grid Plan expenditures in the context of its overall Capital and O&M budgets?

9.3 Is Toronto Hydro's approach to allocating Smart Grid Plan O&M and Capital costs to its distribution customers appropriate?

There were no specific comments received regarding this section.

Issues Arising From Other Proceedings

VECC stated that it agreed with the proposed Issues List with one comment, which was that current Toronto Hydro applications before the Board (EB-2009-0180-83 Street Lighting Amalgamation and EB-2009-0243 Contact Voltage Cost Recovery, "Streetlighting and Contact Voltage Applications") may require supplementary evidence and have ratemaking implications in 2010.

SEC and BOMA echoed VECC's views with SEC expressing its particular concern that the impact of the Streetlighting and Contact Voltage applications be fully reviewed in the present proceeding and that the Issues List not be construed in any manner that would narrow the scope of that review.

Toronto Hydro expressed the concern that the SEC submission on this topic appeared to seek an extremely broad recanvassing of the issues pertaining to both the Streetlighting and Contact Voltage applications.

Toronto Hydro submitted that the Board should not permit any unbounded exploration and rehearing of the Streetlighting application, or appropriateness of recovery of costs arising from the Contact Voltage application as these matters will have already been dealt with by the panels hearing these applications.

The Panel in this proceeding will not reconsider or reopen issues which have already been determined by panels in other proceedings. This Panel will however consider matters related to Streetlighting and contact voltage remediation which are included in the present application. Any rate impacts associated with the final outcomes of the other proceedings that become evident in this proceeding will be considered in conjunction with any rate impacts associated with the outcome of this proceeding.

Process

The Board sees no reason to amend the schedule as set out in Procedural Order No. 1 at this time.

With regard to intervenor evidence, the Board expects to be informed as soon as possible regarding the possible filing of such evidence but acknowledges the reasonableness of waiting until interrogatory responses are filed and reviewed by the intervenors. A date for filing of intervenor evidence was set in Procedural Order No. 1.

The Board acknowledges the submissions of many parties that determination of issues that can be dealt with on either an oral or written basis is best determined in the settlement conference. The Board will proceed on this basis.

Procedural Order No. 2

The schedule for filing interrogatories and responses to interrogatories as set out in Procedural Order No. 1 is confirmed. Interrogatories should indicate the issue number to which they relate and all references to Exhibits should be clearly indicated as to exhibit, tab, schedule, page and if appropriate, line numbers.

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. Written interrogatories and any evidence filed in relation to Toronto Hydro's application must relate to one or more of the issues on the Board approved Issues List, attached as Appendix A to this Order.

All filings to the Board must quote file number EB-2009-0139, 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. Please 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 you may email your document to the address below. Those who

do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

Address

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Filings: www.errr.oeb.gov.on.ca
E-mail: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273 (toll free)
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ISSUED at Toronto, November 10, 2009.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
DISTRIBUTION RATE HEARING**

EB-2009-0139

**APPROVED FINAL
ISSUES LIST**

**Appendix “A”
Toronto Hydro-Electric System Limited
EB-2009-0139**

Approved Final Issues List

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