

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

AND IN THE MATTER OF an Application by Toronto Hydro-Electric System Limited for an Order or Orders approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2010;

AND IN THE MATTER OF a motion by Pollution Probe requesting an Order that Toronto Hydro provide full and adequate responses to Pollution Probe Interrogatory Nos. 2, 3, 6, and 7.

**RESPONDING SUBMISSIONS
OF TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

December 30, 2009

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EB-2009-0139

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DELIVERED DECEMBER 30, 2009

INTRODUCTION

1. Toronto Hydro-Electric System Limited (“Toronto Hydro”) filed an application, dated August 28, 2009, with the Ontario Energy Board (the “Board”) under Section 78 of the *Ontario Energy Board Act, 1998* (the “Act”), seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2010 (the “Application”).
2. The Board issued Issues List Decision and Procedural Order No. 2 on November 10, 2009 (“Procedural Order No. 2”) in which the Board approved a Final Issues List, confirmed the schedule for filing interrogatories and responses to interrogatories, and further ordered that:

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.

Procedural Order No. 2 at page 10.

3. On November 13, 2009 Pollution Probe filed a number of interrogatories with the Board and Toronto Hydro, and on November 30, 2009 Toronto Hydro filed its

responses to these interrogatories. Pollution Probe indicated in their interrogatory submission that all of their interrogatories fall within the scope of Issue 1.1: *Has Toronto Hydro responded appropriately to all relevant Board directions from previous proceedings?*

4. The relevant Board direction can be found in Section 5.3 of the Board's May 15, 2008 Decision in EB-2007-0680 (the "Decision"), which is excerpted below in its entirety (emphasis added):

Leaving aside the question of the need for the third transmission line, which the Board acknowledges is best addressed through other proceedings, including the IPSP application currently before the Board, the Board considers that the Applicant should facilitate connections for DG and self-generation, where they can be implemented practically and economically, both from the perspective of the generator and of the Applicant and its load customers.

With regard to conservation and demand management, it would be premature for the Board to comment on the specific suggestions made by Pollution Probe, as the IPSP proceeding has not yet been completed.

The Board observes that the Applicant's study of distributed generation has not been rigorous. **Therefore, the Board directs the Applicant to conduct a study into the capability, costs and benefits of incorporating into the Applicant system, a significant (up to 300MW) component of bi-directional distributed generation in Toronto.** In this study, the Applicant should also incorporate the outcomes, as they pertain to distributed generation, of two items which are currently being considered by the Board: 1) enabler lines and their connection costs; and 2) the IPSP. The study should also be responsive to any new policy or regulatory developments in these areas. This study shall be filed as part of the Company's next application dealing with rates beyond the test period dealt with in this proceeding.

Board Decision in EB-2007-0680 dated May 15, 2008 at page 62.

5. In response to this direction, Toronto Hydro, together with the Ontario Power Authority ("OPA"), retained Navigant Consulting, Inc. ("Navigant") to evaluate the potential for distributed generation to address the need for additional area supply capacity, infrastructure renewal, and supply diversity to mitigate against low probability but high impact events in Central and Downtown Toronto (the "Study").

The Study was commissioned to respond directly to the Board's direction in the Decision. Toronto Hydro filed the Navigant Study at Exhibit Q1, Tab 4 of its Application.

6. Pollution Probe has filed a motion pursuant to Section 78(3.0.5) of the Act and Rules 28 and 29 of the Board's *Rules of Practice and Procedure* (the "Rules") requesting an Order that Toronto Hydro provide full and adequate responses to Pollution Probe Interrogatory Nos. 2, 3, 6 and 7 (the "Motion").

THE SUBMISSIONS OF TORONTO HYDRO

A. Toronto Hydro Submissions Regarding Pollution Probe Interrogatory No. 3

7. Toronto Hydro submits that it procured the services of Navigant, a reputable and professional independent consultant, to complete the Study in accordance with the Board's directive, that the Study was diligently completed and filed as part of the Application, and that the Study satisfies the requirements of the Board's directive.
8. Toronto Hydro does not "propose" any part of the Study as part of its distribution system. There are no revenue requirement or rate impacts that flow directly from the Study. Put more directly, the Study is not being used as evidence to support any increase in Toronto Hydro's revenue requirement or rates as part of this cost of service rate hearing.
9. It is in this context that Pollution Probe filed its Interrogatory No. 3, and Toronto Hydro responded as recorded at Exhibit R1, Tab 8, Schedule 3.
10. Toronto Hydro notes that the Study was jointly commissioned by the OPA to respond to a directive from the Minister of Energy and Infrastructure to the OPA to revisit the renewable generation, distributed generation and conservation and demand management targets in its IPSP. Toronto Hydro submits that this cost of service rate proceeding is not an appropriate forum for Pollution Probe to use to further its own agenda to attempt to influence a potential input into the IPSP, which in this instance is

unrelated to the relief sought by Toronto Hydro or the decision which is required of the Board.

11. The information Pollution Probe requested in Interrogatory No. 3 pertains to nothing more than a disagreement between Pollution Probe and Navigant on a narrow and transparent technical issue. The issue itself (the relative attractiveness of CHP versus other forms of distributed generation) is not an accepted issue in this rate proceeding and the requested information is not probative of any issue in this case. Contrary to its assertion in paragraph 8, Pollution Probe has not demonstrated that the information is relevant to the issues in this case.
12. THESL acknowledges that it is open to Pollution Probe to submit that the Study does not meet the Board's directive and that would be a matter for argument. Otherwise, there is nothing to prevent Pollution Probe from contacting Navigant directly in pursuit of its private interests. Unless directed by the Board otherwise, Toronto Hydro is not prepared to make further expenditures to engage Navigant to do Pollution Probe's work at ratepayers' expense.

B. Toronto Hydro Submissions Regarding Pollution Probe Interrogatories Nos. 6 and 7

13. Toronto Hydro re-iterates its position, which it stated in its response to these interrogatories at Exhibit R1, Tab 8, Schedules 6 and 7 that the requested information in Pollution Probe Interrogatories No. 6 and No. 7 does not relate to any approved issue in this hearing. This fact is tacitly acknowledged by Pollution Probe, given that neither interrogatory provides a reference to any evidence filed in this hearing.
14. The Board's determination of this matter is given in its Procedural Order No. 2, as excerpted below:

“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?”

...

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.**" (emphasis added)

Procedural Order No. 2 at pages 3-4.

15. The issue of whether connection cost recovery, as currently mandated by the Board through the Distribution System Code (DSC), forms an undue barrier to the development of a particular form of distributed generation is possibly appropriate for consideration in a generic proceeding but it does not pertain to Toronto Hydro individually nor to any of the proposals put forward by Toronto Hydro in its rate application.
16. Toronto Hydro submits that if the Board were to consider any of the substantive policy issues raised by Pollution Probe as part of this hearing, a number of interested parties may very likely be excluded as they have not received proper notice that these generic issues would be addressed.
17. Furthermore, the interrogatories posed do not even go to the substantive issue but rather seek Toronto Hydro's opinion on a matter of policy over which it has no discretion and is necessarily bound by the Board and the Province; specifically: how should costs to connect CHP generation be borne by other customers, if at all. Therefore Toronto Hydro's responses do not assist the Board in any determination it must make in this proceeding.
18. Simply to dispose of the matter for the purpose of this hearing, Toronto Hydro proposes no change to the current practice of recovering 100% of connection costs from non-renewable generators and takes the position that this matter is properly determined by the Board in the DSC and any proceedings amending the DSC, and particularly not in the context of an individual rate case; and Toronto Hydro takes no position in this proceeding on whether the Board should "apply the same or similar cost-sharing principles to new natural gas-fired CHP facilities."

19. Finally, Toronto Hydro submits that the Board's views on this matter were, in part, expressed in its September 11, 2009 Notice of Revised Proposed Amendments to the Distribution System Code in EB-2009-0077 (the "Notice"), as excerpted below:

vii. Combined Heat and Power Generation

Some stakeholders commented that the proposed approach to connection cost responsibility should be extended to distributed combined heat and power ("CHP") generation projects. The Board notes that the *Green Energy and Green Economy Act, 2009* is intended to facilitate and promote the connection of renewable generation, and that the Board's new objective is worded as such. A CHP generation project that wished to be subject to the proposed new cost responsibility rules could achieve that end by qualifying as a "renewable energy generation facility".

Notice at page 12.

C. Toronto Hydro Submissions Regarding Pollution Probe Interrogatory No. 2

20. Toronto Hydro has already provided a complete and valid answer to the question posed, of it. The response is reproduced below:

"All materials prepared by Navigant Consulting Inc. for THESL regarding distributed generation are contained in the reports filed in Exhibit Q1, Tab 4 Schedules 1-1, 1-2, and 1-3. These reports integrate and update material previously provided by Navigant Consulting Inc. at workshops conducted with industry stakeholder groups in Toronto on February 25, 2009 and April 17, 2009. The filed reports are the most complete record of Navigant Consulting's analysis and findings."

Application at Exhibit R1, Tab 8, Schedule 2.

21. Pollution Probe has seized upon a trivial matter of wording in an attempt to make something out of Toronto Hydro's observation that it "is not in a position to comment on what additional materials, if any, Navigant Consulting Inc. prepared for the Ontario Power Authority." The statement simply indicates that THESL does not know, and should not be expected to know, what other arrangements might exist between Navigant and the OPA.

22. Toronto Hydro re-iterates its position that the Study filed is adequate for its intended purpose and completely meets the Board's directive. It is open to Pollution Probe to argue that the Study does not meet its purpose. In the present proceeding, the OPA is not an applicant but a third party and Toronto Hydro cannot speak for third parties. The fact that the OPA partnered with THESL to commission the Study should not make it answerable to Pollution Probe, nor obligated to produce evidence in this proceeding either in respect of the Study or in respect of other studies it commissioned from Navigant.

REQUEST FOR RELIEF

23. On the basis of the foregoing submissions, Toronto Hydro requests that the Orders sought in the Motion be denied.

December 30, 2009

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Original Signed by John A.D. Vellone

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