



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.

AND IN THE MATTER OF a Notice of Motion from Pollution
Probe dated December 15, 2009 for full and adequate
interrogatory responses in this proceeding.

DECISION ON MOTION & PROCEDURAL ORDER NO. 5

Toronto Hydro-Electric System Limited ("Toronto Hydro", or the "Applicant") filed an application, dated August 28, 2009, with the Ontario Energy Board 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 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.

Procedural Order No.1 was issued on October 19, 2009. It approved a number of intervention requests, established a schedule for the hearing and included a draft issues list for comment by parties.

The Board issued Issues List Decision and Procedural Order No. 2 on November 10, 2009. In Procedural Order No. 2, the Board approved a Final Issues List and confirmed the schedule for filing interrogatories and responses to interrogatories as set out in Procedural Order No. 1.

On November 17, 2009, the Board issued Decision and Procedural Order No. 3 related to issues regarding interrogatory formats and deadlines.

On December 15, 2009, Pollution Probe filed a Notice of Motion (the “motion”) requesting the Board direct Toronto Hydro to provide full and adequate interrogatory responses to Pollution Probe interrogatories 2, 3, 6 and 7. Pollution Probe requested an oral hearing of the motion.

On December 22, 2009, the Board issued Decision and Procedural Order No.4 related to, among other matters, the motion. The Board determined that it could proceed most expeditiously in this matter by conducting a written hearing of the motion. The Board established December 30, 2009 as the date by which Toronto Hydro and other parties wishing to make submissions on the motion should do so and January 8, 2010 by which Pollution Probe should file any response if it wished to do so. The Board received a submission from Toronto Hydro and a reply submission from Pollution Probe.

In its reply submission, Pollution Probe stated that in light of paragraph 18 of Toronto Hydro’s submission, it appeared that an order requiring a full and adequate response to Pollution Probe interrogatory #6 was no longer necessary. Pollution Probe maintained its position that Toronto Hydro had not provided valid reasons why it should not provide full and adequate responses to Pollution Probe interrogatories 2, 3 and 7.

The Basis for Compelling Interrogatory Responses

The purpose of all evidence adduced in a hearing before the Board is to assist the Board in making a decision. Only evidence that is relevant to an issue in the application that must be decided by the Board can be of assistance to the Board in its decision making. The Board will only direct a party to provide a response to an interrogatory if the Board is persuaded that the interrogatory relates to an issue in the application before it, and the response to the interrogatory is likely to adduce evidence that is relevant and helpful to the decision it must make. These principles underlie the Board’s decisions in this motion.

Pollution Probe #2:

In this proceeding, Toronto Hydro filed copies of three sets of materials by Navigant Consulting, Inc. regarding distributed generation in Toronto. Did

Navigant Consulting, Inc. prepare any other related reports or materials for Toronto Hydro and/or the Ontario Power Authority (e.g. an Analyst's Report, other additional or more detailed reports/materials, etc.)? If yes, please provide copies of these materials.

Pollution Probe's interrogatory references three sets of materials concerning distributed generation prepared by Navigant Consulting, Inc. ("Navigant") for Toronto Hydro and the Ontario Power Authority ("OPA"), filed as Exhibit Q1 Tab 4, Sch. 1 to the application. The first two sets of materials are stakeholder presentations; the third is a report titled "Central and Downtown Toronto Distributed Generation Final Report" (the "Study").

Toronto Hydro's interrogatory response was that all of the materials prepared by Navigant for the Applicant were filed as part of the application. Toronto Hydro also stated that it was not in a position to comment on what additional materials, if any, Navigant may have prepared for the OPA regarding distributed generation in Toronto.

In its motion Pollution Probe submitted that "Toronto Hydro ought to be required to make reasonable inquiries of the OPA in order to provide a full and adequate response to this interrogatory". Pollution Probe stated that such inquiries were appropriate given the general importance of these issues and the joint retainer of Navigant by Toronto Hydro and the OPA to prepare the distributed generation materials filed by Toronto Hydro in the present application. Pollution Probe submitted that "a full and adequate response can be provided with reasonable effort."

In its response, Toronto Hydro argued that it had already provided a complete and valid answer to the question posed in that it had provided all of the materials prepared by Navigant for Toronto Hydro. Toronto Hydro noted that the OPA is not an applicant in this proceeding but a third party and Toronto Hydro could not speak for third parties. Toronto Hydro submitted that the fact that "the OPA partnered with Toronto Hydro 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."

Board Findings

Pollution Probe #2 concerns a Study that Toronto Hydro was directed to undertake by the Board¹. The Board's direction was to conduct a study into the capability, costs and benefits of incorporating a significant component of bi-directional generation in Toronto. One of the issues in the application is whether the Study which has been filed by Toronto Hydro complies with the Board's direction. To determine that issue it is important for the Board to review all of the materials that were created in response to the Board's direction.

The Board notes that while the OPA is not an applicant in this proceeding, it is clear that all the materials on distributed generation that have been produced in this application were prepared for both Toronto Hydro and the OPA. It is possible that the OPA may have received materials on distributed generation from Navigant that were created in response to the Board's direction but which have not been produced by Toronto Hydro, and that those materials could be relevant and of assistance to the Board in its decision making. The Board directs Toronto Hydro to inquire of the OPA if it has within its possession any reports or materials on distributed generation, created by Navigant as part of its joint retainer by the OPA and Toronto Hydro, which have not been produced in this application. Should the OPA advise that it has such reports or materials, Toronto Hydro shall use its best efforts to obtain the reports and materials from the OPA and produce them in this application.

Pollution Probe #3

Page 116 of Schedule 1-3 [of the Study] includes a graph showing the evaluated costs of various distributed generation technologies. However, according to pages 108 and 110, the costs for the various CHP technologies appear to be calculated based on the assumption that they would not be properly sized to match their minimum thermal loads. Please re-calculate these costs and reproduce the graph on page 116 assuming that the CHP technologies are instead properly sized to meet their minimum thermal loads. Please provide all of the key input assumptions for your revised cost calculations for each of the CHP technologies.

¹ EB-2007-0680, Decision of the Board, p. 62.

Toronto Hydro's interrogatory response was that neither it nor Navigant Consulting accepted the premise of Pollution Probe's question, that the units in question are not properly sized and did not provide the requested recalculations.

Pollution Probe's motion noted that as part of Navigant's materials, it had calculated the "evaluated cost" for various types of combined heat and power ("CHP") and produced a graph at page 116 to compare the "evaluated costs" of various forms of distributed generation, with the calculations assuming that differential seasonal heat rates needed to be accounted for as part of the calculations for CHP (e.g. 5,766 Btu/kWh and 9,100 Btu/kWh for large CHP.) Pollution Probe submitted that it was more appropriate for the CHP "evaluated cost" calculations to use a uniform low heat rate (5,766 Btu/kWh for large CHP) across all seasons, and requested that the Board direct Toronto Hydro to require Navigant to do so.

Toronto Hydro submitted that the information requested by Pollution Probe related to the issue of the relative attractiveness of CHP versus other forms of distributed generation, which is not an accepted issue in this proceeding. Toronto Hydro argued that Pollution Probe had not demonstrated that the requested information is relevant to the issues in the present case.

Pollution Probe's reply submission stated that it was only seeking the recalculations and corresponding new graph on the basis of this one input assumption change.

Board Findings

The importance of the Study and the issue to which it relates is discussed in the previous Board finding. As noted previously, the Board's direction was to conduct a study into the capability, costs and benefits of incorporating a significant component of bi-directional generation in Toronto. The Board accepts Pollution Probe's argument that this interrogatory tests the underlying assumptions of the Study, as well as the resulting "evaluated cost" calculations, and that testing the underlying assumptions of the study regarding costs is relevant to the issue of determining whether the Study which was filed adequately and completely examines the costs of incorporating bi-directional generation, as directed by the Board. The Board assumes that the requested recalculation and graph are reasonable and not onerous, as it requires only one change to the input assumptions.

The Board directs Toronto Hydro to require Navigant to re-calculate and re-graph the CHP's evaluated costs on the basis of the assumption change described by Pollution Probe in its interrogatory and motion materials.

Pollution Probe #7:

Reference(s): EB-2009-0077, Notice of Amendment To A Code: Amendments To The Distribution System dated October 21, 2009

On October 21, 2009, the Board amended its Distribution System Code with respect to how the costs of connecting a new renewable generating facility to an electric LDC's system would be shared between the generating facility and the LDC. Specifically, according to page 2 of the Notice of Amendment:

- cost responsibility for "expansions" would be assigned as follows:*

where the expansion is in a Board-approved plan or is otherwise approved or mandated by the Board, the distributor would be responsible for all costs of the expansion; and

in all other cases, the distributor would be responsible for the costs of the expansion up to a "renewable energy expansion cost cap" (\$90,000 per MW of capacity on the connecting generator), and the generator would be responsible for all costs above that amount; and

- the distributor would bear all of the costs of "renewable enabling improvements".*

Would Toronto Hydro be opposed to a directive from the Board to apply the same or similar cost-sharing principles to new natural gas-fired CHP facilities in its service territory? If so, please fully explain why.

Toronto Hydro responded that the question did not pertain to any approved issue and had not provided the requested information.

Pollution Probe argued that these issues were relevant and directly related to Issue 1.1, “Has Toronto Hydro responded appropriately to all relevant Board directions from previous proceedings?” particularly given the Board’s findings in its *Issues List Decision and Procedural Order No. 2*.

Pollution Probe noted that during the process leading to the Board’s Approved Final Issues List, it had requested that the issue “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?” be added to the Issues List. The Board had not included this issue on the Approved Final Issues List on the basis that:

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.

Pollution Probe submitted that this interrogatory was relevant and directly related to Issue 1.1, particularly given the Board’s finding as quoted above.

Toronto Hydro’s submission reiterated the position taken in its interrogatory response, that this issue might be appropriate for consideration in a generic proceeding, but did not pertain to Toronto Hydro individually nor to any of the proposals put forward by Toronto Hydro in its rate application. Toronto Hydro argued that if the Board were to consider any of the substantive policy issues raised by Pollution Probe as part of the present 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. Finally, Toronto Hydro argued that the interrogatories seek Toronto Hydro’s position on a matter of policy over which it has no discretion and is necessarily bound by the Board and the Province.

In its reply submission, Pollution Probe stated that it strongly disputed Toronto Hydro’s assertions that this was a generic policy issue over which it had no discretion, both on the basis that the Board’s *Distribution System Code* only states that such costs may, not shall, be recovered from customers and because in its view, the recently added section

78(3.0.5) of the *Ontario Energy Board Act, 1998* explicitly provides the Board with statutory authority in its rate making function for individual distributors to allow for incentives and the recovery of costs related to connections to a distributor's grid.

Board Findings

The Board is in agreement with Toronto Hydro that the information being sought by Pollution Probe relates to a policy matter and it is not an issue before the Board in this application and thus is not relevant. Accordingly, the Board denies Pollution Probe's request that Toronto Hydro be directed to provide an interrogatory response.

Procedural Matters

The Board will provide Toronto Hydro with a week from the date of the issuance of this Decision and Procedural Order to provide answers to Pollution Probe interrogatories #2 and 3.

The Board has determined that due to the outcome of this motion and other scheduling concerns, it will move the beginning of the oral hearing from February 1, 2010, as provided for in Decision and Procedural Order No. 4, to February 4, 2010. The Board notes that significant scheduling issues will arise if the hearing requires dates beyond February 12, 2010.

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. Toronto Hydro is directed to provide responses to Pollution Probe interrogatories #2 and #3, as outlined in this Decision. Such responses will be filed with the Board and delivered to all parties on or before **Thursday January 28, 2010**.
2. The oral hearing will commence on **Thursday February 4, 2010** in the Board's West Hearing Room at 2300 Yonge Street, 25th floor, Toronto, 9:30 am. In the event that a settlement agreement is filed with the Board, the presentation of the agreement will be made at the commencement of the oral hearing on **Thursday February 4, 2010**.

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 searchable PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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ISSUED at Toronto, January 22, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary