ONTARIO ENERGY BOARD

STAFF SUBMISSION

2010 ELECTRICITY DISTRIBUTION RATES

Toronto Hydro-Electric System Limited

EB-2009-0139

February 18, 2010

INTRODUCTION

On August 28, 2009 Toronto Hydro-Electric System Limited ("Toronto Hydro" or the "Applicant") filed an application (the "Application") with the Ontario Energy Board (the "Board") requesting an order or orders of the Board approving or fixing just and reasonable distribution rates and other charges, effective May 1, 2010.

The Association of Major Power Consumers in Ontario ("AMPCO"), Building Owners and Managers Association of the Greater Toronto Area ("BOMA"), Canadian Union of Public Employees (Local One) ("CUPE One"), the Consumers Council of Canada ("CCC"), the Energy Probe Research Foundation ("Energy Probe"), Ontario Power Authority ("OPA"), Pollution Probe Foundation ("Pollution Probe"), the School Energy Coalition ("SEC"), the Smart Sub-metering Working Group ("SSMWG") and the Vulnerable Energy Consumers' Coalition ("VECC") were granted intervenor status in this proceeding. All parties which applied for cost eligibility were determined to be eligible except CUPE One.

On January 22, 2010, a Settlement Agreement was filed with the Board which incorporated settlement of most outstanding issues in this proceeding.

On the same date, the Board issued its Decision on a Motion to Review (the "Decision") brought by Toronto Hydro to vary part of a Decision with Reasons issued May 15, 2008 (the "2008 Decision"), an earlier cost of service application which found that 100% of the net after-tax gains arising from the sale of certain properties should go to the ratepayer. As part of its Decision, the Board stated that while it did not accept Toronto Hydro's argument, it did recognize that implementation of the 2008 Decision required further direction from the Board, and advised that the Board would hear submissions from parties concerning the implementation of the 2008 Decision as part of this proceeding.

On February 4, 2010, the Board announced its acceptance of the Settlement Agreement. Unsettled issues remained in three areas, which were:

(1) cost of capital and related PILs impact;

(2) distributed generation issues, incorporating:

> (i) whether or not Toronto Hydro responded appropriately to all of the Board's relevant directions with respect to distributed generation from previous proceedings,
>
> (ii) whether or not Toronto Hydro's proposed capital expenditures to facilitate distributed generation are appropriate, and
>
> (iii) whether or not Toronto Hydro's Asset Condition Assessment information and Investment Planning Process adequately addresses the condition of the distribution system assets and supports the OM&A and Capital Expenditures for 2010, and;

(3) the proper rate design for multiple unit residential "suite metered" customers.

Staff's submissions are restricted to the issues arising from the implementation of the Board's finding in its 2008 Decision relating to the proceeds from the sale of certain properties and cost of capital. Staff has no submissions on the remaining outstanding issues.

Staff's submission reflects observations and concerns which arise from staff's review of the case record including the oral hearing which was held from February 4th to the 8th 2010 and is intended to assist the Board in evaluating Toronto Hydro's application and in setting just and reasonable rates.

PROCEEDS FROM THE SALE OF BUILDINGS

Background

On May 15, 2008, the Board issued its 2008 Decision concerning Toronto Hydro's 2008 cost of service application. The Board made the following finding and order regarding certain properties owned by Toronto Hydro: "100% of the net after-tax gains from the sale of 228 Wilson Avenue, 175 Goddard Street, and 28 Underwriters Road, the properties that are planned to be sold in 2008, should go to the ratepayer. The

Company's revenue requirement for the 2008 test year shall be adjusted downward by $10.3 Million to reflect this finding" (the "sales proceeds order").

The Board further directed Toronto Hydro to employ a variance account to record any differences in the gains reflected in rates and the actual gains achieved from the sale of these properties either in 2008, or beyond.

In addition, the Board found that the evidence was unclear as to whether all or any of four other parcels of land, referenced as Bathurst, Birmingham, Sterling and Rustic, were sold in 2007. , The Board noted that Toronto Hydro's proposed regulatory treatment of the capital gains did not include the capital gains associated with the sale of these four parcels of land and directed Toronto Hydro to record 100% of the net capital gains associated with the sale of these four pieces of land in the above variance account also.

On June 4, 2008, Toronto Hydro filed a Notice of Motion with the Board requesting, among other things, a review and variance of the sale proceeds order. On June 9, 2008, Toronto Hydro filed an amended Notice of Motion with the Board advising it would appeal the sale proceeds order to the Divisional Court, which it did on June 16, 2008. (the "2008 Motion to Review") On June 25, 2008, the Divisional Court granted Toronto Hydro's request for a stay of the sale proceeds order pending the hearing of the appeal.

On June 27, 2008, the Board issued a Decision declaring the portion of the 2008 Motion to Review related to the sale proceeds order moot given the stay granted by the Divisional Court. The Board ordered Toronto Hydro to record the forecasted sale proceeds of $10.3 million in Deferral Account 1508, Other Regulatory Assets, to ensure that it could be credited to ratepayers in the event that Toronto Hydro was unsuccessful with its appeal.

On April 29, 2009, the Divisional Court dismissed Toronto Hydro's appeal and on September 14, 2009, the Court of Appeal denied Toronto Hydro's motion for leave to appeal the decision of the Divisional Court.

On November 27, 2009 Toronto Hydro filed a Notice of Motion under Rule 42 of the Board's *Rules of Practice and Procedure* for an Order of the Board reviewing and varying the sale proceeds order (the "2009 Motion to Review"). Toronto Hydro stated the passage of time had rendered it impossible to implement as its 2008 rates had been superseded by its 2009 distribution rates, and no process had been established through which to dispose of the sale proceeds. Further, Toronto Hydro advised that it had not realized $10.3 million from the disposition of the properties referred to in the Decision.

Toronto Hydro requested: (i) that the net after-tax gains on the sale of properties which were actually sold be used rather than the forecast contained in the Decision, which as of the date of filing was $1.65 million; and (ii) that this amount be treated as a revenue offset to the 2010 revenue requirement.

On December 17, 2009, the Board issued a procedural order requesting written submissions from parties on the threshold question of whether the 2009 Motion to Review should be reviewed before conducting any review on the merits. The Board received submissions from the Vulnerable Energy Consumers' Coalition and the School Energy Coalition as well as a reply submission from Toronto Hydro.

On January 22, 2010, the Board issued its Decision on the Motion to Review. The Board found that Toronto Hydro had not met the threshold test and the 2009 Motion to Review was dismissed. In so finding, the Board noted that a decision to appeal an order of the Board will always result in the passage of time during which the circumstances underlying the order may change. The Board stated that if Toronto Hydro's argument was adopted, a possible outcome is that any order under appeal could be the subject of a motion to review on the basis that changes in the circumstances or facts underlying the order have occurred.

The Board further stated that while it did not accept Toronto Hydro's argument, it did recognize that the implementation of the 2008 Decision would require further direction from the Board and it would hear submissions from parties during the oral hearing of Toronto Hydro's EB-2009-0139 rate application concerning the implementation of the Decision in view of the delay caused by the appeals process.

On February 4, 2010, Toronto Hydro filed an update of Exhibit I1, Tab 1, Schedule 1 "Actual and Forecast Net After-tax Gains on Sale of Named Properties"[1] during the oral hearing. This update showed that of the seven named properties, four of these, 3706 Bathurst Street, 124 Birmingham Avenue, 522 Rustic Road and 228 Wilson Avenue had been sold to produce net after-tax gain on sale amounts totaling $1,649.8 million and that another, 175 Goddard Street, is forecast to be sold in 2010 for an after-tax gain of $2.4 million for a total amount of $4.05 million in net after-tax gains. Of the two remaining properties, 211 Sterling Road and 28 Underwriters Road, the former is not forecast to be sold in 2010 and the latter is now not for sale. Toronto Hydro stated that 211 Sterling Road was not forecast to be sold in 2010 as it is the subject of considerable environmental damage and that 28 Underwriters Road is no longer for sale due to changes in its facilities strategy and plans which have resulted in that property again being used [2].

Discussion and Submission

Staff submits that as Toronto Hydro's appeals have been unsuccessful, the draft Rate Order should be based on the incorporation of the $10.3 million in Deferral Account 1508 related to the forecast sale proceeds, which the Board's 2008 Decision had determined should go to the ratepayer, as a revenue offset.

Staff notes that in its Argument-in-Chief, Toronto Hydro proposes that the Board provide it with approval to credit ratepayers in 2010 rates with all of the net after tax gains on sale amounts related to named properties that either have been sold or, in the case of Goddard Street, are forecast to be sold, within the test period. Toronto Hydro states that this would result in an additional $4.05 million reduction in revenue requirement and rates to those originally proposed.[3] This proposal would exclude the two properties that are either not anticipated to be sold in this time period, or are no longer planned to be sold at all (211 Sterling Street and 28 Underwriters Road).

Staff submits that Toronto Hydro's proposal is not in accordance with the Board's Decision of January 22, 2010 and should not be accepted. The Board's decision stated that the passage of time, and the events which occur or do not occur during its passage,

[1] Exhibit K2
[2] Transcript of Hearing, Vol. 1, p.67, L3-L27
[3] Toronto Hydro-Electric System Limited, Argument-in-Chief, February 12, 2010, p.15

do not constitute new facts or changes in circumstances sufficient to justify changing that finding. Accordingly, staff submits that the Board's original finding in its 2008 Decision that Toronto Hydro's revenue requirement be adjusted downward by $10.3 million must now be implemented, and the fact that Toronto Hydro has not sold, or may not sell, two of the named properties is irrelevant to its implementation.

Staff submits that the only remaining issue is how and when the variance account which tracks the actual proceeds of the sale of the named buildings should be disposed. Staff submits that the variance account should not be disposed until 175 Goddard Street has been sold and the amount in this account can be determined based on the proceeds of all of the buildings which are likely to be sold in the 2010 test year (i.e. exclusive of 211 Sterling Road and 28 Underwriters Road). Staff submits that this variance account should not be disposed as part of the present proceeding; a more appropriate time for the disposition of this variance account to be considered would be as part of the review of Toronto Hydro's 2011 application.

In making this submission, staff is mindful of the fact that two of the buildings have not been sold. In the event that 211 Sterling Road and 28 Underwriters Road are subsequently sold, these amounts can be considered for disposition at the time of a future application.

Staff submits that the proposed approach would also provide some further mitigation of the increases which are contained in this application.

COST OF CAPITAL

Background

Staff notes that while cost of capital is an unsettled issue, the Settlement Agreement incorporates a table containing estimated cost of capital impacts based on adoption of the Board's EB-2009-0084 Cost of Capital Report.[4]

[4] Toronto Hydro-Electric System Limited Settlement Agreement January 22, 2010, Appendix B

Discussion and Submission

Staff submits that while Toronto Hydro has used a 9.75% Return on Equity (ROE) in Appendix B of the Settlement Agreement, this should not be the final number. Board staff submits that the final cost of capital parameters, to be published in February 2010 based on January 2010 data using the formulae in the Board's Report, will determine the ROE and other applicable rates for determination of the final revenue requirement for rate setting purposes.

-All of which is respectfully submitted -