



EB-2009-0308

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

AND IN THE MATTER OF a Notice of Intention to Make an
Order for Compliance against Toronto Hydro-Electric System
Limited.

BEFORE: Gordon Kaiser
Vice-Chair and Presiding Member

Cynthia Chaplin
Member

DECISION AND ORDER

Background

[1] The Ontario Energy Board (the "Board") issued a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited ("Toronto Hydro") under section 112.3 of the *Ontario Energy Board Act, 1998* (the "Act") on August 4, 2009. By way of letter dated August 17, 2009, Toronto Hydro gave notice to the Board requiring the Board to hold a hearing on this matter.

[2] On February 22, 2010, the Board issued a Compliance Order which directed, amongst other things, that Toronto Hydro reimburse Residences of Avonshire Inc. ("Avonshire"), Metrogate Inc. ("Metrogate"), the Smart Sub-Meter Working Group ("SSMWG"), and the Board for all costs relating to their participation in proceeding EB-2009-0308, which costs will be borne by Toronto Hydro's shareholder and not the ratepayer.

[3] On March 19, 2010, Toronto Hydro filed a letter with the Board objecting to the cost claim submitted by Avonshire, Metrogate and the SSMWG, on two grounds: that the claim does not follow the Cost Award Tariff at Appendix A to the Practice Direction on Cost Awards (the "Practice Direction") and that Avonshire, Metrogate and the SSMWG have not met their burden of establishing that the costs claimed were incurred directly and necessarily for their participation as authorized by the Board.

[4] On March 22, 2010, the SSMWG filed a letter in response to Toronto Hydro's cost claim objection. The SSMWG argued that the Compliance Order did not contain a cost assessment process as is typical in most Board cost orders. It further argued that the Practice Direction relates to situations where a person has applied for and been granted eligibility for costs awards in a proceeding. In this case, the SSMWG, nor Avonshire, nor Metrogate applied for cost eligibility. Accordingly, the SSMWG is of the view that the cost decision against Toronto Hydro is not subject to the Practice Direction. SSMWG requested that the Board confirm its Order that Toronto Hydro is required to pay all of the SSMWG's costs associated with the compliance proceeding.

[5] The Board has considered all of the filed materials, and has determined that Toronto Hydro will reimburse the SSMWG for all of their as filed hours, but at the tariff rate from the Practice Direction. The Board does not agree with Toronto Hydro that it is a legal requirement that costs only be assessed in conformity with the Practice Direction. However, in the circumstances the Board is not prepared to order that Toronto Hydro pay the SSMWG's costs on a "full indemnity" basis. The Board finds, however, that the hours as filed are appropriate considering the parties' participation in the proceeding. The Board has also determined that Toronto Hydro will reimburse Metrogate and Avonshire for the full amounts claimed. The Board finds these claims reasonable in the circumstances.

IT IS THEREFORE ORDERED THAT:

1. The SSMWG shall serve on Toronto Hydro, and file with the Board, new costs claims using the tariff rates from the Board's Practice Direction on Cost Awards.
2. Toronto Hydro shall pay these amounts forthwith.

DATED at Toronto, March 29, 2010.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary