



EB-2010-0142

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, 2011.

ISSUES LIST DECISION
and
PROCEDURAL ORDER NO. 2

Toronto Hydro-Electric System Limited ("Toronto Hydro", or the "Company") filed an application, dated August 23, 2010, 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, 2011.

The Board issued a Notice of Application and Hearing dated September 15, 2010. In Procedural Order No.1, issued on October 18, 2010, the Board approved 11 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 (“Pollution Probe”)
Horizon Utilities Corporation (“Horizon”)
Smart Sub-metering Working Group (“SSMWG”)

Toronto Hydro provided two submissions, dated October 25, 2010 and October 29, 2010, 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. Neither Pollution Probe nor Horizon had any changes to suggest to the draft issues list. However, several changes and clarifications were requested by other parties. 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 2011 appropriate?
- 1.3 Is service quality, based on the OEB specified performance indicators, acceptable?
- 1.4 Is the overall increase in the 2011 revenue requirement reasonable given the overall bill impact on consumers?
- 1.5 When would it be appropriate for Toronto Hydro to commence filing rate applications under incentive regulation? Is this application an appropriate base case for a future IRM application? If not, why not?

Toronto Hydro expressed concern with the wording of issue 1.4, stating that this issue as presently worded can be interpreted to give more prominence or weight to one specific criterion in determining “just and reasonable” rates and thereby excluding or de-emphasizing other relevant and important criteria. As such, the Company expressed the view that this issue should either reference all the relevant objectives which the Board must consider or be made more generic.

Accordingly, Toronto Hydro proposed that the issue be revised as follows: “Is the overall increase in the 2011 distribution revenue requirement reasonable given its impact on the overall bill for consumers, and given the requirement to maintain the adequacy, reliability and quality of electricity service.”

AMPCO agreed with Toronto Hydro’s suggested change as in its view, the revised wording better reflected the Board’s responsibilities under Section 1(1) of the *OEB Act*. However, AMPCO recommended that the word “protect” replace the word “maintain” to be consistent with the *OEB Act*.

Toronto Hydro accepted AMPCO’s suggestion.

The Board finds it appropriate to amend this issue to read “Is the overall increase in the 2011 distribution revenue requirement reasonable?” The Board is of the view that the various criteria proposed by parties for determining the reasonableness of the revenue requirement are implicit in this issue as redefined. The Board notes that this redefinition will more accurately describe the Board process in arriving at just and reasonable rates as there are a range of issues which may determine whether or not the proposed increase is appropriate.

Toronto Hydro submitted that Issue 1.5 was not relevant to the current proceeding and should be removed from the issues list. The Company argued that the development and implementation of an incentive regulatory mechanism could not be forecast with certainty at this time and it would not be a productive use of hearing time and resources to entertain a speculative discussion around how the existing incentive regulation mechanism might be changed in order to accommodate Toronto Hydro’s specific circumstances. Toronto Hydro also expressed the concern that any consideration or ruling on proposed issue 1.5 could in the future be interpreted as somehow binding a future panel, which the Company submitted is clearly inappropriate and beyond the Board’s jurisdiction in any event.

Toronto Hydro further submitted that in both previous rate applications and the current one, it has presented clear evidence that it is in the midst of a substantial infrastructure renewal effort associated with its aging distribution network as well as a timely replacement of a significant portion of its workforce as many of its workers retire. As such, the Company stated at this time it anticipates filing separate cost of service applications until an alternative mechanism is in place which accommodates and does not prejudice the merits of capital spending and other factors which cause revenue requirements to increase apart from the influence of inflation and productivity growth.

No other parties commented on this issue.

The Board finds that Issue 1.5 is relevant to the present proceeding and will be on the Approved Final Issues List. The Board finds that it is appropriate to incorporate this issue to allow parties to explore the full range of approaches available to deal with the longer term issues raised by Toronto Hydro's application.

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 2011 other revenues appropriate?

There were no specific comments received regarding this section.

3. OPERATIONS, MAINTENANCE and ADMINISTRATION COSTS

- 3.1 Are the overall levels of the 2011 Operation, Maintenance and Administration budgets appropriate?
- 3.2 Is the proposed level of 2011 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 2011 appropriate?
- 3.4 Are the 2011 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 PILs, including the methodology, appropriate?
- 3.8 Is Toronto Hydro's proposal to recover a one-time Late Payment Penalty Settlement expense in the amount of \$7.75 million appropriate?

Toronto Hydro submitted that the procedural approach to issue 3.8 needed to be clarified, noting that the Company is requesting that the \$7.75 million in expenses be recovered as a rate rider and that the allocation of this cost and the duration of the rate rider are issues which it expected to be reviewed and decided upon in this proceeding.

Toronto Hydro further stated that it, along with substantially all other distributors considers any questions concerning the prudence of the late payment settlement to be a generic issue facing the entire Ontario distribution sector, and has requested that the Board sever the question of prudence and any other generic issues from the proceeding for review and consideration by the Board in a separate generic proceeding.

Accordingly, Toronto Hydro submitted that issue 3.8 should be amended, as follows, assuming that the generic issues are severed: "Are THESL's proposals regarding the derivation and duration of rate riders to cover the one-time late Payment Penalty expense in the amount of \$7.75 million commencing in 2011 appropriate?"

No other parties made any submissions on this matter.

The Board notes that these submissions were made prior to the Board's issuance on October 29, 2010 of a Notice of Proceeding to commence a proceeding on its own motion to determine whether Affected Electricity Distributors, as defined in the Notice, should be allowed to recover from their ratepayers the costs and damages related to the late payment penalty class action, and if so, the form and timing of such recovery. Given the establishment of the aforementioned proceeding, the Board finds that this issue will be removed from the Approved Final Issues List.

4. CAPITAL EXPENDITURES and RATE BASE

- 4.1 Are the amounts proposed for Rate Base appropriate?
- 4.2 Are the amounts proposed for 2011 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 2011?

VECC submitted that Issue 4.3, as framed, suggests that consistency with methodologies used in previously approved Toronto Hydro rate applications is determinative of this issue. VECC's concern specifically related to the reference in the issue to the methodology used being "consistent with the methodologies approved by the Board in previous Toronto Hydro rate applications." VECC argued that consistency with previous decisions is never determinative. VECC submitted that while the referenced part of the issue may well be the basis upon which the Board is asked to approve the methodology used by Toronto Hydro in this proceeding, the proper issue to be determined is whether "the methodology used appropriate?" *[sic]*

Toronto Hydro stated that VECC's proposed restatement was acceptable to it.

The Board finds that Issue 4.3 will be restated as "Are the inputs used to determine the Working Capital component of the Rate Base appropriate and is the methodology appropriate? In so doing, the Board has accepted VECC's proposed restatement, as supported by Toronto Hydro.

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?

- 5.3 Is the proposed dollar cost of Long-Term Debt appropriate after having regard to the transaction undertaken by the holder of the \$490 million promissory notes in March 2010?

VECC stated its presumption that the addition of issue 5.3 is intended to highlight a specific issue relevant to the calculation of the appropriate Long-Term Debt rate, pursuant to issue 5.2. In this context, VECC stated that it had no particular concern with the addition of issue 5.3, so long as it is not interpreted to limit the scope of the examination with respect to the appropriateness of the costs claimed by Toronto Hydro in relation to its Long-Term Debt.

No other parties commented on these issues.

The Board confirms VECC's understanding that the inclusion of Issue 5.3 does not limit the scope of the examination with respect to the appropriateness of the costs claimed by Toronto Hydro in relation to its Long-Term Debt.

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?

Toronto Hydro stated its acceptance of this issue on the understanding that the Board's findings as contained in the July 28, 2009 OEB Report on the Transition to International Financial Reporting Standards (EB-2008-0408) apply in this case, wherein the Board decided that it will continue to use deferral and variance accounts for rate making in appropriate circumstances, whether or not these accounts are recognized under IFRS.

No other parties commented on this issue.

The Board confirms Toronto Hydro's understanding of this issue.

7. COST ALLOCATION and RATE DESIGN

- 7.1 Is Toronto Hydro's cost allocation appropriate?
- 7.2 Is Toronto Hydro's suite metering cost allocation study appropriate?

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

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

7.5 Are the proposed Retail Transmission Service rates appropriate?

7.6 Are the proposed Total Loss Factors appropriate?

Toronto Hydro recommended that the word “study” be deleted from Issue 7.2, as, in its view, the proper focus of this issue should be on whether or not the cost allocation proposed is appropriate and not whether the study itself is appropriate.

No other parties commented on this matter.

The Board accepts the revision to Issue 7.2 proposed by Toronto Hydro, which will now read “Is Toronto Hydro’s suite metering cost allocation appropriate?” In so finding, the Board considers that the matter of the appropriateness of the study itself is subsumed under Issue 1.1 “Has Toronto Hydro responded appropriately to all relevant Board directions from previous proceedings?”

SSMWG submitted that it was appropriate to add an additional issue to this section. It suggested an Issue 7.2(a), specifically: “Is it appropriate for Toronto Hydro to establish a separate rate class for multi-unit residential customers that are served directly by Toronto Hydro through its suite metering provision?”

SSMWG argued that the inclusion of such an issue was consistent with the position taken by it in previous proceedings and was also the logical extension of the Board’s finding in the 2010 rate decision that the study should include an analysis of the implications of creating and maintaining a separate rate class for those customers served in this manner.

Toronto Hydro responded that SSMWG’s new issue should not be accepted by the Board since this issue affects the broader distribution sector and not just Toronto Hydro. As such, the Company submitted that the proposed issue is more appropriately addressed in a wider stakeholder consultation process; specifically, as part of the Board’s EB-2010-0219 Cost Allocation Review.

The Board finds it is appropriate to incorporate SSMWG’s proposed new issue as Issue 7.3. In so finding, the Board is mindful of Toronto Hydro’s concerns that this issue may

affect the broader distribution sector. The Board's EB-2009-0139 Decision envisaged this possibility, stating that the study's results "will be informative to other utilities and to the Board as to how to advance utility rate structures on a province wide scale in response to the introduction of this competitive sub-metering business."¹

AMPCO suggested that issue 7.6 "Are the proposed Total Loss Factors appropriate?" should be revised to "Are the proposed Loss Factors appropriate?" to capture all of the loss factors included in the evidence, as in the pre-filed evidence, values are given for the Supply Facilities Loss Factor, Distribution Loss Factors and Total Loss Factors.

Toronto Hydro submitted that the issue should be amended to read "Is the proposed Distribution Loss Factor appropriate?" to clarify that it is only the distribution loss factor which Toronto Hydro can influence as other Loss Factors are beyond its control.

The Board finds that Issue 7.6 will remain unchanged. In making this finding, the Board notes the concerns expressed by AMPCO and wishes to be clear that Issue 7.6 encompasses all of the loss factors included in the evidence. The Board is mindful of the concerns of Toronto Hydro, but notes that Toronto Hydro's approved Tariff of Rates and Charges incorporates all of the loss factors referenced by AMPCO. As such, the Board finds that AMPCO and other parties can ask questions on the methodology related to the determination of these loss factors to the extent that there is a subjective element in their calculation by Toronto Hydro.

8. SMART METERS

8.1 Is Toronto Hydro's proposal to include its 2011 smart meter costs in rate base as a regular distribution activity appropriate?

CCC submitted that there should be an additional issue, proposed as 8.2, related to smart meters, specifically: "Are Toronto Hydro's smart metering costs appropriate?"

AMPCO agreed with CCC's proposed change.

Toronto Hydro accepted the suggestion to add issue 8.2, but proposed that it should read: "Are the proposed 2011 smart metering costs appropriate?"

¹ EB-2009-0139, Toronto Hydro-Electric System Limited, *Decision April 9, 2010*, p. 30

The Board finds that Issue 8.2 “Are the proposed 2011 smart metering costs appropriate?” will be added to the Approved Final Issues List. The Board makes this finding on the basis that Toronto Hydro’s evidence states its 2008-2010 smart meter costs remain in the smart meter deferral accounts and will be the subject of a subsequent separate application, but that it is proposing to include its 2011 smart meter costs in rate base as a regular distribution activity for 2011 rate-setting purposes

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.

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.

The Board acknowledges the submissions of parties related to the determination as to which issues can be dealt with on either an oral or written basis. The Board will not make a determination on this matter at this time.

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:

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-2010-0142, 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.

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ISSUED at Toronto, November 11, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

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

EB-2010-0142

**APPROVED FINAL
ISSUES LIST**

Appendix “B”
Toronto Hydro-Electric System Limited
EB-2010-0142

Approved Final Issues List

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