



**EB-2010-0295**

**IN THE MATTER OF** a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, as further described herein, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery.

### **NOTICE OF PROCEEDING**

The Ontario Energy Board (the “Board”) has commenced a proceeding on its own motion to determine whether Affected Electricity Distributors (see definition below) should be allowed to recover from their ratepayers the costs and damages incurred as a result of the Minutes of Settlement approved on April 21, 2010 by the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice (Court File No. 94-CQ-50878) and as amended by addenda dated July 7, 2010 and July 8 (the “Minutes of Settlement”) in the late payment penalty class action (the “LPP Class Action”), and if so, the form and timing of such recovery.

For purposes of this proceeding, “Affected Electricity Distributors” means licensed Ontario electricity distributors that were named as defendant class members in Schedule F of the Minutes of Settlement.

Port Colborne Hydro Inc. which is a named defendant class member and is therefore an Affected Electricity Distributor for purposes of this proceeding, informed the Board that due to an administrative error, the amount that it is seeking to recover is not listed in Schedule G of the Minutes of Settlement. Port Colborne Hydro Inc. has therefore

informed the Board that it is seeking to recover from ratepayers approximately \$28,000 arising from the settlement of the LPP Class Action.

In either their respective cost of service or incentive regulation mechanism rate applications, Affected Electricity Distributors have requested that the Board hold a generic hearing to deal with this matter. The Board has determined that it will hold a generic hearing to deal with this matter and has given this proceeding File No. EB-2010-0295.

This proceeding is commenced pursuant to sections 19 and 78(2) of the *Ontario Energy Board Act, 1998*. The Board's decision on this application may have an effect on the rates of Port Colborne Hydro Inc.'s customers.

For more information, please go to the Board's website at <http://www.oeb.gov.on.ca/html/EB-2010-0295> or to the office of Port Colborne Hydro Inc. to view the Minutes of Settlement in the LPP Class Action.

The generic hearing will address the following issues:

1. As a threshold question, whether Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action; and
2. If the answer to the first issue is yes, what would be an appropriate methodology to:
  - (a) apportion costs across customer rate classes, and
  - (b) recover such allocated costs in rates.

Pursuant to section 21 of the *Ontario Energy Board Act, 1998*, the Board directed all Affected Electricity Distributors to collectively file evidence on the issues outlined above.

**The Electricity Distributors Association (EDA) collectively filed evidence on behalf of all Affected Electricity Distributors on November 8, 2010. To address the administrative error referenced above, the EDA will update its earlier evidence.**

The Board will also invite other evidence on all relevant matters from parties to the proceeding. A time table for the treatment of this evidence will be provided shortly.

Any party wishing to provide written comments on the proposed list of issues outlined above shall do so within 5 days of the publication of this Notice.

**PLEASE NOTE:** Due to the number of Affected Electricity Distributors involved in this proceeding, the Board will not require parties to file materials with all other parties. As such, all parties, including intervenors and all Affected Electricity Distributors will be required to regularly consult the Board's website at <http://www.oeb.gov.on.ca/html/EB-2010-0295> to gain access to any newly filed materials in this case. Affected Electricity Distributors are cautioned that they shall have a period of 5 days from the date that letters of intervention are published on the Board's website to file any objections to those intervention requests.

Should any party not have internet access, special arrangements may be made by contacting the Board Secretary's Office by telephone toll free at (1-888-632-6273).

### **How to Participate**

You may participate in this proceeding in one of three ways:

#### **1. Become an Intervenor**

You may ask to become an intervenor if you wish to actively participate in the proceeding. Intervenors are eligible to receive evidence and other material submitted by participants in the hearing.

Your request for intervenor status must be made by letter of intervention and be received by the Board no later than **10 days** from the publication or service date of this notice. Your letter of intervention must include a description of how you are, or may be, affected by the outcome of this proceeding; and if you represent a group, a description of the group and its membership. The Board may order costs in this proceeding. You must indicate in your letter of intervention whether you expect to seek costs from Affected Electricity Distributors and the grounds for your eligibility for costs.

Note that as an intervenor, everything you file with the Board will be placed on the public record, including your name and contact information. This means that it will be

available for viewing at the Board's offices and it will be placed on the Board's website and available to anyone with internet access.

The Board intends to proceed with this application by way of a written hearing. If you object to the Board proceeding in this fashion, your letter of intervention must state the type of proceeding you believe to be necessary and the reasons why.

If you already have a user ID, please submit your intervention request through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca). Additionally, two paper copies are required.

If you do not have a user ID, please visit the Board's website under e-filings and fill out a user ID password request. For instructions on how to submit and naming conventions please refer to the RESS Document Guidelines found at [www.oeb.gov.on.ca/OEB/Industry](http://www.oeb.gov.on.ca/OEB/Industry), e-Filing Services.

The Board also accepts interventions by e-mail, at the address below, and again, two additional paper copies are required. Those who do not have internet access are required to submit their intervention request on a CD in PDF format, along with two paper copies.

## **2. Send a Letter with your Comments to the Board**

If you wish to comment on the proceeding without becoming an intervenor, you may write a letter of comment to the Board Secretary clearly stating your views. A copy of your letter of comment will be provided to the Hearing Panel.

A complete copy of your letter of comment will also be available to all Affected Electricity Distributors (which means it will include your name, contact information, and everything written in the letter).

All letters of comment will become part of the public record in the proceeding. This means that it will be available for viewing at the Board's offices and it will be placed on the Board's website and available to anyone with internet access.

Before placing the letter of comment on the public record, the Board will remove from the letter of comment any contact information for the individual writing the letter. This

includes the address, fax number, phone number, and e-mail address of the individual. However, the name of the individual and anything written in the letter of comment will become part of the public record.

Your letter of comment must be received by the Board no later than **30 days** from the publication or service date of this notice. The Board accepts letters of comment by either post or e-mail at the addresses below.

### **3. Become an Observer**

Observers do not actively participate in the proceeding but monitor the progress of the proceeding by receiving documents issued by the Board. You may request observer status in order to receive documents issued by the Board in this proceeding. There is no fee for observers to receive documents issued by the Board.

As an observer you will be able to view all Board issued documents. If you would like to have access to any documents issued by any other party to the proceeding, you will be required to contact that party directly in order to request such documents. Please note that you may be required to pay for the cost of the duplication and delivery of these documents to you.

Most documents filed in this application will also be available on the Board's website at <http://www.oeb.gov.on.ca/html/EB-2010-0295>.

All letters for observer status will become part of the public record in the proceeding. This means that it will be available for viewing at the Board's offices and it will be placed on the Board's website and available to anyone with internet access.

Before placing the request for observer status on the public record, the Board will remove from the request any contact information for the individual making the request. This includes the address, fax number, phone number, and e-mail address of the individual. However, the name of the individual and anything written in the request for observer status will become part of the public record.

Your request for observer status must be made in writing and be received by the Board no later than **10 days** from the publication or service date of this notice. The Board accepts observer request letters by either post or e-mail at the addresses below.

**How to Contact Us**

In responding to this notice, please reference Board file number EB-2010-0295 in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**Need More Information?**

Further information on how to participate may be obtained by visiting the Board's website at [www.oeb.gov.on.ca/OEB/Industry](http://www.oeb.gov.on.ca/OEB/Industry) or by calling our Consumer Relations Centre at 1-877-632-2727.

**IMPORTANT**

**IF YOU DO NOT FILE AN OBJECTION TO A WRITTEN HEARING OR DO NOT PARTICIPATE IN THE HEARING BY FILING A LETTER IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.**

**ADDRESS**

Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Ste. 2701  
Toronto ON M4P 1E4

Attn: Board Secretary

Toll Free : 1-888-632-6273

Fax: 416-440-7656

Email: [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca)

Filings: <https://www.errr.oeb.gov.on.ca/>

**DATED** at Toronto, December 15, 2010

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary