



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.

PROCEDURAL ORDER NO. 6

Toronto Hydro-Electric System Limited ("Toronto Hydro") 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.

On October 18, 2010, Procedural Order No.1 was issued establishing, among other items, the dates for which interrogatories were to be filed with the Board and responded to by Toronto Hydro.

On November 11, 2010, the Board issued its Issues List Decision and Procedural Order No. 2. In it, 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 December 6, 2010, Toronto Hydro filed its responses to interrogatories from parties.

On December 13, 2010, the Board issued Procedural Order No. 3 outlining further steps in this proceeding.

On January 12, 2011, the Board issued Decision on Confidentiality and Procedural Order No. 4 (the “Confidentiality Decision”) which dealt with confidentiality issues raised by Toronto Hydro and the scope of the settlement conference. The Board found in the Confidentiality Decision, among other matters, that it would accept Toronto Hydro’s confidentiality claim regarding Toronto Hydro Corporation’s Business Plan 2011-2015 (the “Business Plan”) for the reasons outlined in the Confidentiality Decision.

On January 12, 2011, the School Energy Coalition (“SEC”), an intervenor in the proceeding, filed a letter with the Board, which stated that SEC was bringing to the Board’s attention facts related to the Confidentiality Decision that were not referred to in the Confidentiality Decision and therefore may not have been known to the Board Panel at the time it made the Confidentiality Decision.

SEC submitted that in light of the additional facts referred to in its letter, none of which were referenced in the Confidentiality Decision, the practical effect of the Confidentiality Decision was that the Board had decided a material issue having given Toronto Hydro an opportunity to make submissions, but denying intervenors who actively sought to make submissions the same right. SEC submitted that this was contrary to the Board’s consistent practice of applying the principle *audi alteram partem* to matters before it.

The Board notes that among the additional facts referred to by SEC in its letter was that on December 23, 2010, Toronto Hydro had made submissions claiming confidentiality for this document and providing its reasons for doing so. SEC stated that these submissions did not appear to have been copied to parties, or at least not to SEC. SEC further stated that it obtained a copy of these documents by searching the Board’s web site on December 30th.

The Board notes that its Confidentiality Decision had been based on the assumption that Toronto Hydro’s letter of December 23, 2010 had been distributed to all parties in the proceeding. The Board will accordingly allow parties that wish to do so the opportunity to make submissions on the confidentiality issues related to the Business Plan.

The Board has received three requests for late intervention status from counsel for Entera Utility Contractors Co. Limited, Aecon Utilities, a division of Aecon Construction Group Inc. and Powerline Plus Ltd. Each of these intervention requests were all stated to be due to the confidentiality issues arising from the Confidentiality Decision. The Board approves these intervention requests subject to Toronto Hydro's right to object. A revised list of intervenors is attached as Appendix A.

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. SEC and other parties wishing to make submissions on the confidentiality status of the Business Plan shall file such submissions with the Board and deliver them to other parties by **Thursday January 20, 2011**.
2. If parties wish to respond to any submissions on the confidentiality status of the Business Plan, such submissions shall be filed with the Board and delivered to all other parties by **Tuesday January 25, 2011**.

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

Address

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Tel: 1-888-632-6273 (toll free)

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ISSUED at Toronto, January 18, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix "A"
To The Procedural Order No. 6
Applicant and List of Intervenors
EB-2010-0142
Toronto Hydro-Electric System Limited
Date: January 18, 2011

Toronto Hydro-Electric System Limited
EB-2010-0142

APPLICANT & LIST OF INTERVENORS

January 18, 2011

APPLICANT

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APPLICANT & LIST OF INTERVENORS

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