



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.

BEFORE: Ken Quesnelle
Presiding Member

Marika Hare
Member

Karen Taylor
Member

DECISION AND ORDER ON MOTION

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 a Decision on Confidentiality and Procedural Order No. 4 which dealt with confidentiality issues raised by Toronto Hydro and the scope of the settlement conference.

On January 14, 2011, the Smart Sub-metering Working Group ("SSMWG"), an intervenor in the proceeding, filed a Notice of Motion (the "Motion") requesting, among other things, that the Board direct Toronto Hydro to provide full and complete answers to the interrogatories of the SSMWG as contained in Appendix "A" to the Motion.

SSMWG also requested an order amending the timetable for all future procedural matters and the oral hearing in respect of issues arising out of the interrogatories of SSMWG to allow SSMWG such further time as is appropriate to receive THESL's answers to the subject interrogatories, to prepare for and participate in a Technical Conference, prepare and file evidence and attend and participate in an oral hearing in respect of such issues. SSMWG requested an oral hearing of the Motion.

On January 18, 2011, the Board issued Procedural Order No.5 establishing that it would hear the Motion orally on January 19, 2011.

The Motion had requested full and complete answers to the following SSMWG interrogatories: #1, #11, #12 and #13 from the November 19, 2010 interrogatories. #1 and #13 from December 23, 2010 interrogatories.

On January 14, 2011, Toronto Hydro sent a letter to the Board and parties to the proceeding in which it stated that it had received the Motion and noted that the Motion stated, among other things, that Toronto Hydro had failed to produce answers to SSMWG November 19, 2010 interrogatories 11, 12 and 13. Toronto Hydro stated that it

had checked its records and could confirm that while paper copies of these three interrogatory responses were produced and distributed to parties requesting paper copies, it appeared that through inadvertence, Toronto Hydro had omitted these responses when compiling the electronic version filed on December 6, 2010.

During the hearing of the Motion, SSMWG counsel stated that as a result of the SSMWG's review of these responses, it was no longer requesting that the Board requires additional responses to interrogatory #11, or #12, except for part e of #12. SSMWG counsel also stated that it was also no longer requesting that the Board require an additional response to the December 23, 2010 interrogatory #1 at this point in time. The Board's Decision will accordingly deal only with the remaining outstanding interrogatories.

The Basis for Compelling Interrogatory Responses

The purpose of all evidence adduced in a hearing before the Board is to assist the Board in making a decision. Only evidence that is relevant to an issue in the application that must be decided by the Board can be of assistance to the Board in its decision making. The Board will only direct a party to provide a response to an interrogatory if the Board is persuaded that the interrogatory relates to an issue in the application before it, and the response to the interrogatory is likely to adduce evidence that is relevant and helpful to the decision it must make. These principles underlie the Board's decisions on the Motion.

With the exception of the decision with respect to the SSMWG's request concerning part (k) of interrogatory #1 on November 19, 2010 provided below, the Motion is denied. The Board's reasons for so finding are outlined in the subsequent sections which review each of the requests made by SSMWG.

SSMWG November 19, 2010 #1:

This interrogatory asked Toronto Hydro a series of questions related to its EB-2010-0233 application for a Licence "to engage in the commercial offering or commercial provision of smart sub-metering systems, equipment and technologies, and any associated equipment, systems and technologies."

Toronto Hydro's response was that it would not answer this interrogatory as it did not accept the citation of a separate proceeding as the only reference forming the basis for

this interrogatory and also did not accept that the question pertained to any approved issue in this proceeding.

SSMWG submitted that the interrogatory did request information relevant to this proceeding since if Toronto Hydro intended to undertake these activities either within the utility, or through an affiliate, there were a number of questions that were appropriately raised in this proceeding. This is because if these activities were to be undertaken within the utility there would be costs that would need to be examined and if it was to be through an affiliate, there would need to be an examination of the safeguards and mechanisms that were going to be included to ensure that there was no cross subsidization and that the requirements of the Affiliate Relationships Code had been met.

Board Findings

The Board is in agreement with Toronto Hydro that the information being sought by SSMWG largely relates to another proceeding and is not an issue before the Board in this application and thus is not relevant to this proceeding. Accordingly, the Board denies SSMWG's request that Toronto Hydro be directed to provide a further response to this interrogatory, except as noted here in. Part (k) of this interrogatory seeks information specifically related to, among other things, any rate impacts that may be referenced in the application that exist as a result of unit sub-metering activities including planned activities. The Board directs Toronto Hydro to provide a full response to the SSMWG November 19 interrogatory # 1 part (k).

SSMWG November 19, 2010 #12e:

Part (e) of this interrogatory asks Toronto Hydro whether or not it has forecast the additional expansion deposit revenues that it will retain as a result of the expansion deposit policy which it has adopted.

Toronto Hydro responded that expansion deposits are deposits, not revenues.

SSMWG argued that this response was not an answer, nor helpful and did not assist parties in assessing whether or not Toronto Hydro had embedded in its numbers in this proceeding amounts that may not be appropriately included.

Board Findings

The Board denies SSMWG's request that Toronto Hydro be directed to provide a further response to this interrogatory on the basis that Toronto Hydro is not seeking rate relief related to this activity in the present application. SSMWG is, however, free to ask Toronto Hydro additional questions about this matter during the hearing phase of this proceeding should it so choose.

SSMWG November 19, 2010 #13:

This interrogatory asked Toronto Hydro, with respect to its expansion deposit return policy to provide copies of all internal memoranda, notes, communications, business plans, executive management team minutes, emails and all correspondence with third parties as defined in the interrogatory.

Toronto Hydro declined this interrogatory on the basis that the requested production would be onerous and could not be completed within the prescribed time period for response.

SSMWG argued that this response was unacceptable as there was no indication as to whether or not Toronto Hydro had made any effort to determine if any of the requested information exists. SSMWG further submitted that the requested information was relevant because it would allow parties to assess the thinking behind Toronto Hydro's policy as well as the timing of it.

Board Findings

The Board is in agreement with Toronto Hydro that SSMWG's request is onerous and as the Board noted in denying SSMWG's request for a further response to interrogatory 12e, Toronto Hydro is not seeking rate relief related to this activity in the present application. Accordingly, the Board denies SSMWG's request that Toronto Hydro be directed to provide a further response to this interrogatory.

SSMWG December 23, 2010 #13:

This interrogatory asked Toronto Hydro to recast the cost of service study which it filed in this proceeding as *Cost of Service Study for Individually Metered Suites in Multi-Unit Residential Buildings* (the "study"), prepared by BDR NorthAmerica Inc. ("BDR") and

dated November 29, 2010 with an alternative definition of the suite metered sub-class to include only those 9,243 customers which were customers of Toronto Hydro's suite metering program as of the end of 2009. Toronto Hydro was also requested to provide in Excel format the revised cost of service study showing the formulas, inputs and assumptions used in the model, as well as a breakdown of all of the capital costs incurred in respect of the primary and secondary infrastructure required (excluding the Quadlogic metering systems) to serve the 5,534 suite meter customers added in 2009.

Toronto Hydro declined to answer this interrogatory, first, on the basis that it did not accept the premise of the interrogatory, which Toronto Hydro stated was that the study which it had undertaken and filed did not meet the requirements of the Board's directive and second because the information requested could not be produced within the timeline directed by the Board for responding to interrogatories.

SSMWG took the position that the study, as filed by Toronto Hydro, was non compliant with the Board's directive in its EB-2009-0139 Decision.

Toronto Hydro submitted that it had been absolutely clear what the Board had directed it to do and it had complied fully and properly with the direction of the Board. Toronto Hydro further submitted that SSMWG was, through the Motion, attempting to change what the Board had approved and directed it to do and impose a new and different definition of suite metering.

VECC submitted that the Motion as it related to this interrogatory response was not in reality a motion for further answers to interrogatories, but instead akin to a motion for summary judgment on a fundamental issue, specifically whether or not Toronto Hydro has complied with a Board directive from a previous proceeding. Board staff supported VECC's position.

Board Findings

The Board notes that Issue 1.1 on the Approved Final Issues List for this proceeding is "Has Toronto Hydro responded appropriately to all relevant Board directions from previous proceedings?" The Board is in agreement with the submissions of VECC and Board staff that the nature of SSMWG's request for a further response from Toronto Hydro would be such as to be pre-determinative of this issue. As such, the Board denies SSMWG's request for a further response to this interrogatory.

However, the Board would be assisted by the provision of additional information by Toronto Hydro in this area. The *Ontario Energy Board Act, 1998*, s. 21(1) confers upon the Board the power to at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by the *Ontario Energy Board Act, 1998* or any other Act.

The Board would, in this context, and without making any determination regarding Issue 1.1, be assisted in its assessment of this issue if Toronto Hydro was to request BDR to produce an alternative scenario arising from the study.

THE BOARD THEREFORE ORDERS THAT:

1. Toronto Hydro file with the Board and provide copy to all parties a full and adequate to SSMWG interrogatory #1, part (k), filed on November 19, 2010, no later than **January 31, 2011**.
2. Toronto Hydro produce an alternative scenario to the one provided in the study, which would be to divide the residential customer class into three sub categories. These would be: (i) the 9,243 suite metering customers as of the end of 2009, (ii) the approximately 110,000 remaining customers in the study's suite metered sub class ("SMSC") and (iii) all of the other residential customers, using the Board's approved methodologies. As discussed in the filed study, no secondary services costs should be allocated to the three residential customer sub categories specified herein by the Board, unless these costs would otherwise exist for Toronto Hydro's account; i.e., be a cost to Toronto Hydro. In undertaking this alternative scenario, Toronto Hydro, through its expert BDR would be free to attach to it, any caveats or concerns which it had about the revised scenario.
3. Toronto Hydro request that BDR provide any further scenarios, in addition to the alternative scenario described by the Board, or any further information or analysis that BDR determined would be helpful in assessing whether and to what extent any cross-subsidy may exist between the different types of Toronto Hydro customers relative to the suite metering customers.
4. Toronto Hydro file with the Board and copy to all parties to the proceeding on or before **January 31, 2011**, an assessment of the time that will be required to produce the alternative scenario which the Board has ordered (part 1 of this

Order) and if necessary, any further scenarios, information or analysis that Toronto Hydro (part 2 of this Order), through its expert, BDR, determines would be helpful to the Board.

Once Toronto Hydro has filed its assessment of the time required to fulfill parts 1 and 2 of the Board Order, the Board will issue a Procedural Order making any necessary revisions to the schedule for this proceeding to accommodate the additional process related to this matter. All existing dates established in previous Procedural Orders remain in effect, except as regards the process related to Issues 7.2 and 7.3 for which further direction will be provided once the Board has received Toronto Hydro's assessment.

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. Parties must 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 parties may email their 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

The Ontario Energy Board:

Post:
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Board Secretary

Filings: www.errr.oeb.gov.on.ca
E-mail: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, January 21, 2011
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary