



EB-2011-0144

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, 2012, May
1, 2013 and May 1, 2014.

PROCEDURAL ORDER No. 1

Toronto Hydro-Electric System Limited ("THESL") filed an application with the Ontario Energy Board (the "Board") on August 26, 2011 under section 78 of the *Ontario Energy Board Act*, 1998, (the "Act") seeking approval for changes to the rates that THESL charges for electricity distribution, to be effective May 1, 2012, May 1, 2013 and May 1, 2014. The Board has assigned the application File Number EB-2011-0144.

The Board received 11 requests for intervenor status and five requests for observer status. No objections were received. The Board approves these intervention and observer requests. A list of the intervenors is attached as Appendix A.

The following parties also applied for cost award eligibility: Association of Major Power Consumers in Ontario, Building Owners and Managers Association Toronto, City of Toronto, Consumers Council of Canada, Energy Probe, Pollution Probe, School Energy Coalition and Vulnerable Energy Consumers Coalition. No objections were received.

The Board finds that each of these parties is eligible for a cost award under the Board's *Practice Direction on Cost Awards* (the "Practice Direction") except for the City of Toronto which the Board finds is ineligible for costs as it is the indirect sole shareholder of the applicant through its ownership of Toronto Hydro Corporation, THESL's parent

company. In making this finding, the Board does not consider that the justifications provided for cost award eligibility by the City of Toronto are sufficient for the Board to grant the request.

Cost Claims:

The Board will make use of certain criteria noted below in assessing claims that may be made for cost awards for intervenors determined as eligible for cost awards under the Practice Direction in this proceeding. These criteria are designed to ensure that costs are only awarded where the party provides assistance to the Board in examining relevant issues and that only reasonable costs are awarded.

Appendix A of the Practice Direction, the Cost Award Tariff (the “Appendix”), outlines hourly rates for legal and analyst/consultant fees. The Appendix notes that analyst/consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences and that time spent providing expert evidence, expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate rate as set out in the tariff. The Appendix also notes that a copy of the expert’s curriculum vitae must be attached to the cost claim.

The Appendix further notes that if a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate. In this context, intervenors should ensure that, if time is to be claimed for case management services, the time spent on case management should be clearly separated from time spent on other activities and a full justification provided as to why the case management time was necessary and how it was differentiated from the time spent on other activities.

The Board also expects that where cost claims for oral hearing days are concerned, intervenors will generally only claim costs for one representative present in the hearing room, either counsel or an analyst/consultant, but not both. The Board would generally allow costs for more than one representative only to facilitate effective cross-examination of certain specialized evidence.

In considering all cost claims, parties should also be mindful of Section 5.01 of the Practice Direction, which outlines the criteria the Board may consider in determining the amount of a cost award to a party.

The Appendix also provides guidance as to acceptable claims for disbursements, noting that reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation directly related to the party's participation in the process will be allowed. The Board is of the view that given the widespread availability and use of electronic documents, it is no longer reasonable for intervenors to make claims for the recovery of costs of copying or printing case documents, other than materials that are filed for use during the hearing.

The Preliminary Issue:

In its EB-2010-0142 Decision, the Board stated as follows regarding the nature of future applications from THESL:

The Board has indicated in many policy instruments, papers, speeches and decisions that it continues to believe that incentive regulation provides benefits to ratepayers and shareholders, in both the electricity and natural gas distributors.

A clear and timely indication of the Board's intent on this matter is contained in its April 20, 2010 letter to all Licensed Electricity Distributors. In this letter, the Board addressed the issue of electricity distributors filing rate applications to have their rates set through a cost of service proceeding earlier than scheduled.

The Board's letter included a list of Electricity Distributors scheduled for Rate Rebasing in 2011. THESL was one of the Distributors listed and the application that is the subject of this Decision is the application anticipated in that letter.

The multi-year rate setting plan for electricity distributors was established in 2006. The April 20, 2010 letter described the plan as calling for electricity distributors to have their rates set on a cost of service basis only

once over a period of several years, with rates being set using an IRM in the intervening years.

The letter went on to explicitly state that the Board's rate-setting policies are such that distributors are expected to be able to adequately manage their resources and financial needs during the term of the plan.

THESL indicates that it did not understand the case it must meet prior to commencing this proceeding, and did not understand that the current application could be used as the base year to impose IRM in setting future rates. The Board does not accept this assertion, given the April 20, 2010 letter and established nature of the IRM framework.

In order to justify its approach, THESL posits that two separate frameworks exist and that it has been operating within one of them, that being a cost of service framework. THESL argues that it would be inappropriate for the Board to now treat it as though it were operating within the other framework, that being an IRM framework.

THESL also argues that based on this rate making construct, that there is a distinction between a cost of service application and a rebasing application. THESL submits it would do things differently in a rebasing application and that it did not anticipate that there was an expectation that its 2011 application would be treated as a rebasing application.

The Board's rate setting policies are not composed of the two separate frameworks that THESL describes. As stated above, the Board has clearly articulated the mechanics of the multi-year rate setting plan and its expectations of distributors. The Board believes that THESL's submissions mischaracterize the Board's rate setting policies and the Board does not accept the construct as described by THESL as a Board sanctioned framework.

THESL has pointed to situations in which the Board's multi-year rate setting plan has not been strictly adhered to in support of its position that its view of the framework is one that the Board should accept. While the Board accepts that there have been deviations from the Board's stated

multi-year rate setting plan, including the acceptance of THESL's non-conforming applications in the past, the Board considers the April 20, 2010 letter to be a clear and explicit statement of the Board's expectations of distributors on a going forward basis.

Given this clear and direct communication to THESL and other distributors regarding the Board's expectations, the Board does not accept THESL's view that it is reasonable for it to have approached its 2011 application with an expectation that it would also be making a cost of service application in 2012. The Board is not persuaded by THESL's submissions that the Board's stated rate setting policies did not apply to it.

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The Board makes no determination as to what THESL is required to file in its subsequent rate application. It is for THESL to determine the manner in which it chooses to apply for any adjustment to its rates for 2012. The acceptability of the application will be determined by the Board at that time.

The Board notes that THESL is not included in the list of expected cost of service applicants for 2012, as per the letter issued by the Board on March 1, 2011.

Should THESL file a cost of service application for 2012 rates, the expectations of the Board are clear. As set out in the April 20, 2010 and March 1, 2011 letters, a distributor that seeks to have its rates rebased earlier than scheduled must justify, in its cost of service application, why early rebasing is required and why and how the distributor cannot adequately manage its resources and financial needs during the remainder of the 3rd generation IRM plan term.

In its current application, and specifically at Exhibit A1/Tab1/Schedule 2, "The Manner of Regulation for THESL," THESL has provided its reasons and support for making what it characterizes as a cost of service application for electricity distribution rates for the 2012, 2013, and 2014 rate years.

The Board has determined that it will, in the context of its EB-2010-0142 Decision and the Board's letters of April 20, 2010 and March 1, 2011, and in advance of further procedural steps, consider the question of whether the application filed by THESL is acceptable or whether it should be dismissed (the "Preliminary Issue"). To accomplish this, the Board will allow an initial round of interrogatories by intervenors and Board staff to seek additional information specifically related to the Preliminary Issue and THESL's evidence on the Preliminary Issue at Exhibit A1/Tab 1/Schedule 2. Following THESL filing its responses to these interrogatories, the Board will hear oral submissions from Board staff, intervenors and the applicant on whether THESL's application is justified.

Following its determination on the Preliminary Issue, and if the Board decides to proceed with its consideration of THESL's application, the Board will issue a further Procedural Order to allow for further discovery on the application.

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. Board staff and intervenors shall file with the Board and deliver to Toronto Hydro-Electric System Limited any interrogatories with respect to the Preliminary Issue on or before **Friday October 14, 2011**.
2. Toronto Hydro-Electric System Limited shall file with the Board and deliver to all intervenors any responses to interrogatories filed with respect to the Preliminary Issue on or before **Monday October 24, 2011**.
3. The Board will hear oral submissions related to the Preliminary Issue from Board staff, intervenors and the applicant on **Tuesday November 1, 2011** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am. The hearing may continue on **Friday November 4, 2011** if necessary. Parties wishing to file written material related to their oral submissions, such as books of authorities, should do so by **Friday October 28, 2011**.

All filings to the Board must quote the file number, EB-2011-0144, be made through the Board's web portal at <https://www.errr.ontarioenergyboard.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 <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents 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.

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.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at martin.davies@ontarioenergyboard.ca and Board Counsel, Kristi Sebalj at kristi.sebalj@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, October 4, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix 'A'

To

Procedural Order No. 1

Toronto Hydro-Electric System Limited

EB-2011-0144

Applicant and List of Intervenors

October 4, 2011

**Toronto Hydro-Electric System Limited
EB-2011-0144**

APPLICANT & LIST OF INTERVENORS

Appendix A – PO #1

October 4, 2011

APPLICANT

Rep. and Address for Service

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System Limited**

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INTERVENORS

Rep. and Address for Service

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**Toronto Hydro-Electric System Limited
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APPLICANT & LIST OF INTERVENORS

Appendix A – PO #1

October 4, 2011

**Building Owners and
Managers Assoc. of the
Greater Toronto Area
(BOMA)**

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**Toronto Hydro-Electric System Limited
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APPLICANT & LIST OF INTERVENORS

Appendix A – PO #1

October 4, 2011

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**Toronto Hydro-Electric System Limited
EB-2011-0144**

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Appendix A – PO #1

October 4, 2011

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**Toronto Hydro-Electric System Limited
EB-2011-0144**

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October 4, 2011

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Pollution Probe Foundation

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October 4, 2011

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**Toronto Hydro-Electric System Limited
EB-2011-0144**

APPLICANT & LIST OF INTERVENORS

Appendix A – PO #1

October 4, 2011

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