



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. 4

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.

On October 4, 2011, the Board issued Procedural Order No. 1 which determined that, in advance of further procedural steps, the Board would consider the question of whether the application filed by THESL is acceptable or whether it should be dismissed (the "Preliminary Issue"). The Board stated that it would 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 stated that it would hear oral submissions on November 1, 2011 from Board staff, intervenors and the applicant on whether THESL's application is justified.

On October 21, 2011, THESL filed a Notice of Motion (the "Motion") with the Board requesting that the Board vary Procedural Order No. 1 to allow THESL to present a witness panel to provide *viva voce* evidence relevant to the Preliminary Issue during the oral submissions phase scheduled for November 1, 2011 and prior to oral submissions related to the Preliminary Issue from Board staff, intervenors and THESL. THESL requested that the Motion be heard in writing and provided a number of grounds for the Motion.

On October 21, 2011, the Board issued Procedural Order No. 2 in which it determined that it would hear the Motion in writing. The Board stated that it would seek written submissions from Board staff and intervenors on the matters raised by the Motion and reply submissions from THESL.

The Board determined after reviewing these submissions that it would grant the Motion and allow THESL to present a witness panel prior to the hearing by the Board of submissions on the Preliminary Issue.

The Board also noted that the submissions by parties raised issues related to the interrogatory responses provided by THESL on the Preliminary Issue, in particular that a number of the interrogatories were not answered. The Board further noted the arguments made by THESL as to the limitations on relevant interrogatories established by Procedural Order No. 1. The Board stated that while it did intend the scope of interrogatories related to the Preliminary Issue to be narrower than the entire application under consideration, based upon its review of the interrogatory responses provided by THESL, the Board was of the view that there might be additional information relevant to the Preliminary Issue that was not provided by THESL.

The Board accordingly invited Board staff and intervenors to file with the Board and deliver to THESL submissions with respect to the sufficiency of THESL's interrogatory responses by October 31, 2011. The Board stated that it would further expect all parties and THESL to come prepared to speak to the issue of unanswered interrogatories on November 1, 2011, the date originally scheduled to hear submissions on the Preliminary Issue.

On November 1, 2011, at the commencement of the oral hearing, THESL provided to the Board a proposal which had been agreed to by intervenors whereby THESL would provide answers for all of the interrogatories which it had not previously answered, as

well as those interrogatories that had been clarified, or modified by parties in their correspondence of October 31, 2011. THESL stated its willingness to provide these responses was based on the clarification provided by the Board in Decision and Procedural Order No. 3 based on its review of THESL's interrogatory responses. THESL further stated that it could have the responses in question completed by November 8, 2011. The Board accepted THESL's proposal and stated that further procedural direction beyond the phase of the interrogatory responses would follow.

The Board has determined that the hearing will resume on Friday November 11, 2011 with the presentation and cross-examination of THESL's witness panel. This will be followed by oral argument-in-chief on the Preliminary Issue on Monday November 14, 2011 and oral submissions from Board staff and intervenors on Thursday November 17, 2011, followed by oral reply submissions by THESL on Thursday November 24, 2011.

The Board advises parties that it will expect to complete the appearance of the THESL witness panel on Friday November 11, 2011 as the regulatory calendar will not permit another hearing day within a reasonable timeframe. Parties are asked to provide their estimated cross-examination times for this panel to Board staff no later than Thursday November 10, 2011.

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. The oral hearing scheduled for **Friday November 4, 2011** is cancelled.
2. Toronto Hydro-Electric System Limited shall file with the Board and deliver to Board staff and all intervenors all remaining outstanding interrogatory responses on or before **Tuesday November 8, 2011**.
3. The oral hearing will continue with the presentation and cross-examination of Toronto Hydro-Electric System Limited's witness panel on **Friday November 11, 2011** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am.

4. Toronto Hydro-Electric System Limited shall present oral Argument-in-Chief with respect to the Preliminary Issue on **Monday November 14, 2011** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am.
5. The Board will hear oral submissions from Board staff and intervenors with respect to the Preliminary Issue on **Thursday November 17, 2011** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am.
6. The Board will hear reply submissions from Toronto Hydro-Electric System Limited with respect to the Preliminary Issue on **Thursday November 24, 2011** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am.

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, unless otherwise ordered, 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, November 4, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary