



EB-2012-0035

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 or
fixing just and reasonable rates and other charges for the
distribution of electricity to be effective May 1, 2012, May
1, 2013, and May 1, 2014;

AND IN THE MATTER OF a Notice of Motion filed by
Toronto Hydro-Electric System Limited on January 25,
2012 for a review of the Board's January 5, 2012
Decision with Reasons and Order on the Preliminary
Issue.

NOTICE OF MOTION AND PROCEDURAL ORDER NO. 1

BACKGROUND

On August 26, 2011, Toronto Hydro Electric-System Limited ("THESL") filed an application with the Board for an order approving or fixing just and reasonable rates and other charges for the distribution of electricity to be effective May 1, 2012, May 1, 2013, and May 1, 2014 pursuant to section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B, as amended (the "Application").

On January 5, 2012, the Board issued its Decision with Reasons and Order on the Preliminary Issue in EB-2011-0144 (the "Decision") regarding the Preliminary Issue, which was whether the Application should be accepted or dismissed, based on a consideration of the early rebasing criteria that have been established by the Board.

MOTION

On January 25, 2012, THESL filed a Notice of Motion for review of the Board's Decision (the "Motion for Review"), and an Order of the Board:

1. Varying the Decision to allow THESL to recover the revenue requirement associated with \$378.8 million in prospective annual capital spending in rates during the Board's Third Generation Incentive Regulation Mechanism regulatory model ("3GIRM") term, which amount was: (i) raised as a new fact by the Board Chair in a letter to Toronto Hydro's Chairman dated January 13, 2012 (the "Board Letter"); (ii) is justified in the evidence on the record before the Board at Exhibit D1 of the Application; and (iii) is consistent with the annual level of capital expenditures ("CAPEX") approved by the Board its Decision and Reasons dated July 7, 2011 in EB-2010-0142 (the "Frozen CAPEX Solution").
2. Varying the Decision to allow THESL to recover in rates the revenue requirement - approximately \$12 million annually or \$35 million over the IRM period - associated with \$120 million in historic and approved 2011 CAPEX that is not otherwise reflected in rates under 3GIRM due to the operation of the half-year rule (the "Half-Year Rule Solution"), and is permanently lost by THESL under the 3GIRM model.

THESL also requested that the hearing of the Motion for Review be expedited for reasons of commercial necessity.

The Board assigned docket number EB-2012-0035 to the Motion to Review.

A copy of the Notice of Motion is available for public inspection at the Board's offices at:

Ontario Energy Board
2300 Yonge Street,
27th Floor,
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli
Board Secretary

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656
E-mail: Boardsec@ontarioenergyboard.ca

The material is also available on the Board's website.

ABEYANCE LETTER

By letter dated February 6, 2012 THESL wrote to advise the Board that THESL intends to file with the Board in the near future an application within the Incentive Regulation Mechanism and Incremental Capital Module ("IRM/ICM") framework for its 2012 electricity distribution rates.

THESL indicated further that in light of this, the Board may wish to hold THESL's Motion for Review in abeyance pending the determination of procedure for the impending IRM/ICM application and that THESL would consent to such approach provided that THESL's rights to seek to vary the procedure regarding the Motion to Review and/or the IRM/ICM application would be preserved.

The Board has determined that it will hold the Motion for Review in abeyance pending the receipt of THESL's IRM/ICM application. Once such application is received, and the procedure related to the hearing of that application is initiated, the Board will consider whether the Motion to Review will continue to be held in abeyance.

THE BOARD THEREFORE ORDERS THAT:

The Motion for Review filed by THESL with the Board on January 25, 2012 in respect of the Board's Decision in EB-2011-0144 dated January 5, 2012 shall be adjourned pending THESL's IRM/ICM application and further direction from the Board.

DATED at Toronto, February 14, 2012.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary