



**Ontario Energy Board  
Commission de l'énergie de l'Ontario**

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**DECISION AND PROCEDURAL ORDER  
NO. 3**

**EB-2015-0108**

**WATERLOO NORTH HYDRO INC.**

**Waterloo North Hydro**

**BEFORE: Christine Long**  
Presiding Member

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**November 6, 2015**

## 1. INTRODUCTION AND SUMMARY

Waterloo North Hydro Electric Inc. (Waterloo North Hydro) is the electricity distributor that serves approximately 55,000 customers in the City of Waterloo and the Townships of Woolwich and Wellesley. Waterloo North Hydro filed an application with the Ontario Energy Board (OEB) to change the rates it charges to its customers for electricity distribution, to be effective January 1, 2016 (the application). Under the OEB Act, (electricity) distributors must apply to the OEB to change the rates that they charge customers.

In order to determine the amount Waterloo North Hydro can charge its customers for electricity service, the OEB must first determine how much total revenue Waterloo North Hydro should be allowed to recover from its customers. This amount is known as the revenue requirement. Rates are then determined to recover that revenue requirement using forecasts of the number of customers and the energy usage of these customers. The OEB considers among other factors, the distributor's expected operating and maintenance costs and the investments the distributor expects to make which are necessary to provide reliable and cost-effective service. It is the OEB's responsibility to approve the specific rates a distributor is able to charge its customers.

The OEB's process for this application included an opportunity for parties participating in the proceeding to discuss the issues in the application and try to reach an agreement. The parties were able to agree on all the issues in the application.

In early October, Waterloo North Hydro filed a document that contained the proposed elements of the settlement it had reached with parties. The parties then filed the settlement proposal with the OEB. The OEB is prepared to accept the proposed settlement with one modification.

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## 2. THE PROCESS

The OEB published a Notice of Application (the Notice) in the newspaper having the highest circulation in Waterloo North Hydro's service territory, and served the Notice on individuals the OEB determined to be appropriate. The Notice indicated that anyone interested in participating in the application process should apply for intervenor status.

The OEB then issued a procedural order accepting the parties who applied for intervenor status and further outlining the next steps in the proceeding.

Four parties, who each represent different groups of customers affected by the application: Energy Probe Research Foundation (Energy Probe), the School Energy Coalition (SEC), the Vulnerable Energy Consumers Coalition (VECC) and E2 Energy Inc. (E2E) representing the University of Waterloo, participated in the process. OEB staff also participated in the proceeding.

The OEB provided parties and OEB staff the opportunity to ask Waterloo North Hydro questions about its evidence in writing through interrogatories, and in person at a technical conference. A settlement conference took place on September 3 and 4, 2015. Waterloo North Hydro filed the resulting settlement proposal on October 1, 2015.

OEB staff made a supplementary submission on October 27, 2015, and subsequently on October 28, 2015 the OEB issued Procedural Order No. 2 requesting submissions from the parties on the settlement proposal's use of the word "privilege" instead of "confidentiality".

### 3. DECISION ON THE ISSUES

This Decision and Order determines Waterloo North Hydro's rates for 2016.

#### 3.1. Settlement Proposal

The parties in the proceeding met on September 3 and 4, 2015 to determine whether they could agree on the revenue requirement and the rates for Waterloo North Hydro for 2016. The parties to the settlement proposal were able to settle all issues.

OEB staff filed a submission indicating its overall support of the settlement proposal. OEB staff indicated that it reviewed the settlement proposal in the context of the objectives of the Renewed Regulatory Framework for Electricity (RRFE), other applicable OEB policies, relevant OEB decisions, and the OEB's statutory obligations. The RRFE is a rate setting option developed for distributors in the Report of the Board - Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, issued on October 18, 2012. OEB staff submitted that the outcomes arising from the OEB's approval of the settlement proposal would adequately reflect the public interest and would result in just and reasonable rates for customers. OEB staff supplemented its submission, observing that the *Practice Direction on Settlement Conferences* refers to confidentiality, and the settlement proposal refers to privilege. Procedural Order No. 2 sought submissions on this issue.

#### Findings

The OEB accepts the cost consequences of the settlement proposal and OEB staff's analysis in support of its submission that the settlement proposal reflects the public interest. The OEB has reviewed the submissions of the parties on this issue, the balance of the settlement proposal itself and OEB staff's submission on the settlement proposal. The OEB is prepared to accept the settlement proposal except for one issue.

The settlement proposal includes the following paragraph:

These settlement proceedings are subject to the rules relating to privilege contained in the Guidelines. The Parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the settlement conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a

subsequent dispute over the interpretation of any provision of this Settlement Proposal.

The OEB has also reviewed the filed settlement proposal in the Kingston Hydro case (EB-2015-0083), where the same issue is addressed. Although the Kingston case involves many of the same intervenors, it appears that there has been an evolution in the proposed framing of this issue, as the proposal is worded differently:

The Parties acknowledge that this settlement proceeding is confidential in accordance with the Board's Practice Direction on Settlement Conferences (the "Practice Direction"). The Parties understand that confidentiality in that context does not have the same meaning as confidentiality in the Board's Practice Direction on Confidential Filings, and the rules of that latter document do not apply. Instead, in this settlement conference, and in this Agreement, the Parties have interpreted "confidential" to mean that the documents and other information provided during the course of the settlement proceeding, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the settlement conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal. Further, the Parties shall not disclose those documents or other information to persons who were not attendees at the settlement conference. However, the Parties agree that "attendees" is deemed to include, in this context, persons who were not physically in attendance at the settlement conference but were a) any persons or entities that the Parties engage to assist them with the settlement conference, b) any persons or entities from whom they seek instructions with respect to the negotiations, and c) any persons or entities to whom they are expected to report the results of the negotiations, and/or the reasons for the positions they have taken; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions.

The OEB is not satisfied with the wording proposed by the parties for the Waterloo North Hydro settlement proposal. *The Practice Direction on Settlement Conferences* and the *Rules of Practice and Procedure* refer to confidentiality, not privilege, and confidentiality has a broader meaning than privilege. The OEB is not prepared to

accept a settlement that does not follow the Practice Direction without having a fuller understanding of all the potential ramifications of this significant change.

The OEB believes that the wording used in the Kingston settlement proposal is preferable, though still not ideal. The Kingston proposal is clear that the settlement discussions are confidential, and cannot be disclosed except under three circumstances: a) any persons or entities that the Parties engage to assist them with the settlement conference, b) any persons or entities from whom they seek instructions with respect to the negotiations, and c) any persons or entities to whom they are expected to report the results of the negotiations, and/or the reasons for the positions they have taken; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions.

The OEB can accept the first two exceptions with the proposed blanket proviso that any such persons or entities have agreed to be bound by the same confidentiality provisions. However, the OEB is not satisfied that the third exception(c)– persons to whom parties are expected to report the results of the negotiations and the reasons for positions taken – is appropriate. The OEB finds this exception to be overly broad. Parties are free to discuss settlement discussions with their direct instructing client (this is covered by exemption (b)); however, the OEB does not see a strong reason to allow for a broader disclosure of settlement discussions. In order to be effective, it is important that parties to settlement discussions have confidence that their discussions will not be widely disclosed.

The OEB recognizes that the settlement proposal has been filed as a complete package. As the proposal states: “If the Board does not accept this Settlement Proposal in its entirety, then there is no settlement (unless the Parties agree in writing that any part(s) of this Settlement Proposal that the Board does accept may continue as a valid settlement without inclusion of any part(s) that the Board does not accept).” Since the OEB cannot accept the provisions of the agreement relating to privilege as written, it must reject the entire proposal. However, the OEB encourages the parties to consider whether they can agree to wording similar to that used in the Kingston proposal, subject to the OEB’s comments on the exemptions above. The OEB has no other concerns with the settlement proposal.

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## Confidentiality

The OEB's general policy, as stated in its *Practice Direction on Confidential Filings* (Revised April 24, 2014), is that all records should be open for inspection and that its proceedings should be open, transparent, and accessible. The OEB therefore generally places materials it receives on the public record. However, in order to receive full and complete disclosure of all relevant information the OEB recognizes that some of that information may be of a confidential nature and should be protected as such.

Waterloo North Hydro filed a letter dated August 7, 2015 requesting confidentiality for three reports filed in response to interrogatory 2-Staff-37 (a). Waterloo North Hydro stated the following reason for requesting confidentiality was that the reports contained confidential information related to a particular customer, the public disclosure of which could reasonably be expected to prejudice those customers.

On August 27, 2015, Waterloo North Hydro filed two reports in response to Technical Conference Undertaking JTC1.2. Waterloo North Hydro requested that both entire reports be treated as confidential because they contained independent appraisals of the value of a property for sale and disclosure of the appraisals could reasonably be expected to result in a lower overall sale price for the property.

## Findings

As detailed in the OEB's *Practice Direction on Confidential Filings*, Appendix A, there are various factors the OEB considers in making a determination of confidentiality. One of those is whether the information is personal information and a second one is whether the information could interfere significantly with negotiations being carried out by a party. The OEB also considers whether the type of information in question was previously held confidential by the OEB.

The OEB accepts the requests for confidentiality of the documents filed in response to interrogatory 2-Staff-37(e) as they contain customers' personal information. Similarly, the OEB also accepts the request for confidentiality of the documents filed in response to JTC1.2 as the information contained in the reports related to appraisal values is commercially sensitive.

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## 4. IMPLEMENTATION

Should the parties accept the settlement proposal as modified by this Decision and Procedural Order, then the following implementation steps should be followed.

Pursuant to the approval by the OEB of the terms and cost consequences of the modified proposed settlement, the new rates are to be effective January 1, 2016. The results of the settlement proposal are to be reflected in Waterloo North Hydro's draft rate order. The OEB expects Waterloo North Hydro to file detailed supporting material, including all relevant calculations showing the impact of the implementation of the settlement on its proposed revenue requirement, the allocation of the approved revenue requirement to the classes, and the determination of the final rates, including bill impacts.

The draft rate order supporting documentation shall include, but not be limited to, filing a completed version of the revenue requirement work form excel spreadsheet which can be found on the OEB's website. Waterloo North Hydro should also show detailed calculations of any revisions to the rate riders or rate adders reflecting the settlement and this Decision.

The OEB notes that pursuant to issue 2.1 (c) of the settlement proposal Waterloo Hydro shall adjust the cost of capital parameters using the updated information for 2016 rate applications issued on October 15, 2015.

A Rate Order will be issued after the steps below are completed.



## ORDER

### THE BOARD ORDERS THAT:

1. If the parties are able to agree to the changes to the settlement proposal outlined in the Decision, they shall re-file the proposal by November 13, 2015. If the parties are unable to reach an agreement, the OEB will take steps to schedule a written hearing in this matter.
2. If the parties agree to the outlined changes to the settlement proposal, then Waterloo North Hydro shall file with the OEB, and shall also forward to Energy Probe, SEC, VECC and E2E a draft rate order attaching a proposed Tariff of Rates and Charges reflecting the OEB's findings in this Decision and Order by November 13, 2015. The draft rate order shall also include customer rate impacts and detailed supporting information showing the calculation of the final rates.
3. If the parties agree to the outlined changes to the settlement proposal, then Energy Probe, SEC, VECC, E2E and OEB staff shall file any comments on the draft rate order with the OEB, and forward to Waterloo North Hydro, on or before November 20, 2015.
4. If the parties agree to the outlined changes to the settlement proposal, then Waterloo North Hydro shall file with the OEB and forward to Energy Probe, SEC, VECC and E2E responses to any comments on its draft rate order within 7 days of the date of the receipt of the submission.

All filings to the Board must quote the file number, EB-2015-0108, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, 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, Jane Scott at [jane.scott@ontarioenergyboard.ca](mailto:jane.scott@ontarioenergyboard.ca) and Board Counsel, Ljuba Djurdjevic at [ljuba.djurdjevic@ontarioenergyboard.ca](mailto:ljuba.djurdjevic@ontarioenergyboard.ca).

**DATED** at Toronto November 6, 2015

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary