



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

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## **DECISION ON SETTLEMENT PROPOSAL**

**EB-2015-0173**

### **TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

**Decision on the settlement proposal filed by Toronto Hydro-Electric System Limited with respect to its application for an order approving an Incremental Capital Module (ICM) funding true-up and the resulting rate riders**

**BEFORE: Cathy Spoel**  
Presiding Member

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**July 28, 2016**

## 1 INTRODUCTION AND SUMMARY

Toronto Hydro-Electric System Limited (Toronto Hydro) filed an application for approval of an ICM true-up amount of \$11.1 million and the resulting proposed rate riders (the Application) with the Ontario Energy Board (OEB) on March 8, 2016 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective November 1, 2016 to December 31, 2017.

A Notice of Hearing was issued on March 30, 2016. Each of the Association of Major Power Consumers in Ontario (AMPCO), Building Owners and Managers Association, Greater Toronto (BOMA), Consumers Council of Canada (CCC), School Energy Coalition (SEC), Sustainable Infrastructure Alliance of Ontario (SIA), and Vulnerable Energy Consumers Coalition (VECC) applied for and were approved for intervenor status and cost eligibility. On June 27, 2016, SIA withdrew as an intervenor in this proceeding.

On April 25, 2016, the OEB issued Procedural Order No. 1 which among other things made provision for the development of an issues list and also set out a process for written interrogatories. The OEB, after reviewing the interrogatory responses determined that there was no longer a requirement for an issues list as the matters before the OEB were apparent.

On June 14, 2016, Toronto Hydro filed a letter with the OEB stating that Toronto Hydro had consulted with the intervenors and they were willing to participate in a settlement conference, subject to it being without prejudice to their ability to request that the OEB provide for further discovery if a full settlement was not reached.

On June 17, 2016, the OEB issued Procedural Order No. 2 which established that a settlement conference was to be held on June 28, 2016, continuing if necessary on June 29, 2016.

On July 12, 2016, Toronto Hydro filed a letter with the OEB enclosing a Settlement Proposal, arising from the settlement conference which provided for a complete settlement of all issues in this proceeding.

The parties to the Settlement Proposal were stated as Toronto Hydro and the following OEB-approved intervenors in the proceeding: AMPCO, CCC, SEC and VECC. BOMA, an intervenor in this proceeding did not participate in the Settlement Conference and was not one of the Parties.

On July 19, 2016, OEB staff filed a submission stating that it had reviewed the settlement proposal in the context of the objectives of the Renewed Regulatory

Framework for Electricity, other applicable OEB policies, relevant OEB decisions, and the OEB's statutory obligations. On the basis of its review, OEB staff expressed the view that the settlement proposal reflected a reasonable outcome for all customers of Toronto Hydro.

OEB staff noted that for the purposes of obtaining a complete settlement in this proceeding, the Parties had agreed that the \$41.2 million in revenue requirement, collected through the initial ICM Rate Rider pursuant to EB-2012-0064 forms the full and final ICM funding for the ICM period of 2012 to 2014 and that, as such, the associated ICM variance accounts established by the OEB in the EB-2012-0064 proceeding should be closed without any further disposition to or from ratepayers.

The Parties further agreed that the variance account established by the OEB in EB-2014-0116 to capture any differences between amounts included in 2015 rate base related to the ICM work undertaken and any disallowance based on prudence determined in this proceeding should be closed at a zero balance.

OEB staff submitted that the Settlement Proposal is appropriate and reasonable in the specific circumstances of this proceeding. The outcome of its acceptance would be that the amount owed by customers arising from the ICM True-up Application would be zero, as compared to a proposed recovery from customers of \$11.1 million in the period running from November 1, 2016 to December 31, 2017 in the application. Accordingly, there would be no bill impacts in the form of new rate riders and/or rate adjustments for customers resulting from the OEB's acceptance of the Settlement Proposal.

OEB staff concluded that the OEB's approval of the Settlement Proposal as filed would adequately reflect the public interest and would result in just and reasonable rates for customers.

The Settlement Proposal is included as Schedule A to this Decision.

## **OEB Findings**

The OEB agrees with the parties to the Settlement Proposal that Toronto Hydro's capital program related to the ICM period was large and complex as it consisted of multiple jobs categorized into 13 project segments and as a result, during this period circumstances arose during job execution which caused jobs (for various project segments) to have budget variances, be added, cancelled, deferred, or only partially completed, which affected the application of the intended true-up.

The OEB also agrees with the submission of OEB staff that the Settlement Proposal is appropriate and reasonable in the specific circumstances of this proceeding.

The OEB finds that the Settlement Proposal represents a reasonable outcome for Toronto Hydro and its ratepayers and accordingly accepts it as filed by Toronto Hydro.

**The OEB ORDERS THAT:**

1. The Settlement Proposal attached as Schedule "A" is accepted.
2. Intervenors shall file with the OEB and forward to Toronto Hydro their respective cost claims within **7 days** from the date of issuance of the Decision.
3. Toronto Hydro shall file with the OEB and forward to intervenors any objections to the claimed costs within **17 days** from the date of issuance of the Decision.
4. Intervenors shall file with the OEB and forward to Toronto Hydro any responses to any objections for cost claims within **24 days** of the date of issuance of the Decision.
5. Toronto Hydro shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All filings to the OEB must quote the file number, EB-2015-0173, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. 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](mailto:Martin.Davies@ontarioenergyboard.ca) and OEB Counsel, Maureen Helt at [Maureen.Helt@ontarioenergyboard.ca](mailto:Maureen.Helt@ontarioenergyboard.ca).

**ADDRESS**

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

E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

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Fax: 416-440-7656

**DATED** at Toronto July 28, 2016

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**SCHEDULE A**  
**DECISION ON SETTLEMENT PROPOSAL**  
**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**  
**BOARD FILE NO.: EB-2015-0173**  
**DATED: JULY 28, 2016**

Andrew J. Sasso  
Director, Regulatory Affairs  
Toronto Hydro-Electric System Limited  
14 Carlton Street  
Toronto, ON M5B 1K5

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July 12, 2016

*via RESS and electronic mail to [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca)*

Kristen Walli, Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited ("Toronto Hydro")  
Incremental Capital Module ("ICM") True-up Application – Settlement Proposal  
OEB File No. EB-2015-0173**

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In accordance with OEB Procedural Order No. 2, a Settlement Conference was held on June 28, 2016. On behalf of and with the agreement of all the parties involved in the Settlement Conference, we are enclosing a Settlement Proposal that provides for a complete settlement of all issues in this proceeding.

Please do not hesitate to contact me if you have any questions.

Regards,

A handwritten signature in blue ink, appearing to read "Andrew J. Sasso".

Andrew J. Sasso

cc: Charles Keizer, Torys LLP  
Anila Dumont, Toronto Hydro  
Intervenors of Record for EB-2015-0173

# **SETTLEMENT PROPOSAL**

**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

Incremental Capital Module (“ICM”) True-up Application

**EB-2015-0173**

**July 12, 2016**



**Toronto Hydro-Electric System Limited  
ICM True-up Application  
EB-2015-0173**

**SETTLEMENT PROPOSAL**

**A. PREAMBLE**

This Settlement Proposal is filed with the Ontario Energy Board (the “OEB”) in connection with the application filed by Toronto Hydro on March 8, 2016 for an order or orders pursuant to section 78 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) as amended, for approval of an Incremental Capital Module (“ICM”) funding true-up amount of \$11.1 million and the resulting rate rider (the “ICM True-up Application”).

Toronto Hydro’s ICM True-up Application arose out of the EB-2012-0064 proceedings in which the OEB directed that a process take place at the end of the ICM period (2012-2014) to address any variances between revenue collected through the initial ICM rate rider and the revenue requirement associated with actual in-service addition (“ISA”) expenditures.<sup>1</sup>

In Procedural Order No. 1, issued April 25, 2016, the OEB approved the intervenors in this proceeding and set dates for filing interrogatories and their responses. Interrogatories were filed by OEB Staff and all intervenors, with the exception of the Building Owners and Managers Association (“BOMA”). On May 27, 2016, Toronto Hydro filed its responses to the interrogatories.

On June 14, 2016, Toronto Hydro wrote to the OEB requesting that a Settlement Conference be ordered as the next procedural step in this proceeding. On June 17, 2016, the OEB issued Procedural Order No. 2, directing that a Settlement Conference be held on June 28, 2016 starting at 9:30 am and continuing on June 29, 2016, if necessary, in the OEB hearing room at 2300 Yonge Street, 25th Floor, Toronto, Ontario.

On June 27, 2016, Sustainable Infrastructure Alliance of Ontario (“SIA”) withdrew as an intervenor in this proceeding.

The Settlement Conference was duly held on June 28, 2016 in accordance with the OEB *Settlement Conference Guidelines* (the “Guidelines”). This Settlement Proposal arises from the Settlement Conference.

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<sup>1</sup> EB-2012-0064 Toronto Hydro-Electric System Limited Decision and Rate Order (May 9, 2013), Accounting Order at pp. 2-3; EB-2012-0064 Toronto Hydro-Electric System Limited Partial Decision and Order (April 2, 2013) at p. 75.

## **The Parties**

Toronto Hydro and the following intervenors (collectively, the “Parties”) participated in the facilitated Settlement Conference:

- Association of Major Power Consumers in Ontario (“AMPCO”)
- Consumers Council of Canada (“CCC”)
- School Energy Coalition (“SEC”)
- Vulnerable Energy Consumers Coalition (“VECC”)

The following intervenor did not participate in the Settlement Conference and is not one of the Parties:

- BOMA

OEB Staff also participated in the Settlement Conference, but in accordance with the Guidelines, is neither a Party nor a signatory to this Settlement Proposal. Although OEB Staff is not a Party to this Settlement Proposal, the OEB Staff who did participate in the Settlement Conference are bound by the same confidentiality standards that apply to the Parties to the proceeding.

## **Confidentiality**

The parties acknowledge that this Settlement Conference is confidential in accordance with the OEB’s Practice Direction on Settlement Conferences. The parties understand that confidentiality in that context does not have the same meaning as confidentiality in the OEB’s Practice Direction on Confidential Filings, and the rules of that latter document do not apply. Instead, in this Settlement Conference, and in this Settlement Proposal, the parties have interpreted “confidential” to mean that the documents and other information provided during the course of the Settlement Conference, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement 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; or b) any persons or entities from whom they seek instructions with respect to the negotiations; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions.

## **Parameters of the Proposed Settlement**

The Parties are pleased to inform the OEB that all Parties have come to a complete agreement on Toronto Hydro's ICM True-up Application.

This Settlement Proposal describes the agreement reached and provides a direct reference to the evidence on the record to date. The Parties consider that evidence sufficient to support the Settlement Proposal and that the quality and detail of the evidence will allow the OEB to make a finding accepting the proposed settlement.

According to the Guidelines (p. 4), the Parties must consider whether a Settlement Proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. Toronto Hydro and the other Parties who participated in the settlement discussions agree that no adjustment mechanism is necessary.

None of the Parties can withdraw from this Settlement Proposal except in accordance with rule 30.05 of the *Rules of Practice and Procedure*.

This Settlement Proposal has been settled by the Parties as a package and none of the provisions is severable. If the OEB does not accept this package in its entirety, then there is no settlement (unless the parties agree that any portion of the package that the OEB does accept may continue as part of a valid settlement proposal).

In the event the OEB directs the parties to make reasonable efforts to revise the Settlement Proposal, the parties agree to use reasonable efforts to discuss any potential revisions, but no party will be obligated to accept any proposed revision. The parties agree that all of the parties who took a position on a particular issue must agree with any revised Settlement Proposal as it relates to that issue prior to its re-submission to the OEB.

Finally, this Settlement Proposal is without prejudice to the positions Parties might take in other proceedings.

## **B. TERMS OF SETTLEMENT**

Toronto Hydro's capital program related to the ICM period was a large and complex program consisting of multiple jobs categorized into 13 project segments. During the ICM period, circumstances arising during job execution caused jobs (for various project segments) to have budget variances, be added, cancelled, deferred, or only partially completed, which affected the application of the intended true-up. For the purposes of obtaining a complete settlement in this proceeding, the Parties agree that the \$41.2 million in revenue requirement, collected through the Initial ICM Rate Rider pursuant to EB-2012-0064, forms the full and final ICM funding for the ICM period (2012-2014). Accordingly, the Parties agree that the associated ICM variance

accounts established by the OEB in EB-2012-0064 should be closed without any further disposition to or from ratepayers.

In EB-2014-0116, the OEB established a variance account to capture any difference between amounts included in 2015 rate base related to the ICM work undertaken and any disallowance based on prudence in this proceeding. The Parties further agree that this variance account should be closed at a zero balance.

This Settlement Proposal represents a compromise among the Parties. For the purposes of settlement, the Parties agree that the proposal protects the interests of Toronto Hydro, its ratepayers, and shareholder, and promotes regulatory efficiency. There will be no new rate riders and/or rate adjustments resulting from this Settlement Proposal.

### **Approval**

Parties in Support: Toronto Hydro, SEC, AMPCO, CCC, and VECC

Parties Taking No Position: None

### **Evidence**

The evidence in relation to this issue includes the following:

- Toronto Hydro's ICM True-up Application (filed March 8, 2016), which includes:
  - A Requests and Rationale Summary which explains the results of Toronto Hydro's applied for true-up process and the rate adjustments (Exhibit 1, Tab 2, Schedule 2)
  - Results of the applied for true-up process for each project segment that qualified for ICM funding in ICM funding in EB-2012-0064 and supporting evidence (Exhibit 2, Tabs 1-13)
  - A report by Power System Engineering that provides an opinion on the reasonableness of variances in OEB approved project-segments (Exhibit 2, Tab 14)
  - Calculation of the applied for ICM true-up revenue requirement (Exhibit 3, Tabs 1-2)
  - A summary of monthly customer bill impacts for representative customers on a distribution and total bill basis (Exhibit 3, Tab 1, Schedule 1)
- All interrogatory Responses in relation to the foregoing evidence