

November 1, 2018

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

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2018-0165 – Toronto Hydro Electric System Limited (“Toronto Hydro”) Custom Incentive Rate Application 2020-2024

We are counsel to Toronto Hydro in the above-noted matter. We are in receipt of Procedural Order No. 1 issued by the Ontario Energy Board (the “Board”) on October 25, 2018, which indicated that the Distributed Resource Coalition (“DRC”), among others, had been approved for intervenor status. We are also in receipt of an intervention request from Mowat Energy dated October 26, 2018.

In brief, and for the reasons set out below, Toronto Hydro asks that the Board: (a) deny Mowat’s request for intervenor status; and (b) reconsider its Order and deny intervenor status to the DRC unless the membership is revised to exclude Spark Power and Energy Storage Canada (“ESC”).

(a) Mowat Energy

Mowat applied for intervenor status in Hydro One Distribution’s current multi-year distribution rate application (EB-2017-0049). In Procedural Order No. 1 in that proceeding, the Board considered and denied Mowat’s request. The Board held:

While the OEB appreciates Mowat’s research function, a distribution utility’s rate case is not a research forum and it is important for the OEB to ensure that the time and resources allocated to a rate case are as time and cost efficient as possible.¹

Nothing about Mowat’s function as a research hub has changed since the Board’s decision in EB-2017-0049 and it remains equally true that this rate application is not a research “forum.” Toronto Hydro submits that the Board’s decision in EB-2017-0049 applies here, and Mowat should be denied intervenor status.

(b) Distributed Resource Coalition

The Procedural Order indicates that the Board received an application for intervenor status from the DRC, that Toronto Hydro did not object to that application, and that DRC was approved by the Board as an intervenor. Toronto Hydro has reviewed its records. DRC did not provide Toronto Hydro with its application for intervenor status and the utility was entirely

¹ Procedural Order No. 1, EB-2017-0049, p. 6

unaware of the application until receipt of the Procedural Order.

Toronto Hydro has now reviewed DRC's application on the Board website. The application indicates that DRC is a coalition made up of several entities including Spark Power Corp. and ESC. While Toronto Hydro does not in principle object to coalitions obtaining intervenor status, it observes that the membership of any coalition is an important factor in this regard. Here, Toronto Hydro's understanding is that the DRC is comprised, at least, in part of commercial interests some of which have no customer relationship with Toronto Hydro.

Spark Power is a commercial enterprise. Its shares are publicly traded, and its description of itself on its website makes its commercial nature clear:

Spark Power provides electrical power services and solutions to North American industrial, commercial, institutional, renewable, and agricultural customers, as well as utility markets including municipalities, universities, schools, and hospitals.

The power and energy sector is transforming from a unilateral monopoly into an integrated, networked ecosystem with consumers becoming producers. The emergence of new technologies, consumer demand, regulatory environment and innovative businesses creating new power alternatives are driving and accelerating this change. Spark Power, with diversified interests in the power services and renewable power sectors, is helping to revolutionize the way electricity infrastructure services are delivered.

Spark Power is not a Toronto Hydro customer.

ESC is itself a separate coalition or association made up of largely commercial interests in the energy storage space.² Some, such as Sigma Energy Storage, Boralex and Stem Energy Superintelligence equally are not customers of Toronto Hydro. Sigma, for example, appears to be a Quebec based company.

ESC applied for intervenor status in EB-2017-0049. The Board considered and initially denied that request, stating that it was "unclear how ESC members will be directly and materially affected by the outcome of this hearing, except potentially with respect to commercial interests, which are not part of the mandate of the OEB to consider."³

Ultimately, in response to an unopposed motion to review, the Board revised its decision and granted ESC intervenor status but circumscribed its eligibility for costs.⁴ The Board based its revised decision on new information provided by ESC to the effect that energy storage providers were "within the class of customers directly and materially affected by ... rates being set in the Proceeding."⁵ In other words, evidence showing that ESC's members were Hydro One customers.

In Toronto Hydro's submission, the following relevant principles emerge from the Board's decisions in EB-2017-0049:

² www.energystoragecanada.org

³ Procedural Order No. 1, EB-2017-0049, p. 6

⁴ Decision on Motions to Review Intervention Request Decisions, November 2, 2017, EB-2017-0049, p. 2. As the Board held, "any interest that ESC may have in alternatives to Hydro One's plans for its distribution system would generally be commercial in nature and not eligible for cost awards."

⁵ EB-2017-0049, ESC letter to the OEB dated September 6, 2017

1. Protection of a commercial interest does not form part of the Board's mandate and that interest does not justify a request for intervenor status.
2. Where a commercial enterprise is also a consumer of electricity its interest as a consumer may justify intervention.
3. Even where intervention has been granted, the commercial enterprise will not be eligible for costs in relation to matters concerning its commercial interest.

Had Toronto Hydro been aware of DRC's request for intervenor status it would have objected to that request. In Toronto Hydro's submission, the application of the principles from EB-2017-0049 leads to the conclusion that DRC is not an appropriate party. Spark Power is clearly caught by principle 1. above and not saved by 2. The same is equally true for at least some of the members of ESC, such as Sigma and the companies identified above, compromising ESC's status as a proper party. The fact that these parties have elected to apply for intervenor status through a coalition does not change the fact that their commercial interests are not "part of the mandate" of the Board, that they have no customer relationship with Toronto Hydro and are unaffected by the rates set in this proceeding. Put simply, they should not be permitted to do indirectly – intervene through the DRC – what they could not do directly. Moreover, even in relation to those ESC members who are Toronto Hydro customers it is unclear how their interests are not already adequately protected by other, proper intervenors

Toronto Hydro respectfully submits that unless the DRC confirms that Spark Power and ESC have been removed from the coalition and confirms that they will not participate directly or indirectly in the coalition's intervention, then the Board should deny DRC intervenor status.. For clarity, Toronto Hydro notes that in the event these members are no longer part of the coalition, it does not object to the intervention request of DRC.

As a final matter, earlier this week Toronto Hydro received signed undertakings with respect to confidentiality from counsel for the DRC. Toronto Hydro will await direction from the Board regarding the matters set out above before sending confidential matters to counsel.

Yours truly,



Crawford Smith