

November 9, 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 write further to our letter dated November 1, 2018 and in response to letters received from Mowat Energy and counsel for the Distributed Resource Coalition (“DRC”).

*(a) Mowat Energy*

Mowat concedes its request for intervenor status was denied by the Ontario Energy Board (the “Board”) in EB-2017-0049. It tries to justify a different result here by taking issue with the Board’s characterization of Mowat’s role in that case. As it says, “[t]he fact is that Mowat is not proposing to engage in the subject case as a research organ, but rather as an organization that has engaged in highly focused analysis on subjects that are directly relevant to the Toronto Hydro Application.” Respectfully, this is a distinction without a difference, necessarily so. Mowat is a research hub and its only interest in Toronto Hydro’s application could be further to that function. But, the Board has already decided that “a distribution utility’s rate case is not a research forum...” and Mowat’s request should be denied.<sup>1</sup>

*(b) Distributed Resource Coalition*

In our letter dated November 1, 2018 we set out Toronto Hydro’s position that the Board should deny the DRC intervenor status unless its membership was revised to exclude Spark Power and Energy Storage Canada (“ESC”). We based our submission on principles relating to intervention which emerge from the Board’s decisions in EB-2017-0049 at first instance and on motion to review. Those principles bear repeating:

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.

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<sup>1</sup> Procedural Order No. 1, EB-2017-0049, p. 6

DRC's response by letter dated November 7, 2018 is confusing and inconsistent with these principles. While stating that Spark Power is no longer a member of the DRC,<sup>2</sup> DRC is cryptic about ESC's role. The letter says ESC "will not be taking an active role in DRC for this Proceeding." What this means is entirely unclear as nothing about the DRC – how it is organized, provides instructions, formulates questions, develops or takes positions, shares materials with coalition members or prepares argument – is explained either in the letter or intervention request. The only conclusion that can be drawn is that however active, ESC remains a member of the DRC for the purpose of this proceeding. Toronto Hydro submits that this alone should be sufficient to disqualify DRC from intervenor status.

To meet the requirements of Rule 22 of the Board's *Rules of Practice and Procedure*, an intervenor must have a "substantial interest" in the proceeding. Consistent with (1) above, that interest cannot be commercial. But that is precisely the interest of ESC's commercial energy storage members, a number of which are not Toronto Hydro customers (or even Ontario businesses). Confirming that other DRC members have a direct interest in the proceeding misses the point. So do references to case law that would support the right of those parties to intervene. The inescapable problem is ESC is founded on the purpose of advancing the commercial interest of its members as providers of energy products and services. ESC is very upfront about this point on the front page of its website where it states, "Energy Storage Canada (ESC) is the voice of leadership for energy storage and the only industry association in Canada that focuses on advancing opportunities and building the market for energy storage. ESC leverages the strength of our diverse membership to drive market development in Canada."<sup>3</sup> (emphasis added) ESC is attempting to shelter the commercial interest of its members as part of a coalition. As set out in our November 1 letter, ESC should not be permitted to do indirectly – intervene through the DRC – what it could not do directly. To permit otherwise would fundamentally undermine the purpose and requirements of Rule 22.

Likewise, comparisons to AMPCO, BOMA, and SEC do not assist the DRC and are not at all analogous. These other intervenors represent groups of consumers, gathered together in their common interests as consumers. They are not commercially active in the energy sector. They do not sell electricity products and services to consumers. They do not have a mission of "building the market" for services that are similar to or compete with Toronto Hydro.

With respect to service, DRC did not serve notice of intervention on October 3. On that day, counsel sent an email to Toronto Hydro about a possible intervention by a group that had yet to be defined in name or membership. Its intention to intervene was never confirmed, and no notice of intervention ever provided. Ultimately, the utility only became aware of DRC's intervention on review of Procedural Order No. 1. It moved promptly thereafter to register its concerns with respect to that intervention.

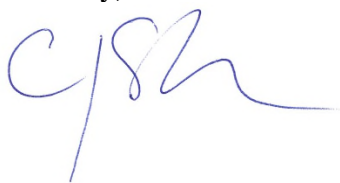
The issues pertaining to DRC's membership and request for intervenor status have created a delay in the process set out in the Board's Order. In the event the Board confirms DRC's intervenor status, DRC may require time to make a submission with respect to confidential information. Toronto Hydro proposes that the Board provide DRC with 5 days to make that submission following the Board's decision concerning DRC's status, and that the Board extend Toronto Hydro's deadline to file the final submission regarding confidential information to a date that is 2 days following the DRC submission date.

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<sup>2</sup> Addressing the first of Toronto Hydro's two objections to DRC's intervention request.

<sup>3</sup> <http://energystoragecanada.org/>

Yours truly,

A handwritten signature in blue ink, appearing to read 'C/S' followed by a stylized flourish.

Crawford Smith