



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

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## **DECISION ON APPEAL**

**EB-2018-0165**

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

**Application for electricity distribution rates beginning January 1,  
2020 to December 31, 2024**

**BEFORE: Lynne Anderson**  
Presiding Member

**Susan Frank**  
Member

**Michael Janigan**  
Member

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**December 14, 2018**

## 1 INTRODUCTION

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a 5-year Custom Incentive Rate-setting (IR) application with the Ontario Energy Board (OEB) on August 15, 2018 (updated September 14, 2018) under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its distribution rates, to be effective January 1, 2020 to December 31, 2024.

The OEB received a late intervention request from the Mowat Centre on October 26, 2018. On November 20, 2018, the Acting Registrar issued a decision denying the Mowat Centre's intervention request (the Decision).

On November 26, 2018, pursuant to section 7 of *the Ontario Energy Board Act*, the Mowat Centre filed a Notice of Appeal with the OEB (the Mowat Appeal) seeking a reversal of the Decision to deny the Mowat Centre intervenor status and cost eligibility. On December 10, 2018, the Mowat Centre filed additional information supporting the Mowat Appeal.

The OEB denies the Mowat Appeal for reasons described further below.

## 2 APPEAL

The Decision stated that the OEB is not satisfied that the Mowat Centre has a “substantial interest” in the proceeding, within the meaning of Rule 22.02 of the OEB’s *Rules of Practice and Procedure* (the Rules). The Decision stated that its concerns with the Mowat Centre’s intervention request, as set out in the Hydro One Networks Inc. (Hydro One) proceeding, largely remain.<sup>1</sup>

The Decision stated that given the OEB’s previously stated concerns, it would have assisted the OEB if the Mowat Centre had provided the specific issues or a better description of the issues it wishes to pursue and explained how its issues will assist the OEB in deciding this application.

The Decision noted that the Mowat Centre’s interest in exploring emerging issues related to a wide variety of significant policy components appear more suited to a policy consultation as opposed to a rates hearing. Further, the Mowat Centre’s broad area of interest does not allow the OEB to make a determination on the relevance of the Mowat Centre’s issues or whether the Mowat Centre’s contribution will be of assistance to the OEB. With respect to issues related to distributed energy resources (DERs), the Decision stated that OEB staff and intervenors will effectively canvass these issues.<sup>2</sup>

The grounds of the Mowat Appeal include:

- a. an objection to the according of any precedential value to the OEB’s Decision to deny it intervenor status in the recent Hydro One proceeding<sup>3</sup>, and
- b. the provision of additional information concerning the work of the Mowat Centre, which the Mowat Centre asserts meets the criteria for being accorded intervenor status pursuant to Rule 22.02 of the Rules.<sup>4</sup>

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

<sup>2</sup> EB-2018-0165, Acting Registrar Decision denying the Mowat Centre Intervenor Status and Cost Eligibility, November 20, 2018, p. 2.

<sup>3</sup> EB-2018-0165, Mowat Centre Notice of Appeal, November 26, 2018, p. 1.

<sup>4</sup> EB-2018-0165, Mowat Centre Notice of Appeal, November 26, 2018, pp. 1-3.

## Findings

While the OEB took into consideration the previous OEB decision for Hydro One denying the intervention of the Mowat Centre<sup>5</sup>, the OEB has determined this appeal on the basis of the record associated with the request filed by the Mowat Centre in this proceeding only.

Rule 22.02 of the Rules provides as follows:

The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness.<sup>6</sup>

There is no definition provided in the Rules for what amounts to a “substantial interest” required by Rule 22.02 for intervenor status. The OEB’s *Practice Direction on Cost Awards* states an intervenor may be eligible for cost awards if the intervenor represents an interest or policy perspective relevant to the OEB’s mandate.<sup>7</sup> However, the OEB notes that the *Practice Direction on Cost Awards* is applicable not just for adjudicative proceedings, such as the hearing of Toronto Hydro’s rates application, it also is applicable to the OEB’s policy consultations.

The interpretation of the term “substantial interest” is dependent as much on the nature of the proceeding for which intervenor status is sought, as the principal organizational mandate of the party seeking intervenor status.

In this proceeding, the Mowat Centre presents itself as a non-profit entity that not only does energy research, but provides analysis and policy recommendations on DER within utilities. It proposes to provide a perspective on the range of approaches associated with DER and the appropriate regulatory response.<sup>8</sup>

The Decision focused on the fit between the Mowat’s Centre research and policy role and the role of intervenors in OEB rate proceedings. While a reconciliation of the various components of the public interest associated with DER issues is a task before the OEB, an intervention based on providing the same role is questionable in the context of a rates proceeding.

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<sup>5</sup> EB-2017-0049, Procedural Order No. 1, p. 6.

<sup>6</sup> Ontario Energy Board, *Rules of Practice and Procedure*, p. 18.

<sup>7</sup> Ontario Energy Board, *Practice Direction on Cost Awards*, p. 3.

<sup>8</sup> EB-2018-0165, Mowat Centre Notice of Appeal, November 26, 2018, pp. 2-3.

The OEB finds that the Mowat Centre does not have a substantial interest in the Toronto Hydro rates proceeding. The OEB will not be developing broad policy directions for DER in this proceeding. The purpose of this proceeding is to determine just and reasonable rates for Toronto Hydro through an adjudicative process.

As noted by the Mowat Centre, the OEB has issued a request for proposal with respect to DER. This initiative is part of a policy review by the OEB to identify and develop regulatory reform to facilitate investment in DERs that can benefit customers, as noted in the OEB's 2018-2021 business plan. For the 2019 / 2020 fiscal year, the OEB's business plan includes activities to evaluate and consult on options related to this policy area. A policy consultation would appear to be the more appropriate venue to consider an intervention by the Mowat Centre on the OEB's approach to DER.<sup>9</sup>

The OEB dismisses the appeal of the Mowat Centre and declines to grant intervenor status pursuant to Rule 22 of the Rules.

**DATED** at Toronto, December 14, 2018

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

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<sup>9</sup> For example, the OEB is holding a Stakeholder Forum on January 16, 2019 related to the work of the OEB's Advisory Committee on Innovation whose focus was to identify actions that a regulator can take that will support and enable cost effective innovation, grid modernization, and consumer choice. Further consultation will occur, as appropriate, as initiatives proceed.