

**EB-2023-0037**

**IN THE MATTER OF** the Ontario Energy Board Act, 1998,  
S.O. 1998, c.15, (Schedule B);

**AND IN THE MATTER OF** an application by  
London Hydro Inc.  
For an order approving just and reasonable rates and  
Other charges for electricity distribution beginning  
May 1, 2024.

**London Hydro Inc.**

**Settlement Proposal**

Filed: April 8, 2024

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Attachment A	Responses to OEB Staff Pre-Settlement Clarification Questions
Attachment B	Revised Simplified Example (Originally Attached to London Hydro's Reply Submissions) to Clarify London Hydro's Proposed Approach

## OVERVIEW

London Hydro Inc. (the Applicant or LH) filed an incentive rate-making mechanism (IRM) application with the Ontario Energy Board (the OEB) on October 11, 2023, under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) (the Act), seeking approval for changes to the rates that LH charges for electricity distribution, to be effective May 1, 2024 (OEB file number EB-2023-0037) (the Application).

The OEB issued a Notice of Hearing on November 1, 2023. No persons applied for intervenor status.

On November 21, 2023, the OEB issued Procedural Order No. 1, which set out the procedural steps for the discovery process up to and including the reply submission by the applicant.

OEB Staff filed its submission on February 23, 2024, and London Hydro filed its reply submission on March 8, 2024.

In Procedural Order 3 issued March 19, 2023, the OEB noted the divergent views in the submissions of London Hydro and OEB Staff with respect to the proper allocation of the credits received from the IESO with regards to Accounts 1588 and 1589 for the years 2015-2016. The identified issue was the sole issue of contention; OEB staff's submission did not take issue with the remainder of LH's application. The OEB directed LH and OEB Staff to engage in a settlement conference with a view to resolving the one outstanding issue, designating OEB Staff as a party to the settlement conference and any resulting settlement proposal.

The Settlement Conference was convened on March 28, 2024, in accordance with the OEB's Rules of Practice and Procedure (the Rules) and the OEB's Practice Direction on Settlement Conferences. OEB Staff participated in the Settlement Conference. Pursuant to the direction from the OEB on March 19, 2023, OEB Staff's participation in the Settlement Conference was as a party.

LH and OEB Staff (collectively referred to as the Parties), reached a full, comprehensive settlement on the outstanding issue of the proper allocation of the credits received from the IESO with regards to Accounts 1588 and 1589 for the years 2015- 2016 . The details and specific components of the settlement are detailed in this Settlement Proposal.

This document is called a Settlement Proposal because it is a proposal by the Parties presented to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB's approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms. In entering into this Settlement Proposal, the Parties understand and agree that pursuant to the Act, the OEB has exclusive jurisdiction with respect to the interpretation and enforcement of the terms hereof.

The Parties acknowledge that the Settlement Conference was 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 specific rules with respect to confidentiality and privilege are as set out in the Practice Direction on Settlement Conferences, as amended on February 17, 2021. The Parties have interpreted the revised Practice Direction on Settlement Conferences to mean that the documents and other information provided during the Settlement Conference itself, the discussion of each issue, the offers and counteroffers, 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 are deemed to include, in this context, persons who were not in attendance at the Settlement Conference but were a) any persons or entities that the Parties engaged to assist them with the Settlement Conference, and b) any persons or entities from whom the attendees' sought instructions with respect to the negotiations, in each case provided those persons are subject to the same obligations of confidentiality and privilege as those persons actually in attendance.

This Settlement Proposal provides a description of the settled issue, together with references to the evidence. The Parties agree that references to the evidence in this Settlement Proposal shall, unless the context otherwise requires, include, in addition to the Application, the responses to interrogatories, all other components of the record up to and including the date hereof, and the additional information included by the Parties in this Settlement Proposal and the attachments and appendices to this document.

Included with the Settlement Proposal are attachments that provide further support for the proposed settlement, including responses to Pre-Settlement Clarification questions (Clarification Responses). The Parties acknowledge that the attachments were prepared by LH. The Parties have reviewed the attachments and are relying on the accuracy of the attachments and the underlying evidence in entering into this Settlement Proposal.

According to section 6 of the Practice Direction on Settlement Conferences, 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. Any such adjustments are specifically set out in the text of the Settlement Proposal.

If 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 the Parties must agree

with any revised Settlement Proposal as it relates to that issue, or take no position, prior to its resubmission to the OEB.

Unless stated otherwise, the settlement of the issue in this proceeding and the positions of the Parties in this Settlement Proposal are without prejudice to the rights of the Parties to raise the same issue and/or to take any position thereon in any other proceeding, whether or not LH is a party to such proceeding, provided that no Party shall take a position that would result in the Settlement Proposal not applying in accordance with the terms contained herein.

Where, in this Settlement Proposal, the Parties accept the evidence of LH, or agree to any issue, term or condition, including a revised budget or forecast, then unless the Settlement Proposal expressly states to the contrary, the words “for the purpose of settlement of the issues herein” shall be deemed to qualify that acceptance or agreement.

## SUMMARY

As described in detail in the application and in the submissions by both OEB Staff and LH there was an over-allocation of Global Adjustment (GA) charges to LH customers between 2015 and 2022. The over-allocation was the result of the inadvertent inclusion of behind the meter embedded generation volumes when the IESO allocated GA charges to LH (the “Error”); behind the meter embedded generation volumes should not have been included because those volumes do not attract GA charges. LH raised the issue with the IESO and was provided a credit that reversed the Error for the 2015 to 2022 period.

In its submissions OEB Staff agreed with LH’s proposed allocation of the credit for the 2017 to 2022 period. OEB Staff did not agree with LH’s proposed allocation of the credit for the 2015 to 2016 period. Accordingly, it is the proper allocation of the credit for the 2015 to 2016 period that is the subject of this settlement proposal.

LH’s proposal for the allocation of credits for the 2015 to 2016 period has always been to allocate those credits entirely to its non-RPP customers, with no allocation of those credits to RPP customers. OEB Staff, in its submissions, opposed this proposal, on the assumption that some of the credit should be allocated to RPP customers and, therefore, settled with the IESO, on the theory that the over-allocation of GA charges in 2015 and 2016 included some level of over-allocation to RPP customers. Accordingly, in its submissions, OEB Staff proposed ways in which LH might allocate the costs between RPP and non-RPP customers, similar to what was proposed by LH and accepted by OEB Staff for the 2017 to 2022 period.

As a result of the Settlement Conference LH was able to clarify for OEB Staff that, as a result of the methodology used to dispose of GA charges specifically for the 2015-2016 period, the Error did not impact the allocation of GA charges to RPP customers when the affected accounts were disposed of initially for the years 2015 and 2016; the Error only impacted the allocation of GA charges to LH’s non-RPP customers, with the result that only LH’s non-RPP customers overpaid GA charges in 2015 and 2016.

More specifically, in the disposition of the GA related accounts in 2015 and 2016 the volumes used to allocate GA charges to LH’s RPP customers were the actual billed volumes for those customers over that period. The volumes created by the Error were fully allocated to LH’s non-RPP customers under the methodology employed by LH in 2015 and 2016, such that the over-allocation of GA credits in 2015 and 2016 was fully borne by LH’s non-RPP customers. As a result, to reverse the impact of the Error in 2015 and 2016, the full amount of the credit has to be allocated to LH’s non-RPP customers as proposed by LH.

Based on this clarification OEB Staff now agrees with LH’s proposal regarding the allocation issue identified in Procedural Order No.3 for the clearance of the 2015 and 2016 amounts.

**SETTEMENT PROPOSAL**

**How should the credits received from the IESO with regards to Accounts 1588 and 1589 for the years 2015-2016 be allocated?**

**Full Settlement**

The Parties agree that the credits from the IESO with respect to the years 2015 and 2016 for accounts 1588 (Power) and 1589 (GA) should be allocated as originally proposed by LH in its application and as summarized below in Table 1.

**Table 1: Settled Disposition of Accounts**

**1588 (Power), 1589 (GA), 1580 (CBR), and 1580 (WMS) for 2015 and 2016**

<b>Year Impacted</b>	<b>1588 Power</b>	<b>1589 GA</b>	<b>1580 CBR</b>	<b>1580 WMS</b>	<b>Total</b>
2015	-	(857,979)	(3,461)	(8,374)	(869,814)
2016	-	(801,551)	(2,777)	(6,947)	(811,275)
<b>Total</b>		<b>(1,659,530)</b>	<b>(6,238)</b>	<b>(15,321)</b>	<b>(1,681,089)</b>

The GA adjustments recorded in Charge Type 2148 for the years 2015 and 2016 were attributed to non-RPP consumption as this was the approach that existed at that time. Accordingly, the GA charges on the additional behind the meter embedded generation volume accumulated in Account 1589 and were recovered entirely from non-RPP Class B customers when variance accounts were disposed of. As a result, the entire credit amounts received from the IESO in order to reverse the over-collection in 2015 and 2016 should be allocated to LH’s non-RPP Class B customers.

**Evidence References**

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**IR Responses**

Staff-3

Staff-4

Staff-5

Staff-6

### **Follow-up Questions**

Staff-1

Staff-2

Staff-3

### **Clarification Questions**

Staff-1

Staff-2

Staff-3

Revised Simplified Example (Originally Attached to LH's Reply Submissions) to Clarify LH's Proposed Approach (Attachment B to the Settlement Proposal)

### **Supporting Parties**

- OEB STAFF

### **Parties Taking No Position**

- None