



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

PARTIAL DECISION AND ORDER

EB-2023-0195

TORONTO HYDRO-ELECTRIC SYSTEM LTD.

**Application for electricity distribution rates beginning
January 1, 2025**

BEFORE: **Michael Janigan**
 Presiding Commissioner

Allison Duff
Commissioner

Anthony Zlahtic
Commissioner

December 10, 2024

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1 OVERVIEW

This is a Partial Decision and Order of the Ontario Energy Board (OEB) regarding Toronto Hydro-Electric System Ltd.'s (Toronto Hydro) proposed Innovation Fund, which is the subject of Issue 2.4. The Innovation Fund proposal also relates to Issues 1.3, 1.4, 9.1, and 10.2. With this decision, the OEB has made determinations on all issues to this proceeding. The OEB's approval of the settlement proposal on November 12, 2024, is unaffected by this decision.

Toronto Hydro proposed, as a component of its Custom Incentive Rate-setting (CIR) framework, an Innovation Fund.¹ Toronto Hydro proposed to allocate 0.3% of its revenue requirement to the Innovation Fund.²

Toronto Hydro stated that the purpose of this fund is to support innovative pilot projects over the 2025-2029 rate term that would be focused on preparing its distribution system for electrification.³ Toronto Hydro stated that the fund would address needs that are not adequately met by existing funding mechanisms, as existing mechanisms tend to support spending where beneficial outcomes are more proven or certain and where expenses are classified as either capital or operating expenses.⁴

Toronto Hydro identified four pilot project concepts that could be supported by the Innovation Fund: flexible connections, electric vehicle commercial fleet charging, electric vehicle demand response, and advanced microgrids.⁵ Toronto Hydro stated that the work would be focused on nascent, development work where there is uncertainty with respect to deploying it as part of standard distribution system solutions.⁶

For the reasons set out below, the OEB denies the proposed Innovation Fund.

For those intervenors who were granted cost eligibility, the OEB is establishing a cost claim process for this proceeding.

¹ Exhibit 1B, Tab 2, Schedule 1, p. 4

² Exhibit 1B, Tab 2, Schedule 1, p. 34

³ Ibid. p. 33

⁴ Exhibit 1B, Tab 4, Schedule 2, p. 4

⁵ Ibid. Appendix A

⁶ Interrogatory Response 1B-Staff-99, part f)

2 CONTEXT AND PROCESS

Toronto Hydro filed an application with the OEB on November 17, 2023, under section 78 of the *Ontario Energy Board Act, 1998*.

A Notice of Hearing was issued on December 1, 2023. The following parties applied for and were granted intervenor status in the proceeding:

- Association of Major Power Consumers in Ontario (AMPCO)
- Building Owners and Managers Association (BOMA)
- Consumers Council of Canada (CCC)
- Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC)
- Distributed Resources Coalition (DRC)
- Enbridge Gas Inc. (Enbridge Gas)
- Energy Probe Research Foundation (Energy Probe)
- Environmental Defence Canada Inc. (ED)
- Independent Electricity System Operator (IESO)
- Pollution Probe (PP)
- Power Workers' Union (PWU)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

AMPCO, BOMA, CCC, CCMBC, DRC, Energy Probe, ED, PP, SEC and VECC also applied for, and were granted, cost award eligibility.

The OEB approved the Issues List in its February 5, 2024, Decision on Confidentiality, Issues List, and Expert Evidence.

In accordance with Procedural Order No. 1, issued on May 22, 2024, Toronto Hydro presented the key aspects of its application. On May 27, 2024, a settlement conference commenced. The participating intervenors were: AMPCO, BOMA, CCMBC, CCC, DRC, Energy Probe, ED, PP, PWU, SEC, and VECC (the Parties).⁷ On July 4, 2024, OEB staff informed the OEB that the Parties had reached a tentative substantial settlement, which excluded the Innovation Fund. Toronto Hydro filed a settlement proposal on August 16, 2024, which the OEB approved on November 12, 2024.

⁷ Enbridge Gas and the IESO did not participate in the settlement conference. The PWU did not take any position on the settlement proposal. ED took no position on Issues 2.2, 2.3, and 4.1

3 DECISION ON THE INNOVATION FUND

3.1 Toronto Hydro's Innovation Fund Proposal

Within its proposed CIR framework, Toronto Hydro proposed an Innovation Fund.⁸ Toronto Hydro proposed to allocate 0.3% of its revenue requirement to this fund.⁹ The fund would support innovative pilot projects over the 2025-2029 rate term focusing on enabling electrification readiness and responding to the OEB's expectations with respect to facilitating Distributed Energy Resource (DER) integration.¹⁰

Toronto Hydro identified four pilot project concepts that could be supported through this proposal: flexible connections, electric vehicle commercial fleet charging, electric vehicle demand response, and advanced microgrids.¹¹ Toronto Hydro stated that the work would focus on nascent, development work that has uncertainty with respect to deploying it as part of standard distribution system solutions.¹²

Toronto Hydro also proposed a governance framework to design, execute, evaluate, and account for pilot projects with the principle aim of enabling new distribution capabilities.¹³ This framework would be executed by a steering committee exclusively internal to Toronto Hydro.¹⁴ In the proposal, several reports were planned, but only the final evaluation and lessons learned report would be made available to the public.¹⁵

Toronto Hydro proposed a rate rider to collect the revenue for this fund, stating that this will provide transparency to ratepayers via the Tariff Sheets.¹⁶ ¹⁷ Toronto Hydro proposed to collect the revenues for the Innovation Fund with a one-year rate rider starting January 1, 2029.¹⁸

Toronto Hydro also proposed a variance account: the Innovation Fund Variance Account.¹⁹ Toronto Hydro proposed that this variance account track the variances

⁸ Exhibit 1B, Tab 2, Schedule 1, p. 4

⁹ Exhibit 1B, Tab 2, Schedule 1, p. 34

¹⁰ Ibid. p. 33

¹¹ Exhibit 1B, Tab 4, Schedule 2, Appendix A

¹² Interrogatory Response 1B-Staff-99, part f)

¹³ Exhibit 1B, Tab 4, Schedule 2, pp. 8-16

¹⁴ Technical Conference Transcript, Day 4, p. 132

¹⁵ Interrogatory Response 1B-SEC-29, part a)

¹⁶ Exhibit 1B, Tab 2, Schedule 1, p. 34

¹⁷ Interrogatory Response 1B-Staff-13, part b)

¹⁸ Interrogatory Response 9-Staff-342, part a)

¹⁹ Exhibit 1B, Tab 4, Schedule 2, p. 1

between the revenues collected through the Innovation Fund Rate Rider and the revenue requirement impact of the actual costs incurred by the Innovation Fund pilot projects by the end of the rate period.²⁰

Toronto Hydro did not propose there to be a limit to the expenditures.²¹ Toronto Hydro stated that the proposed amount of 0.3% reflected the lower end of the range of utility investment in comparable innovation initiatives and activities.²² While Toronto Hydro viewed a “hard cap” as a limitation to flexibility, Toronto Hydro did view regulatory oversight as a measure to moderate the risk of overspending: Toronto Hydro stated that it “does not intend to stray far outside of its boundaries, unless there is a strong value proposition for doing so.”²³

Toronto Hydro stated that the proposed variance account meets the eligibility requirements for establishing a new deferral or variance account on the following basis:²⁴

- **Causation:** The proposed funding is outside the base revenue requirement and the projects would not form part of the utility’s base revenue requirement.
- **Materiality:** The amounts would be based on actual expenditures incurred to execute the projects selected in accordance with the proposed governance framework. With respect to the impact to operations, Toronto Hydro states that the pilot projects are necessary pre-requisites to scaling them to cost-effective programs or solutions.²⁵
- **Prudence:** The forecast, or planned amount, of 0.3% of revenue requirement is reasonable based on a comparison to other jurisdictions, and by the governance framework that Toronto Hydro has proposed.

3.2 Submissions Regarding the Innovation Fund Proposal

Procedural Order No. 7 directed intervenors and OEB staff to file submissions on Toronto Hydro’s Innovation Fund proposal by September 18, 2024. The submissions were mixed in the level of support: while the majority of submissions raised various concerns, four of the 10 submissions argued for complete rejection of the proposed fund.

²⁰ Interrogatory Response 9-Staff-342, part a)

²¹ Interrogatory Response 1B-CCC-46, part h)

²² Exhibit 1B, Tab 4, Schedule 2, p. 5

²³ Interrogatory Response 9-Staff-342, part a)

²⁴ Exhibit 1B, Tab 4, Schedule 2, pp. 16-17

²⁵ Undertaking Response JT4.34

Toronto Hydro filed its reply submission on October 4, 2024. Toronto Hydro agreed to several recommendations, proposing some modifications to address concerns from the submissions, and argued the governance structure and variance account, with the 2029 rate rider, should be maintained as proposed.

Submissions from OEB staff and Intervenors

There were 10 submissions on the proposed Innovation Fund including OEB staff's. Four submissions, those of AMPCO, CCC, EP, and VECC, submitted that the OEB should reject the Innovation Fund. Three submissions, those of BOMA, SEC, and OEB staff, were critical of the Innovation Fund while offering support on the condition of specific changes to address concerns with the proposal. Three submissions, those of DRC, ED, and PP, supported the Innovation Fund and argued for amendments that were generally characterized as improvements to the proposal.

Regardless of opposition or support, all submissions considered the scope of the work associated with the proposal and the governance framework that would select the projects. AMPCO noted the substantial capital spending in the settlement proposal that supports DERs and Non-Wire Solutions, while EP questioned why the proposed work is not considered a part of normal utility management. BOMA submitted that the proposal lacked evidence to clearly distinguish the proposed concepts from what would be normally expected of a utility, while SEC submitted that the proposal lacked clarity regarding the types of eligible projects and that the proposal should not be approved without clear selection criteria approved by the OEB. OEB staff argued that a custom funding mechanism of this nature should clearly demarcate its scope not only from what is included in the base funding, but also what should be funded through base rates. Despite supporting the proposal, DRC offered additional projects that DRC argued would improve the proposal.

Many submissions raised concerns regarding wasted ratepayer funding and effort from Toronto Hydro, not only due to the lack of a limit to the expenditures but also lack of coordination with and potential duplication of the efforts of other utilities. CCC raised concerns that the proposal lacked prudence review for undefined projects while VECC questioned why a particular utility should be provided separate funds without rigorous criteria that ensures the utility's customers would realize tangible benefits. Both ED and PP raised concerns that the proposal would lead to duplication of the efforts of other utilities, with ED submitting that Toronto Hydro should not pursue a project unless it is demonstrated that it is not a duplication of similar projects in North America. OEB staff argued such a mechanism would require not only a prudence review of the execution of the work, but that Toronto Hydro should also demonstrate prudence in project selection

and that the prospect of benefits must be maintained throughout the execution of the pilot project.

Most submissions addressed the proposed governance framework, arguing the need for external involvement in project selection. The submissions of BOMA, DRC, and PP submitted that the steering committee responsible for project selection should include external stakeholders such as the IESO or the OEB. SEC identified that Toronto Hydro's proposed governance structure for project selection is an outlier among the jurisdictions included in the supporting evidence, arguing that the OEB must retain final oversight by conducting a full prudence review of all costs related to the proposal. OEB staff also noted that no examples from other jurisdictions had a governance structure where the utility determined how the funding was spent. OEB staff submitted that prudence reviews and timely public reporting were important remediating measures.

Additionally, OEB staff was critical of the rate-setting implications of Toronto Hydro's proposal. SEC also gave this area particular focus. SEC observed that the revenue requirement basis for the fund could lead to spending many times more than its stated budget, submitting that any capital expenditures should be expensed in the year in which they are incurred, and not capitalized. OEB staff raised the same concern, noting that capital expenditures under Toronto Hydro's proposal would attract depreciation and return on capital costs beyond 2029.

OEB staff submitted that, despite the name, the proposed variance account was a revenue true-up mechanism. OEB staff submitted that the proposal to track the difference between revenues collected by the rate rider and actual revenue requirement impact of expenditures was not the nature of a variance account. The variance account proposal was absent a baseline amount, lacking any forecast of costs or indication of the nature of those costs. OEB staff submitted that a deferral account was the appropriate mechanism. OEB staff also questioned the need for advanced funding when the rate rider was proposed only for the final year of the CIR term when work would be performed prior to 2029.

Finally, AMPCO, CCC, and VECC all submitted a variation of the argument that truly innovative and exploratory work should not be pursued by individual utilities. These submissions argued that a centralized approach was more appropriate, identifying the IESO's Grid Innovation Fund as a proven example.²⁶ CCC and VECC also expressed

²⁶ AMPCO Innovation Fund Submission, pp. 2-3; CCC Innovation Fund Submission, p. 4; VECC Innovation Fund Submission, par. 7

concerns that if the OEB approved the Innovation Fund, other Ontario distributors would likely seek approval to establish similar funds.²⁷

Toronto Hydro's Reply Submission

In reply, Toronto Hydro stated that it is committed to aligning the proposal with the submissions in the areas of prudence, scope of work, reporting, and the fund's mechanics. Toronto Hydro submitted that the conditions submitted by intervenors and OEB staff in these areas were consistent with the goals of the Innovation Fund. Toronto Hydro maintained its position on the proposed governance structure, 2029 rate rider, and variance account.

Toronto Hydro stated that the evidentiary record shows that it agrees that the Innovation Fund must be subject to prudence review and that costs could be disallowed by the OEB. Toronto Hydro submitted that it agrees with OEB staff's submission that prudence of the outcomes must demonstrate sound project selection and that there be a reasonable prospect of learning valuable lessons, and that this prospect was maintained throughout the life of the pilot project.

In response to the submissions regarding the scope of work, Toronto Hydro made the distinction between "nascent" innovation and "mature" innovation, emphasizing the Innovation Fund's focus on the former, and that the critical submissions overlooked this distinction.²⁸ Toronto Hydro stated that mature innovation is what would be a normal part of utility operations. To address concerns regarding the demarcation of Innovation Fund work from that which is funded by base rates, Toronto Hydro presented a two-part test for scoping the Innovation Fund: a test of eligibility followed by a selection test.

Toronto Hydro also responded to the concerns raised by OEB staff and SEC regarding the implications of capital expenditures, arguing that those concerns were overstated. Toronto Hydro stated that the OEB could establish a cap on expenditures, regardless of the type of expenditure. Toronto Hydro also suggested that the OEB could set the useful life of the funded capital investments to not exceed the duration of the pilot project and that Toronto Hydro could present evidence to justify including these assets in rate base at the next rebasing application.

Finally, in relation to the scope of the Innovation Fund proposal, Toronto Hydro cautioned against the OEB mandating specific types of projects or issues to be

²⁷ CCC Innovation Fund Submission, p. 4; VECC Innovation Fund Submission, par. 13

²⁸ Toronto Hydro Innovation Fund Reply Submission, par. 17, 18, & 22

prioritized by the Innovation Fund. Toronto Hydro submitted that such mandates could limit the utility's flexibility in selecting pilot projects that offer the greatest potential value. Toronto Hydro also stated that it is committed to engaging with other utilities and project partners to ensure that the selected pilot projects were not duplicative.

With respect to reporting, Toronto Hydro accepted the proposals from the submissions to publicly provide all reports that were identified as part of the Innovation Fund, subject to confidentiality concerns or the need to contain any other sensitive information.

In response to OEB staff's submissions regarding the rate rider and the variance account elements of the proposal, Toronto Hydro agreed to a claw-back mechanism should the utility fail to demonstrate prudence. However, Toronto Hydro maintained that the 2029 rate rider was required to fund the innovation investments. As a result, Toronto Hydro disagreed with OEB staff's position that a capped deferral account was more appropriate.

Toronto Hydro opposed the submissions that argued for stakeholder involvement in project selection and maintained its proposed governance structure. Toronto Hydro submitted that including external stakeholders with competing or conflicting interests would bog down what Toronto Hydro intended to be a fast-moving, barrier-breaking proposal.²⁹ Toronto Hydro stated that it viewed itself accountable to the OEB and its customers, and that involving such stakeholders in the decision-making would undermine Toronto Hydro's ability to manage the work. Toronto Hydro submitted that if the OEB did mandate external stakeholders, those stakeholders should be limited to representatives from the IESO's Grid Innovation Fund and the OEB's Innovation Sandbox, with delegated authority to review and approve project selection.³⁰

Regarding the submissions that considered the proposed governance framework and Toronto Hydro's submitted jurisdictional scan, Toronto Hydro stated that the purpose of the jurisdictional scan was to inform the level of funding, not the governance framework.

3.3 Findings

The OEB denies the proposed Innovation Fund.

The proposal's objectives parallel those set out in the Ontario Government's recently released policy report "Affordable Energy Future: The Pressing Case for More Power".

²⁹ Toronto Hydro Innovation Fund Reply Submission, par. 98

³⁰ Toronto Hydro Innovation Fund Reply Submission, par. 101

The report challenges the OEB to encourage continuous improvement that prepares for growth and electrification through a centralized planning process that strengthens “the governance and accountability of LDCs to improve operational efficiencies, increase reliability, and support investments necessary for the increasing energy demand.”

The approval of the Settlement Proposal was consistent with the Report’s challenges and the OEB’s statutory objective of “facilitating innovation in the energy sector.”³¹ In particular, the OEB estimates \$444 million of the total \$3,568.7 million approved settlement proposal capital plan for the 2025 to 2029 rate plan period includes innovation funding for a Grid Modernization Strategy, the Advanced Metering Infrastructure 2.0 platform, an Advanced Distribution Management System and a robust non-wires program.

The OEB denies Toronto Hydro’s Innovation Fund proposal for the following reasons:

- The proposal would have been funded 100% by customers. The OEB is not convinced the pilots are cost effective³² or in the best interest of customers, sufficient to approve the proposed variance account. Shareholders had no financial “skin in the game” for investments in research and development that could reduce utility risk and increase productivity. While not a prerequisite for approval, a shareholder financial commitment reinforces a utility’s prediction regarding a proposal’s cost effectiveness.
- The proposal was deficient in details. The OEB will not pre-approve cost recovery from customers through the proposed rate rider, when Toronto Hydro falls short of providing sufficient specifics of the plan.
- Toronto Hydro did not commit to any specific pilots. Further, while it identified four pilot “concepts” that were commendable, the governance framework for pilot selection was not transparent.
- The OEB agrees with OEB staff that the proposed variance account would not have been appropriate in the absence of a baseline expense embedded in rates.
- Amendments from intervenors and OEB staff were suggested to improve the Innovation Fund proposal. Given the breadth of intervenor and OEB staff amendments and disagreement by Toronto Hydro about some of those amendments, the OEB is of the view that it should not be adjudicating amendments

³¹ *OEB Act*, Section 1(4)

³² Chapter 2 Filing Requirements, Section 2.9.2 “Establishment of New Deferral or Variance Accounts”

through an order, effectively redesigning Toronto Hydro's proposal and the management thereof.

- The IESO Grid Innovation Fund is available province wide. The evidence is insufficient for the OEB to approve utility-specific pilots funded only by Toronto Hydro's customers without understanding how they could appropriately complement the IESO's program. Further, Toronto Hydro has not sufficiently identified the "key funding and flexibility challenges" that it needs to overcome.³³
- The Innovation Fund proposal included a mix of OM&A and capital, but the mix was uncertain. The ratemaking implications for customers in the next rebasing period were unclear.

This Decision does not alter the OEB's approval of the Settlement Proposal or the draft rate order process.

³³ Toronto Hydro Innovation Fund Reply Submission, p.2.

4 COST AWARDS

AMPCO, BOMA, CCC, CCMBC, DRC, Energy Probe, ED, PP, SEC and VECC applied for, and were granted, cost award eligibility. The OEB has made provision in this Decision for these intervenors to file their cost claims. The OEB will issue its cost awards decision after the steps outlined in the following Order section are completed.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Intervenors shall submit their cost claims to the OEB and forward a copy to Toronto Hydro by **December 19, 2024**.
2. Toronto Hydro shall file with the OEB and forward to intervenors any objections to the claimed costs by **January 14, 2025**.
3. Intervenors to which Toronto Hydro filed an objection to the claimed costs, shall file with the OEB and forward to Toronto Hydro any responses to any objections for cost claims by **January 21, 2025**.
4. Toronto Hydro shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

Please quote file number, **EB-2023-0195** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 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, Thomas Eminowicz at Thomas.Eminowicz@oeb.ca and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca.

DATED at Toronto **December 10, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar