

**Andrew J. Sasso**  
**Director, Regulatory Affairs & Government Relations**  
Toronto Hydro-Electric System Limited  
14 Carlton Street | Toronto, Ontario, M5B 1K5  
Visit us at: [www.torontohydro.com](http://www.torontohydro.com)  
Email: [regulatoryaffairs@torontohydro.com](mailto:regulatoryaffairs@torontohydro.com)



*via Regulatory Electronic Submission System (RESS)*

January 14, 2025

Ms. Nancy Marconi, Registrar  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: OEB File No. EB-2023-0195, Toronto Hydro-Electric System Limited (“Toronto Hydro”)  
2025-2029 Custom Rate Application for Electricity Distribution Rates and Charges –  
Cost Claim Submission**

---

Toronto Hydro has reviewed the cost claim submissions of the Intervenors in this proceeding, filed pursuant to the Partial Decision and Order of December 10, 2024, and provides the following comments for the OEB’s consideration.

Toronto Hydro does not object to any of the cost claims submitted by the Intervenors in this proceeding, having set those costs in the context of the overall significance of this rate application.

However, Toronto Hydro respectfully submits that the OEB should reflect on these claims through the lens of – and for the benefit of – the OEB’s Framework for Review of Intervenor Processes and Cost Awards (EB-2022-0011) policy consultation, which is being undertaken pursuant to direction from the Minister of Energy and Electrification. Cost claims in this proceeding illustrate ongoing opportunities for incremental regulatory efficiencies. Further, the experience of this proceeding once more demonstrates the importance of reviewing both Intervenor and OEB Staff activities in regulatory proceedings – a gap that has already been flagged in the policy consultation.

For administrative ease, Toronto Hydro will also file this submission in EB-2022-0011.

### **Collaboration vs Excessive Duplication**

As demonstrated most clearly in the Technical Conference and Interrogatories, some but not all Intervenors coordinated with each other to limit redundant questioning of certain exhibits, studies, and witnesses. Similarly, in some cases, coordination between OEB Staff and Intervenors was more or less apparent. Some parties provided statements asserting their collaboration, but there were few if any details to support an effective evaluation.

The OEB has previously contemplated Intervenors developing and filing a joint outline that documents intended participation within the rate application. OEB Staff could also reflect its participation in that outline. The outline could be updated, as necessary, throughout the proceeding, recognizing that participation will (and should) evolve as evidence is tested. Those outlines would provide opportunities for the OEB to prospectively assess sufficiency of intended collaboration and guard against excess duplication. During the cost claim process, the outlines would serve as points of reference to retrospectively assess actual collaboration and excess duplication.

To be clear, Toronto Hydro recognizes that there will be divergent interests among Intervenors and, for that matter, with OEB Staff. None of the above should inhibit those diverse perspectives from finding expression in the proceeding. Further, Toronto Hydro recognizes that some duplication is unavoidable. However, multiple sets of questioning (written and verbal) that tread the same territory produces no incremental value, while driving up cost claims (paid for by customers), utility costs (paid for by customers), OEB costs (paid for by customers), and delaying the process and OEB Decisions.

### **Quality of the Record and Proportionality**

Of the 9,000 pages of Toronto Hydro, Intervenor, and OEB Staff-led evidence, nearly 37% was the result of almost 2,500 interrogatories. Many interrogatories were helpful in filling out important details in respect of issues material to the application. They enhanced the quality of the record. The time and effort associated with preparing the questions, and developing responses, as well as the time that parties and the Panel spent reviewing both, were proportionate to their value.

However, the nexus between many other lines of questioning and rate-setting at hand could not be discerned by Toronto Hydro. Toronto Hydro is aware that it has the right to object to questions on that basis, and in some cases availed itself of that right. There are costs to doing so, including diverting attention away from substantive issues, and heightening conflict during the proceeding. Therefore, in many cases, Toronto Hydro elected to provide a response notwithstanding the irrelevance or immateriality of the question.

Some of these questionable questions were posed by the same Intervenors in other recent rate applications. Absent remedying action, it would be unsurprising to see those questions asked (verbatim) of applicants in the next wave of major rebasing proceedings. Prior to that occurring, the OEB could perform a post-mortem review of OEB Staff and Intervenor questions from this proceeding, and provide feedback in that regard to those who posed the questions. The OEB Staff and Intervenors who posed the questions may well reject the feedback as missing the point – and they should have an opportunity to talk that through if they wish. But in the absence of any constructive feedback (outside the pressures and procedural considerations of an active adjudicative proceeding), how else will these resource-intensive phases of proceedings become more efficient? Presumably cost claim denials. Otherwise, customers will bear the cost again (and again) of immaterial and irrelevant questioning.

### **Intervenor Evidence**

Toronto Hydro did not object to BOMA filing evidence in this proceeding, nor does Toronto Hydro object to the cost claim associated with that evidence. Nevertheless, the product filed by BOMA in this proceeding was disconcerting and warrants reflection for the sake of future proceedings.

When BOMA filed its intention to bring forward load forecast evidence, Toronto Hydro was surprised and intrigued to see how BOMA would go about that and what findings would come of it.

It became clear through BOMA's interrogatories and Technical Conference questioning that it was expecting to create its study based on data it hoped – but had no basis to expect – Toronto Hydro would have, such as the square footage of customer-owned buildings in Toronto. As a long-time intervenor in Toronto Hydro and other utility rate proceedings, BOMA should have known that this was not a feasible endeavour from the outset.

Failing that, once it was clear that the data did not exist, BOMA could have withdrawn its proposal to file intervenor evidence. It didn't do that. Instead, BOMA created a product built upon information that it repeatedly described as "anecdotal". The handful of building load "anecdotes" were neither carefully selected to be representative of all building or a class of buildings in Toronto, nor were they selected on a randomized basis. The methodology might best be described as "guesswork".

That BOMA's product came to fruition brings attention to a gap in the OEB's criteria for expert reports, the screening of proposed reports, and/or the risks that an Intervenor bears in undertaking one. Expert evidence filed in a major application warrants seriousness and sophistication. The costs of the evidence – whatever the source – are ultimately borne by utility customers. Customers should be paying for high quality evidence that puts the OEB in the best practical position to come to decisions that will sustain or improve outcomes for customers' benefit. Poor evidence isn't just wasteful; it threatens the quality of decision-making in respect of critical utility infrastructure and operations.

With the range and complexity of issues before the OEB only increasing with time, it is foreseeable that more parties will express an interest in tendering evidence. This case illustrates that more can and should be done by the OEB to clarify expectations at the outset. The OEB should make clear that Intervenor evidence is only to be filed a) in respect of subject-matter that is material to the OEB's Decision in the particular proceeding, and b) if it will reasonably be expected to influence the outcome of the proceeding. The process should allow the Panel to ensure that the value of the evidence is commensurate with the cost to customers. Further, OEB Staff should engage Intervenors who express an interest in preparing expert evidence to ensure quality standards are understood, particularly in the case of Intervenors or Intervenor representatives who may be less experienced in OEB proceedings. This is in keeping with recent advocacy in the policy consultation that called for greater case management in support of proceeding efficiency.

With those incremental safeguards in place, the OEB can and should scale back cost awards for Intervenor evidence that does not meet quality standards from a benefit-to-cost perspective.

### **Cost Awards and Value of Intervenor Participation**

Toronto Hydro has long supported the OEB's use of Intervenors in regulatory proceedings, and that support continues. Intervenors can add value by helping Panels discern the public interest by representing customers and other interests.

This value, importantly, may not be directly tied to the hours Intervenors put into the proceeding. The most proficient Intervenors may be able to complete value-added tasks much more quickly than others; less proficient Intervenors may spend much more time on the same task. Notionally, the

graduated hourly rate is intended to recognize that greater proficiency should come from more years of service. It may, however, be time to reconsider the correctness of that assumption, as well as the assumption that every hour is of comparable value.

To be clear, it may also be the case that cost claims with a large number of hours are warranted, including by senior Intervenor representatives. By way of example, Toronto Hydro recognizes that in this proceeding the representatives for SEC and VECC played disproportionately large roles during settlement, in keeping with their respective areas of expertise, and that the value of those contributions are reflected in the hours cited in their cost claims.

Toronto Hydro recommends that the OEB reconsider how the value of Intervenor participation is addressed through cost claims and cost awards. The frequency of the “usual suspects” appearing as representatives for intervening organizations presents an opportunity for the OEB to assess value over time, provide that feedback to the Intervenors, and scale customer-funded cost awards commensurate with value. None of the above precludes participation by Intervenors; rather, it helps immunize the Intervenor model from common criticisms, promotes high-value Intervenor participation, and shifts the cost of low-value interventions from all customers to those organizations.

Sincerely,

Andrew J. Sasso  
Director, Regulatory Affairs & Government Relations  
Toronto Hydro-Electric System Limited

Cc: Charles Keizer and Arlen Sternberg, Torys LLP; all intervenors