

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998 c.15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Toronto Hydro-Electric System Limited for an Order or Orders approving and fixing just and reasonable distribution rates and other charges related to Smart Meter investments, effective November 1, 2007.

NOTICE OF MOTION

Toronto Hydro-Electric System Limited ("THESL") will make a motion to the Ontario Energy Board (the "Board") on a date and at a time to be determined by the Board.

PROPOSED METHOD OF HEARING: THESL proposes that the Motion be heard orally.

THE MOTION IS FOR an Order of the Board:

1. Reviewing and varying its Decision in the EB-2007-0063 proceeding, as follows:
 - a) rescinding its disallowance of certain capital and related revenue requirement amounts held by the Board to have been funded previously under the '3rd Tranche' Conservation and Demand Management ("CDM") regime, and permitting the inclusion of those amounts in the determination of THESL's 2006 Smart Meter deferral account balance, 2007 rate base and 2007 distribution rates;
 - b) rescinding its deduction of 1,000 Smart Meter units from the total number of units in respect of which THESL is permitted to recover its costs, and restoring that number of units to THESL's total claim;
 - c) excluding the amount of \$598,000 related to AMCC; and
 - d) amending the calculation of allowed amounts as set out in Appendix "A" to the Decision so as to reflect actual Smart Meter costs incurred by THESL in 2006, and permitting inclusion of those amended amounts in the determination of THESL's 2006 Smart Meter deferral account balance, 2007 ratebase and 2007 distribution rates.

THE GROUNDS FOR THE MOTION ARE:

2. On March 23, 2007, THESL filed an application (the “Supplementary Application”) with the Board, which sought rate adjustments to be effective in the 2007 rate year related to CDM programs and Smart Meter activities. Subsequently, the Board notified THESL that it would sever the Supplementary Application and determine the parts of that application related to 2006 Smart Meter activities in a separate proceeding initiated on the Board’s own motion, namely the Combined Smart Meter Proceeding, EB-2007-0063 (the “Combined Proceeding”).
3. The relief sought by THESL and considered by the Board in the Combined Proceeding consisted of:
 - a) Clearance of the 2006 Smart Meter Deferral Account (“SMDA”) credit balance to customers by way of a temporary rate rider effective for one year from May 1, 2007;
 - b) Inclusion in 2007 ratebase of the 2006 year end net book value of the smart meter assets, amortized and averaged over 2007; and
 - c) Adjustment of 2007 distribution rates, effective May 1, 2007, to reflect and recover the incremental revenue requirement stemming from the 2007 ratebase adjustment for 2006 Smart Meter assets.
4. In view of the timing of the Combined Proceeding, THESL amended the relief it sought with respect to rate implementation. Specifically, the amended relief was for rate implementation commencing November 1, 2007 for the permanent adjustment to distribution rates, as well as for two six-month temporary rate riders commencing on that date to:
 - a) clear the 2006 SMDA balance; and
 - b) recover the permanent distribution revenues foregone in the first six months of the 2007 rate year.

5. Prior to and during the course of the oral hearing in the Combined Proceeding, THESL filed further written evidence concerning its Smart Meter activities and costs according to prescribed filing requirements for that proceeding, and provided oral testimony under direct and cross-examination as well as responses to undertakings arising out of that testimony. THESL relies upon and incorporates by reference its pre-filed and supplementary written evidence, its oral testimony, and its undertaking responses into this Motion Record, subject to the Board's previous directions on confidentiality in the Combined Proceeding, and with the Board's findings on confidentiality as set out in the Decision.
6. On August 8, 2007, the Board issued its Decision in the Combined Proceeding, and in Appendix A to that Decision, set out the Smart Meter-related amounts that would be allowed for inclusion in THESL's 2007 revenue requirement and corresponding rates.
7. THESL submits that the Board erred in fact in four ways in its determination of the allowed amounts shown in Appendix A.
8. First, the Board misapprehended THESL's evidence and incorrectly concluded that THESL's Smart Meter capital costs, as filed and claimed in this proceeding, included amounts for meters that had already been funded through THESL's Board-approved '3rd Tranche CDM' plan. In the notes to Appendix A, for cell C8, the Board cites Undertaking Response K4.7 as the basis for the disallowance.
9. In fact, K4.7 indicates precisely the opposite, and states expressly:

"Toronto Hydro's total expenditures on Smart Meters (and related equipment) that was funded from the "third tranche" CDM pool of funds was, \$2,055,773 in 2005 and \$288,516 in 2006, as reported in Toronto Hydro's 2005 and 2006 CDM Annual Report filed with the OEB.

Toronto Hydro confirms that none of these expenditures have been included in the Smart Meter deferral account balance for 2006." (Emphasis added)
10. THESL's evidence in this proceeding was based on its financial records and reflected only those expenditures recorded in the Smart Meter accounts, as distinct from the CDM

accounts. The statement that none of the CDM-funded Smart Meter expenditures were included in the SMDA means precisely that those expenditures were not included in the Smart Meter accounts and were not reflected in the amounts claimed by THESL in this proceeding. By making the adjustment referred to in the notes to cell C8 in Appendix A, the Board has in effect removed THESL's Smart Meter-related 3rd Tranche CDM expenditures a second time.

11. Second, the Board has erred by deducting 1,000 meter units from the total number of meters eligible for cost recovery to reflect those undertaken as part of CDM-funded Smart Meter pilots. As with the 3rd Tranche CDM-related Smart Meter expenditures, these units were not originally included in the totals reported in THESL's evidence, and it would have been an error had they been included, since the corresponding costs were excluded. As in the case of the 3rd Tranche CDM expenditures, the Board has in effect removed THESL's 1,000 meters a second time.
12. Third, the Board has erred with respect to the applicable unit meter cost used to calculate the adjusted allowed capital cost. Specifically, the calculations underpinning the figures set out in Appendix A assume a forecast average of Smart Meter unit costs over 2006 and 2007, which according to THESL's evidence had not yet been realized, and certainly was not the 2006 actual, invoiced, and paid unit cost.
13. The calculations in Appendix A are therefore incorrect and inconsistent with the body of the Board's Decision, in which the Board states at page 15:

"In accepting the costs outlined in Appendix "A" for the thirteen utilities the Board has relied on a number of findings. First, ...Third, the costs allowed relate to meters installed (i.e., the costs incurred) as opposed to forecasted costs."
14. At no time did THESL indicate that it sought any recognition or rate adjustment for forecast costs, or in fact any actual Smart Meter costs incurred after December 31, 2006. The costs presented by THESL for recovery through the proposed rate adjustment represented its actual costs. The figure for unit meter costs used by the Board to derive the allowed Smart Meter capital amounts (and the other amounts depending on that) is,

on THESL's evidence, very clearly a forecast and averaged figure that depends for its realization on certain volumes of Smart Meter purchases by THESL taking place after 2006. These volumes have not yet been achieved, and in any event, if they are achieved, there will not be a retroactive adjustment of the prices previously paid by THESL and reported in the Combined Proceeding. The volumes will only affect unit prices on future purchases. This potential future averaged cost is not a cost that can properly be attributed to units purchased by THESL in 2006, and such an attribution clearly involves an improper multiplication of forecast average unit costs by a quantity reflecting only historical 2006 purchases. In the result, total 2006 costs and the consequential revenue requirements for 2006 and 2007 are materially and unduly understated.

Inclusion of AMCC Costs:

15. Fourth, the Board has incorrectly included an amount for recovery of \$598,000 related to technology costs for the AMCC. THESL presented this information for the purpose of conforming to the Board's Combined Proceeding filing requirements. However, THESL's testimony was that this amount was not sought for recovery, having already been provided for by the Board in its decision on 2006 rates for THESL.
16. THESL requests that the Board approve the revised determinations of the revenue requirements related to Smart Meters (i.e., for 2006 with respect to clearance of the 2006 SMDA, and for 2007 with respect to 2007 incremental rate base and consequential rates and riders) pursuant to its authority under Sections 21 and 78 of the *Ontario Energy Board Act, 1998*, as amended, and pursuant to Rule 42 of the Board's *Rules of Practice and Procedure*. THESL also requests that the Board suspend its direction to THESL to file a draft rate order until a date not earlier than 15 days after the date of either the Board's ruling on this motion, or the date of the Board's pending decision on THESL's Supplementary (CDM) Application (EB-2007-0096), whichever is later.
17. THESL may provide such further and other grounds as counsel for THESL may submit and the Board allow.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The Affidavit of Colin McLorg, Manager of Regulatory Affairs for THESL, sworn August 28, 2007. Exhibit "A" to the McLorg Affidavit is being filed in confidence in accordance with the Board's previous directions on confidentiality in the Combined Proceeding, and with the Board's findings on confidentiality as set out in the Decision;
- b) The complete record of the Combined Proceeding (unredacted) as it pertains to the case presented by THESL, subject to the Board's previous directions on confidentiality in the Combined Proceeding, and with the Board's findings on confidentiality as set out in the Decision; and
- c) Such further documentary evidence as counsel for THESL may submit and the Board allow.

All of which is respectfully submitted this 28th day of August, 2007.

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