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August 28, 2026
Our File: EB20260129

Attn: Ritchie Murray, Registrar

Dear Mr. Murray:

Re: EB-2026-0129 – Toronto Hydro NWS Incentive Application – SEC Submission

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 2, these are SEC's submissions on the application by Toronto Hydro-Electric System Limited ("Toronto Hydro") for a 25% Margin-in-Payment ("MoP") incentive for its Local Demand Response ("LDR") program.

SEC does not support this application. Customers are being asked to pay more and receive nothing in return, for a program Toronto Hydro has run for eight years without an incentive. SEC recognizes, however, that the Distribution System Code ("DSC") as the OEB has interpreted it appears to leave this panel no discretion to refuse a MoP where the requirements are met.

Background

Toronto Hydro has had an LDR program since 2018, aimed at addressing short and medium-term capacity constraints.[1] As part of its most recent Custom IR application it proposed the continuation of the program through its rate term (2025-2029). The approved Settlement Proposal included the creation of a new Non-Wires Solutions ("NWS") deferral account, to record variances in the costs of the LDR program compared to what was included in the approved revenue requirement.[2]

As part of the proposed rate framework in that application, Toronto Hydro proposed a Performance Incentive Mechanism ("PIM"). Under the PIM, an additional stretch factor would reduce Toronto Hydro's revenue each year from 2025 to 2029, and the company could earn those amounts back by meeting targets on a set of performance measures.[3] One of those measures, and its target, related specifically to the LDR program.[4]

Ultimately, the approved Settlement Proposal, as part of a number of adjustments to the proposed rate framework, included an "agreement to eliminate the proposed Performance Incentive Mechanism in lieu of a higher than proposed stretch factor and an incremental stretch factor on capital."[5] Toronto

[1] Interrogatory Responses CCC-1a, OEB-Staff-8, Appendix A, p2
[2] *Partial Decision and Order* (EB-2023-0195), November 12, 2024, p.12, p.16, 27
[3] EB-2023-0195, Exhibit 1B-3-1
[4] EB-2023-0195, Exhibit 1B-3-1, p.47-49. The target was set at 30 MW procured through the LDR program during the term.
[5] EB-2023-0195 Settlement Proposal, p.35

Hydro therefore sought an incentive for the LDR program once already, and gave it up as part of a negotiated trade-off.

The interaction between this application and the approved settlement proposal was raised by the OEB in Procedural Order No. 1. In Toronto Hydro's response to the OEB's preliminary questions, it emphasized the difference in design between the MoP incentive and the PIM proposed in its rebasing application. SEC agrees that the mechanisms are different, but both provide incremental upside associated with the LDR program.[6] The PIM would have allowed the company to earn back amounts removed up front through the stretch factor. It cannot, however, be considered in isolation from the overall rate framework that Toronto Hydro proposed and ultimately settled. Approval of the MoP can be considered to impact the balance agreed to as part of the Settlement Proposal by restoring LDR-related upside through a different mechanism after the proposed PIM was eliminated.

While Toronto Hydro says the mechanisms have two different purposes, this is not exactly the position it took in the rebasing application when it proposed the PIM. As part of the PIM measure related to the LDR program, it couched the language in very similar wording that underpins the purpose of the MoP, including that the proposal, "provides the utility an appropriate incentive to continue maturing in its journey of developing non-wires capabilities to help unlock broader and more significant long-term benefits that are not yet captured in the BCA."[7]

Toronto Hydro is correct that the approved 2025-2029 Settlement Proposal does not contain any language that explicitly prohibits Toronto Hydro from bringing forward a future application for incentives.[8] This is not surprising, since the mechanism at issue in this proceeding did not exist at the time, and therefore could not have been contemplated. What can be said is that approving this application now would, at the very least, could be considered contrary to the spirit of the overall settlement, which did consider and approve revenue requirement related to the underlying LDR program, without an incentive, even though one was proposed as a part of a different mechanism.[9]

Distribution System Code

Subsequent to the approval of the Settlement Proposal, the OEB initiated a consultation and then later amended the DSC to include establishment of the MoP at issue in this application.[10] The DSC requires individual OEB panels to approve a MoP where the requirements in the DSC are met, and the OEB has taken the view that it has left panels no residual discretion.[11] Accordingly, even where approval would produce no demonstrated customer benefit, a panel appears to be required to grant the incentive. Toronto Hydro's eligibility for the MoP therefore arises solely from the subsequently enacted DSC provisions, even though the LDR program had already been approved and its costs included in the approved revenue requirement, there is no benefit to customers. This is unreasonable and an imprudent result.

Approving the MoP in these circumstances would be contrary to Ontario government policy, which is

[6] Toronto Hydro, Response to Preliminary Questions (June 15, 2026), p.2
[7] EB-2023-0195, Exhibit 1B-3-1, p.55
[8] Toronto Hydro, Response to Preliminary Questions (June 15, 2026), p.2
[9] This is confirmed by Toronto Hydro who notes "is not seeking approval for any changes to the Local Demand Response ("LDR") program approved in EB-2023-0195" (See Toronto Hydro, Response to Preliminary Questions (June 15, 2026), p.2).
[10] See EB-2023-0083, Notice of Amendments to the Distribution Code, Amendments Regarding A Margin on Payment Incentive Mechanism For the Use of the Third-Party Distributed Energy Resource as Non-Wires Alternatives (November 25, 2025)
[11] Distribution System Code, section 11.3; EB-2023-0083, Notice of Amendments to the Distribution Code, Amendments Regarding A Margin on Payment Incentive Mechanism For the Use of the Third-Party Distributed Energy Resource as Non-Wires Alternatives (November 25, 2025), p.4

rooted in affordability[12], and inconsistent with the purpose of the MoP itself. The DSC amendments, the Government's direction, and the OEB's policy are intended to reduce barriers to NWS and provide incentives for distributors to implement solutions that benefit customers.[13] This application advances neither objective. Toronto Hydro has not demonstrated that it needs the incentive to continue the LDR program.

This is far removed from the circumstances for which the MoP was designed, overcoming a distributor's financial disincentive to defer costly infrastructure in favour of more cost-effective third-party NWS. The MoP was intended to encourage distributors to adopt NWS[14], not to provide additional remuneration for existing NWS programs included in rates.

When asked directly why it requires this incentive now, Toronto Hydro does not provide a single reason that is specific to the LDR program. It argues that approving the MoP would provide a broader benefit as "Toronto Hydro and other utilities consider growing their non-wires programs."[15] SEC disagrees. Toronto Hydro has not identified any incremental aspect of the LDR program that depends on receiving the MoP, nor has it suggested that it would reduce, discontinue, or decline to expand the program without the incentive. Approval is more likely to have the opposite effect by undermining customer and public confidence in financial incentive mechanisms of this kind. Toronto Hydro has operated the program for eight years without any such incentive, approving the MoP would simply transfer funds from customers to Toronto Hydro's bottom line. That remains true even if, as Toronto Hydro argues, the resulting ratepayer impact is "negligible".[16]

SEC submits that the OEB should urgently reconsider the current specific MoP approval scheme, which removes individual panels' discretion to reject a MoP application, where all the requirements in the DSC are met, where it would be unreasonable based on the circumstances. Currently, panels appear unable to address unique and application-specific issues in carrying out their task of setting just and reasonable rates that were not contemplated when the amendments were considered. As SEC noted in its comments on those amendments, while it supported the underlying intent of the amendments, it did "not believe it is appropriate to remove the discretion of individual OEB hearing panels to assess the appropriateness of an MoP incentive for a specific third-party NWS project", and that "[t]his discretion is especially important given that the application of DERs to meet distribution system needs is a practice still in its infancy, and not a mature application."[17]

If the panel concludes that based on the DSC is must approve the application, SEC asks that the decision make clear that approval results from the mandatory nature of the provisions, and is not a finding that the incentive is necessary for Toronto Hydro to continue the LDR program. If anything, the panel should make clear that the incentive is not necessary or prudent in these specific circumstances.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

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[12] See for example, Energy for Generations, Ontario's Integrated Plan to Power the Strongest Economy in the G7 (June 2025), p. 6, 13
[13] See references in Toronto Hydro Argument-in-Chief, paras. 4-6
[14] Notice of Proposal to Amend A Code: Proposed Amendments to the Distribution System Code Regarding A Margin on Payment Incentive Mechanism For the Use of the Third-Party Distributed Energy Resource as Non-Wires Alternatives (May 16, 2025), p.7
[15] Interrogatory Response CCC-1c
[16] Interrogatory Response CCC-1c
[17] EB-2025-0083, SEC Comments on Margin of Payments DSC Amendments (June 9, 2025), p.1

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)