



**EB-2012-0064**

**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 Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective June 1, 2012, May 1, 2013 and May 1, 2014.

### **ISSUES LIST DECISION**

**August 16, 2012**

Toronto Hydro-Electric System Limited (“THESL”) filed an application with the Ontario Energy Board on May 10, 2012, under section 78 of the *Ontario Energy Board Act*, 1998, and the Board’s Incentive Regulation Mechanism (IRM) framework seeking approval for changes to the rates that THESL charges for electricity distribution, to be effective June 1, 2012, May 1, 2013 and May 1, 2014.

The Board issued a Notice of Application and Hearing dated June 27, 2012. On the same date, the Board also sent a letter to THESL which stated the Board’s determination that the application would proceed to the stage of the establishment of a Board approved issues list and that once such an issues list had been established, the Board would assess the next steps in this proceeding taking into account the status of two outstanding matters which were THESL’s January 25, 2012 Notice of Motion and the Notice of Appeal to the Ontario Superior Court of Justice (Divisional Court).

On July 31, 2012, the Board issued Procedural Order No. 1 which established a process for determining a final issues list for this proceeding. The Board made provision for initial written submissions by all parties, followed by an Issues Day to hear reply submissions from all parties on any contested issues which was held on August 13, 2012. The Board stated that it would issue a final issues list following the Issues Day.

In addition to THESL and Board staff, submissions were made by the Association of Major Power Consumers in Ontario (AMPCO), City of Toronto (the “City”), Consumers Council of Canada (CCC), Energy Probe Research Foundation (Energy Probe), Pollution Probe, the School Energy Coalition (SEC) and the Vulnerable Energy Consumers Coalition (VECC).

The Board’s determinations as to the final issues list are outlined for each section of the draft issues list. A final issues list is attached as Appendix A. While the Board has been assisted by the comments of all parties, the Board only makes specific reference to comments of parties when they are directly relevant to the determinations being made by the Board.

## **1. Incentive Regulatory Mechanism (“IRM) Schedules and Models**

- 1.1 Are the IRM Model filings by THESL, including the tax sharing proposal for 2012, in accordance with the Board’s requirements and, if not, are any proposed departures adequately justified?
- 1.2 Is THESL’s proposal that the Board approve under the IRM framework separate and successive revenue requirements and corresponding distinct electricity distribution rates and rate adders for each of the 2012, 2013 and 2014 rate years appropriate?
- 1.3 Is THESL’s proposal that the Board recognize in rates THESL’s approved 2011 year-end rate base appropriate?

AMPCO suggested that an issue should be added to this list which would read “Should THESL not be required to withdraw its Motion to the Board and Appeal to the Ontario Superior Court of Justice (Divisional Court) prior to the Board deciding whether to consider the present application?”

The Board has determined that this issue will not be added to the issues list as it is a matter that will be dealt with before further procedural steps will be undertaken as outlined in the Board’s June 27, 2012 letter. Accordingly, it is not necessary to include this on the issues list.

CCC suggested that Issue 1.1 should be broken down into three issues as outlined below:

- (1) Are the IRM filings by THESL, including the tax sharing proposal, in accordance with the Board's policies and requirements?
- (2) If not, what is the standard of proof required to justify a departure from those policies and requirements?
- (3) Has THESL met the standard of proof required to justify a departure from those policies and requirements?

The Board will not make this change to this issue. The Board agrees with the submissions of THESL that the addition of the three more specific issues would not add anything to the one general issue that is already on the draft issues list and also that in the circumstances of this proceeding it is unnecessary to specifically deal with the standard of proof as an issue.

Where Issue 1.2 is concerned, some parties expressed concerns that revenue requirements are not calculated by the IRM model and that general revenue requirements are only approved by the Board during a cost-of service application. SEC suggested that to clarify this matter the word "ICM" should be added to the issue before the words "revenue requirements." The Board accepts this change.

Energy Probe suggested broader wording for this issue, specifically "What alternative regulatory approaches may be appropriate?" The Board does not accept this proposal as the wording is too broad and may invite consideration of overly generic issues which would not be appropriate for this proceeding.

SEC proposed that the first two issues should be replaced with one overarching issue "Is THESL's proposal for an ICM appropriate?" on the basis that THESL's application is very broad in scope and the first two issues are too narrow. The Board considers that the first two issues strike an appropriate balance between specificity and broadness and will not make this change.

Energy Probe suggested that an issue be added related to smart meters, specifically "Is the recovery of Smart Meter Costs and associated SMRRs appropriate?" The Board notes that THESL did not file any evidence on this matter in the present application and that this matter is currently expected to be dealt with through a separate filing by THESL in due course. Accordingly, the Board will not add this issue to the final issues list.

SEC suggested that an additional issue should be incorporated in this section which would read “What is the consequence of this application on any future application by THESL for rates for 2013 and/or 2014?” The Board accepts the addition of this issue. While the Panel in this proceeding cannot make findings that are binding on panels in future proceedings, the Board believes that it would be of value if this matter was considered in this proceeding given the unusual nature of the present application.

## **2. Incremental Capital Module (“ICM”)**

- 2.1 Is THESL’s application of the ICM criteria appropriate?
- 2.2 Do the consultant reports and business cases provided for the proposed capital projects adequately justify them?
- 2.3 Is THESL’s proposal that the Board consider ICM projects for a three-year period, severable into three successive one-year rate periods, each with its own ICM rate adder appropriate?
- 2.4 Is THESL’s proposal for an alternative to the standard treatment of the calculation of the ICM threshold together with the Board’s practice of exempting certain ICM-approved capital expenditures from the application of the half year rule appropriate?

VECC suggested that Issue 2.1 be reworded as “Is THESL’s application in accordance with the Board’s ICM criteria and, if not, are any proposed departures adequately justified?” The Board will not make this change as it is in agreement with THESL’s submission that such a modification would not substantively alter the issue to be considered.

A number of parties suggested that Issue 2.2 should be broadened and THESL expressed the view that there was some merit to these submissions. Energy Probe suggested wording to ensure that reasonable alternatives were explored. The Board agrees with these comments and finds that this issue will be broadened to read: “Has THESL provided sufficient evidence including consultant reports, business cases and consideration of alternatives, for the proposed capital projects to adequately justify them?” The Board also finds that this revised wording will cover the concerns raised by Pollution Probe without the necessity of incorporating additional issues.

Energy Probe also suggested that Issue 2.3 be broadened to read “What alternatives may be appropriate”. The Board does not accept this proposal as the Board considers this wording to be too broad with the same implications as those arising from similar suggestions made for issues in the first section.

### **3. Rate Design**

- 3.1 Are the proposed retail transmission service rates appropriate?
- 3.2 Is the proposed Tariff of Rates and Charges for 2013 appropriate?
- 3.3 Has THESL appropriately complied with the Final Order Regarding Suite Metering Issues dated April 26, 2012 in EB-2011-0144, including

The Board does not consider rate design an appropriate topic for an IRM application and accordingly this topic will be removed from the Final Issue List. However Issue 3.3 will be moved to the Implementation section. The Board considers that any issues related to the retail transmission service rates and the final approved tariffs can be considered as implementation matters.

The Board notes that due to an administrative error, the complete wording in issue 3.3 was missing from the draft issues list, although it was provided to parties on the Issues Day. The missing text will be reproduced on the Final Issue List and is addressed further under Issue 5.

### **4. Deferral and Variance Accounts**

- 4.1 Is the proposed final disposition of the PILs Deferral Account 1562 appropriate, including the proposed rate riders?
- 4.2 Is the proposed final disposition of all remaining Deferral and Variance Accounts (i.e. the Group 1 Accounts as well as the Special Purpose Charge Variance Account 1521) appropriate, including the proposed rate riders?

The Board approves these issues as proposed on the draft issues list. Due to the elimination of the “Rate Design” section, these issues will become 3.1 and 3.2 on the Final Issues List.

The Board notes that THESL requested Issue 4.1 be dealt with as a written issue. The Board will determine at a later date which issues will be dealt with orally and which in writing.

## 5. Implementation

### 5.1 Are THESL's proposals relating to rate implementation appropriate?

As discussed in Section 3, Issue 3.3 will be moved to this section and will incorporate the changes proposed by Board staff during its oral submission which were not opposed by any party. Issue 3.3 will accordingly become Issue 4.1 on the Final Issues List and read: "Has THESL appropriately complied with the Final Order Regarding Suite Metering Issues dated April 26, 2012 in EB-2010-0142 including its use of the name "Competitive Sector Multi-Unit Residential" for the new Quadlogic class?"

The Board notes that there were a number of suggestions for modifications to Issue 5.1, which will become Issue 4.2 on the Final Issues List, by parties.

SEC sought the Board's confirmation that this issue encompasses both the rate implementation date or dates, and any resulting adjustments including true-ups that may be required to the ICM for 2012, 2013 and 2014. The Board confirms this. The Board will reword Issue 4.2 as: "Are THESL's proposals relating to rate implementation appropriate for each of the years 2012, 2013 and 2014?" to more clearly reflect the scope of this issue.

The City of Toronto proposed an issue regarding whether or not THESL's rates (and in particular its street lighting rate) should be declared interim at the conclusion of this proceeding. The City is concerned that THESL's cost allocation for its street lighting class (for which the City is the primary customer) is not proper. It points to the March 2011 *Report of the Board, Review of Electricity Distribution Cost Allocation Policy*, which highlighted some potential issues with respect to the allocation of costs to the street lighting class. In that report, the Board indicated it would be initiating a consultation process to review the matter further. The City would like to have THESL's rates resulting from the current proceeding declared interim pending the outcome of this consultation, so that to the extent any changes to cost allocation for the street lighting class are realized they can be applied retroactively.

The Board will not add an issue to the issues list respecting interim rates. To the extent parties wish to file argument concerning interim rate orders at the end of the case they may do so under the implementation issue (similar to the manner in which a party might present argument on the effective date of the rate order). However, the Board wishes to be clear that cost allocation and rate design are not issues in the current case. The Board will not require THESL to answer questions on this topic, nor will parties be permitted to file evidence.

**Next Steps**

The Board approved issues list has been established and is attached as Appendix A. The Board will now await THESL's indication as to the status of the two outstanding matters referenced in the Board's letter of June 27, 2012 before determining further steps in this proceeding.

**DATED** at Toronto, August 16, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO PROCEDURAL ORDER NO.1**

**EB-2012- 0064**

**Toronto Hydro-Electric System Limited**

**DATED: August 16, 2012**



# TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

EB-2012-0064

## Approved Final Issues List

### 1. Incentive Regulatory Mechanism (“IRM) Schedules and Models

- 1.1 Are the IRM Model filings by THESL, including the tax sharing proposal for 2012, in accordance with the Board’s requirements and, if not, are any proposed departures adequately justified?
- 1.2 Is THESL’s proposal that the Board approve under the IRM framework separate and successive ICM revenue requirements and corresponding distinct electricity distribution rates and rate adders for each of the 2012, 2013 and 2014 rate years appropriate?
- 1.3 Is THESL’s proposal that the Board recognize in rates THESL’s approved 2011 year-end rate base appropriate?
- 1.4 What is the consequence of this application on any future application by THESL for rates for 2013 and/or 2014?

### 2. Incremental Capital Module (“ICM”)

- 2.1 Is THESL’s application of the ICM criteria appropriate?
- 2.2 Has THESL provided sufficient evidence including consultant reports, business cases and consideration of alternatives, for the proposed capital projects to adequately justify them?
- 2.3 Is THESL’s proposal that the Board consider ICM projects for a three-year period, severable into three successive one-year rate periods, each with its own ICM rate adder appropriate?
- 2.4 Is THESL’s proposal for an alternative to the standard treatment of the calculation of the ICM threshold together with the Board’s practice of exempting certain ICM-approved capital expenditures from the application of the half year rule appropriate?

### 3. Deferral and Variance Accounts

- 3.1 Is the proposed final disposition of the PILs Deferral Account 1562 appropriate, including the proposed rate riders?

- 3.2 Is the proposed final disposition of all remaining Deferral and Variance Accounts (i.e. the Group 1 Accounts as well as the Special Purpose Charge Variance Account 1521) appropriate, including the proposed rate riders?

#### **4. Implementation**

- 4.1 Has THESL appropriately complied with the Final Order Regarding Suite Metering Issues dated April 26, 2012 in EB-2010-0142 including its use of the name "Competitive Sector Multi-Unit Residential" for the new Quadlogic class?
- 4.2 Are THESL's proposals relating to rate implementation appropriate for each of the years 2012, 2013 and 2014?