



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.

PROCEDURAL ORDER NO. 3
November 8, 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 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 August 22, 2012, the Board issued Procedural Order No. 2 which established a date of September 14, 2012 for the filing of interrogatories by intervenors and Board staff and October 5, 2012 for responses from THESL.

Procedural Matters

On September 13, 2012, THESL filed a letter with the Board to address the updating of its evidence that has been filed in this proceeding. THESL stated that it was undertaking a review of the extent to which the work proposed in this application, especially that for 2012, needed to be updated and re-prioritized to take into account the

reality that a Board decision in respect of the first year's capital spending will not be available until late 2012 or early 2013.

THESL stated that it had not yet completed this review, but that at the earliest possible opportunity after the review had been completed, it would file its update to the evidence with the Board.

THESL acknowledged that the filing of an update might necessitate further procedural steps and requested that the Board await the filing of this update before considering what procedural steps, if any, might be appropriate in light of the updated evidence.

On October 5, 2012, THESL filed its responses to the interrogatories it had received from Board staff and intervenors. THESL also informed the Board that it had concluded that the Grid Solutions project (Tab 4, Schedule B-22 of its pre-filed evidence) was best considered within a discrete *Green Energy Act* plan which THESL stated it intended to file at the earliest practicable opportunity and that, accordingly, it was withdrawing this section of its evidence, and the relief associated with it, from the application.

On October 22, 2012, THESL sent a further letter to the Board which advised that it intended to file its evidentiary update by October 31, 2012.

THESL stated that in order to provide ratepayers with clarity as to 2012 rates and to address critically needed capital work on its distribution system, it believed that the present application must be heard as expeditiously as possible and in 2012. THESL noted that to achieve this end, it had committed significant resources in its effort to file its update by October 31, 2012.

THESL further stated that with its update, it would also be requesting a change in how the Board manages the application, specifically that the Board consider the work programs identified for 2012 and 2013 together and defer consideration of projects for 2014 to a later date. THESL suggested that its request might also assist in the achievement of a hearing on the 2012 and 2013 portions of the application by the end of 2012.

On October 31, 2012, THESL filed its evidence update as well as its responses to all interrogatories that were initially deferred, either in whole or in part, in anticipation of the

evidence update. At this time THESL also provided a clarification to its proposal that consideration of its 2014 projects be deferred to a later date. This clarification was that the proposed deferral was exclusive of the Bremner Station project. THESL stated that it believed it was necessary to treat the Bremner Station project as an integrated three-year undertaking and that Board approval for the whole of the first phase of this project was required at this time to enable THESL to enter into the construction and equipment supply commitments necessary to achieve completion by the end of 2014.

The Board accepts THESL's proposal that the 2014 component of this application, with the exception of that relating to the Bremner Station project, be incorporated into a separate phase of this proceeding. The Board will provide further direction on the issues relating to this subsequent phase prior to the conclusion of this phase of the proceeding.

In this context, the Board will adopt a schedule for the remainder of this proceeding similar to that which has been proposed by THESL with one modification: In order to expedite matters, the Board has determined that the Bremner Station project will be considered as part of a separate process that will commence once the Technical Conference that is established in this Procedural Order has been completed and that will run in parallel with the dates outlined for the remaining oral component of this proceeding. The Board will consider whether to have an oral component for the Bremner Station project as more information becomes available regarding the scope of that hearing.

The Board's intention at this point is that the two processes will come back together at the submission phase so as to allow the Board to issue one decision on all matters in this phase of the proceeding. The Board will monitor the processes and adjust them appropriately with a view to not unduly delaying its decision with respect to the issues being heard in each process.

The relevant dates for these two processes are incorporated into the procedural steps that follow.

The first step will be a Technical Conference which is to commence on November 21, 2012 and continue, if necessary, on November 23, 2012. The Board asks that all parties, with the assistance of Board staff, accommodate each other's schedules as

much as possible to ensure that the time set aside for the Technical Conference is used as efficiently as possible. This will be followed by a Settlement Conference from November 28th to November 30th inclusive and an oral hearing commencing December 10, 2012. The Settlement Conference and the oral hearing will deal with the 2012 and 2013 components of the application with the exception of the Bremner Station project.

Confidentiality Request

On October 5, 2012, as part of its response to interrogatories, THESL stated that Consumers Council of Canada interrogatory 19 (“CCC IR #19”) requested certain information that THESL considered confidential. THESL accordingly requested that this information and the response to this interrogatory be treated confidentially as it includes the terms of commercially sensitive, negotiated agreements with third parties in a competitive market.

THESL submitted that the disclosure of this information could negatively affect LDCs’ future negotiations. THESL stated that it had provide a partial response to this interrogatory on a non-confidential basis and provided the Board with its complete response in accordance with the Board’s *Rules of Practice and Procedure* in its Practice Direction on Confidential Filings (the “Practice Direction”). THESL asked that the Board limit circulation of this response to counsel who sign the Board’s Declaration of Undertaking. THESL also noted that should any party wish to cross-examine, or otherwise address this document in any other way during this proceeding, it requested that these proceedings be conducted *in camera*, and any submissions or other written material pertaining to these documents be filed in confidence, all in accordance with the Practice Direction.

With respect to CCC IR #19, as an interim measure the Board will allow any external counsel for the intervenors that wish to review the confidential document to do so after signing a copy of the Board’s Declaration and Undertaking with respect to confidential documents, and filing it with the Board and serving it on THESL.

As set out in the Practice Direction, it is the Board’s policy that all evidence should be on the public record unless reasons warrant otherwise. This reflects the Board’s view that proceedings should be open, transparent and accessible. The Practice Direction

seeks to balance these objectives with the need to protect information properly designated as confidential.

Intervenors and Board staff who object to THESL's request for confidential treatment of the interrogatory response shall file their submissions by November 14, 2012. THESL shall file any reply submission by November 16, 2012. If the Board ultimately decides that the document should not be afforded confidential treatment, it will be placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, THESL requests that the information be withdrawn.

Late Intervention Requests

On October 23, 2012, the Board received a letter from Pollution Probe, an intervenor in this proceeding, advising that it was withdrawing from this proceeding. On October 26, 2012, the Board accepted Pollution Probe's notice of withdrawal from this proceeding.

On October 26, 2012, the Board received a late intervention request from Environmental Defence which also requested cost eligibility. Environmental Defence stated that it intended to focus on issue 2.2, and specifically whether or not THESL has provided sufficient evidence to justify its proposed Bremner Station project.

Environmental Defence stated that it intended to provide expert evidence on whether the Bremner Station project is justified in light of the alternatives of CDM and distributed generation.

On October 30, 2012, the Board received a letter from Pollution Probe requesting reinstatement of its intervention, although it clarified that it would not be seeking to file evidence.

On November 2, 2012, THESL responded to the two referenced intervention requests. THESL supported Pollution Probe's intervention reinstatement request, but opposed the granting of intervention status to Environmental Defence.

On November 5, 2012, Environmental Defence responded to THESL's letter arguing that its intervention should be allowed.

The Board approves the intervention requests of both Pollution Probe and Environmental Defence. The Board believes that the participation of both intervenors may be useful to it in considering the outstanding issues in this proceeding. The Board finds that both parties are eligible for a cost award under the Board's *Practice Direction on Cost Awards*. The Board accepts that Environmental Defence may be submitting evidence and has made provision for this circumstance in this Procedural Order. In approving both interventions, the Board encourages Pollution Probe and Environmental Defence to work together to minimize duplication of their respective interventions in their areas of common interest.

The Board considers it necessary to make provision for the following matters related to this proceeding. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. THESL shall provide a copy of the unredacted response to CCC IR#19 to each external counsel that has executed and filed the Board's Declaration and Undertaking.
2. Intervenors and Board staff who wish to make a submission on THESL's claim for confidential treatment of the material so identified in the response to CCC IR #19 shall file their submission with the Board and deliver it to all parties on or before **November 14, 2012**.
3. THESL shall file its response, if any, to the submissions of Board staff and the intervenors with the Board and deliver it to all parties by **November 16, 2012**.
4. A transcribed Technical Conference shall be convened on **November 21, 2012** starting at 9:30am. If necessary, the Technical Conference will continue on **November 23, 2012**. The Technical Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto. Parties participating in the Technical Conference are requested to file with the Board, and copy THESL and all other parties, by **November 19, 2012** confirmation of the particular

issues, including matters related to the updated evidence, they seek to address or seek clarification of at the Technical Conference.

5. THESL shall respond to any undertakings given at the Technical Conference, which shall be filed with the Board and copied to all parties by **November 27, 2012**.
6. A Settlement Conference shall be convened on **November 28, 2012**, starting at 9:30 a.m., with the objective of reaching a settlement among the parties on the issues. The Settlement Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, and may continue until **November 30, 2012**, if needed.
7. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board by **December 7, 2012**.
8. Board staff and intervenors who wish to file evidence on the Bremner Station project shall do so, on or before **December 7, 2012**.
9. An Oral Hearing will commence on **December 10, 2012** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto. The hearing may continue until **December 14, 2012**, if needed. In the event that a settlement agreement is filed with the Board, the presentation of the agreement will be made at the commencement of the oral hearing on **December 10, 2012**.
10. Parties seeking information and material that is in addition to any intervenor or Board staff evidence, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to parties on or before **December 21, 2012**.
11. Responses by parties to interrogatories related to any intervenor or Board staff evidence shall be filed with the Board and delivered to all parties on or before **January 9, 2013**.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

All filings to the Board must quote the file number, EB-2012-0064, be made through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice/ and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at martin.davies@ontarioenergyboard.ca and Board Counsel, Michael Millar at michael.millar@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, November 8, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary