



**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15 (Schedule B);

**AND IN THE MATTER OF** a generic proceeding  
commenced by the  
Ontario Energy Board on its own motion to consider the cost  
of capital parameters and deemed capital structure to be  
used to set rates

**PROCEDURAL ORDER NO. 1**  
**March 28, 2024**

On March 6, 2024, pursuant to sections 36, 78 and 78.1 of the *Ontario Energy Board Act, 1998*, the OEB issued a Notice of Hearing on its own motion to initiate a generic proceeding to consider the methodology for determining the values of the cost of capital parameters and deemed capital structure to be used to set rates for electricity transmitters, electricity distributors, natural gas utilities, and rate-regulated electricity generators. The OEB will determine whether its current approach to setting the cost of capital parameters and deemed capital structures continue to remain appropriate and if not, what approach should be used.

As noted in the Notice of Hearing, this proceeding will also consider the methodology for determining the OEB's prescribed interest rates. Also in scope for this proceeding is the question of what type of interest rate, if any, should apply to the generic Cloud Computing Deferral Account.

**Intervention Requests and Cost Awards**

As a result of the Notice, the following parties requested and are approved as intervenors with cost eligibility.

- Association of Major Power Consumers in Ontario
- Association of Power Producers of Ontario
- Building Owners and Managers Association, Greater Toronto
- Canadian Manufacturers & Exporters
- Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC)
- Consumers Council of Canada

- Energy Probe Research Foundation (Energy Probe)
- Industrial Gas Users Association
- Pollution Probe
- School Energy Coalition
- Small Business Utility Alliance
- Vulnerable Energy Consumers Coalition

While the OEB commends CCMBC and Energy Probe on coordinating their efforts in this proceeding with common representation, CCMBC and Energy Probe should explain with their request for recovery of costs how costs were shared for common procedural activities, such as attendance at conferences and reviewing procedural documents.

The following party requested and is approved as an intervenor. It did not request cost eligibility.

- Society of United Professionals

The following utilities and utility groups have registered to participate in the proceeding.

- Alectra Utilities Corporation
- Bluewater Power Distribution Corporation
- Electricity Distributors Association
- Elexicon Energy Inc.
- Enbridge Gas Inc.
- Enova Power Corp.
- Entegrus Powerlines Inc.
- ENWIN Utilities Ltd.
- EPCOR Electricity Distribution Ontario Inc.
- FortisOntario Inc.
- GrandBridge Energy Inc.
- Halton Hills Hydro Inc.
- Hydro One Networks Inc.
- Hydro Ottawa Limited
- Niagara Peninsula Energy Inc.
- Ontario Energy Association (OEA)
- Ontario Power Generation Inc.
- Toronto Hydro-Electric System Limited

The OEA will be participating on behalf of the CLD+ which includes the following group of utilities: Alectra Utilities Corporation, Elexicon Energy Inc., Enbridge Gas Inc., Hydro One Networks Inc., Hydro Ottawa Limited, and Toronto Hydro-Electric System Limited.

The full list of parties in this proceeding is attached as Schedule A to this Procedural Order.

The OEB will make provision for cost awards under section 30 of the *Ontario Energy Board Act, 1998*. Costs awards (and any applicable costs incurred by the OEB) will be recovered from all rate-regulated electricity distributors, rate-regulated electricity transmitters, rate-regulated natural gas utilities, and rate-regulated electricity generators (i.e., Ontario Power Generation Inc. (OPG)). The costs will be apportioned amongst all rate-regulated electricity distributors (25%), rate-regulated electricity transmitters (25%), rate-regulated natural gas utilities (25%), and OPG (25%). The 25% share allocated to each of the four groups will in turn be sub-allocated amongst the utilities comprising that group, in accordance with the OEB's Cost Assessment Model. If there are objections to this approach, they must be filed by April 4, 2024.

Cost eligible intervenors should be aware that the OEB will not generally allow the recovery of costs for the attendance of more than one representative of any party unless a compelling reason is provided when cost claims are filed.

Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of the hearing.

### **Issues Conference and Issues Day**

The OEB is making provision for an Issues Conference and, if necessary, an Issues Day regarding OEB staff's proposed draft issues list, which is attached as Schedule B to this Procedural Order.

At the Issues Conference, parties and OEB staff will consider the draft issues list attached as Schedule B, as well as which issues could be expeditiously heard in writing. The OEB is also interested in hearing from parties if there is urgency to determine the cloud computing issues through a written process to enable an earlier determination. The Issues Conference will be held on April 18, 2024 and will be an un-transcribed hybrid meeting (i.e., participants will have the option of attending in person or virtually). Commissioners will not attend the Issues Conference.

Following the Issues Conference, the OEB will determine if it will hold an Issues Day on April 23, 2024. The Issues Day would be a transcribed, hybrid meeting. At the Issues Day, parties would make presentations to the panel of Commissioners on the issues and answer questions from Commissioners. The OEB will provide direction following the Issues Conference as to whether an Issues Day will be held.

The OEB Panel will determine the final Issues List prior to the filing of evidence from OEB staff and all other parties.

### **Pre-Hearing Procedural Conference**

The OEB is making provision for a Pre-Hearing Procedural Conference which will be held on May 21, 2024 and will be a hybrid meeting.

The Pre-Hearing Procedural Conference will allow parties to consult with one another and coordinate positions, in order to make common presentations representing shared views. The OEB notes that parties may benefit from continued stakeholder discussions. Such discussions may also be of assistance in informing parties of each other's expectations of involvement, including the content of anticipated expert evidence and areas of interrogatory exploration.

The Pre-Hearing Procedural Conference will be un-transcribed and Commissioners will not attend.

### **OEB Staff and Parties' Evidence**

On March 28, 2024, OEB staff filed a letter informing the OEB and all other parties that expressed an interest in this generic proceeding that it had engaged an expert to provide an expert report. OEB staff's expert report may serve as a "straw-person" for all other parties (and their experts) to comment or adduce evidence in response.

OEB staff shall file its Expert Report by June 21, 2024.

Any party (whether cost eligible or not) wishing to file evidence in this proceeding must inform the OEB of its intention and the nature of its proposed evidence, how it is relevant to the Issues List, and whether the evidence will be commissioned jointly with other parties. If any cost eligible intervenor plans to file expert evidence in this proceeding and seek recovery of those costs, the intervenor must also provide the estimated cost. The estimated cost should include an explanation of any assumptions regarding the purpose and scope of the participation of the expert in the proceeding and should include an estimate of any incremental time that will be spent by the intervenor's counsel or any other consultant(s) in relation to the expert evidence.

The OEB will require that all evidence that is proposed to be filed to be conclusive and non-redundant. The OEB encourages communication and coordination with all parties seeking to introduce evidence concerning the issues to be decided in this proceeding.

The proposal to file evidence including the request for the granting of costs for expert evidence by cost-eligible intervenors should outline the adherence of the request with these requirements.

In addition, if any party's evidence will cover the topics that OEB staff identified in its March 28, 2024 letter, the party must explain how its evidence may be different from, or complement, OEB staff's potential evidence. Such explanation must satisfy the OEB that the party's evidence is unique or contributes to a better understanding of the issues in this proceeding.

Parties shall inform the OEB by letter of their plans to file expert evidence in this proceeding by April 30, 2024.

After reviewing the above information, the OEB will consider whether and to what extent any costs associated with the participation of any expert(s) or the preparation of any expert report(s) will be eligible for cost recovery in accordance with the OEB's [Practice Direction on Cost Awards](#).

Any experts will be expected to [acknowledge their duties](#) in the proceeding by filing Form A pursuant to Rule 13A.03(f) of the OEB's Rules of Practice and Procedure.

Parties' expert evidence shall be filed with the OEB, and copied to all other parties, by July 19, 2024.

### **Interrogatories**

At this time, provision is being made for written interrogatories on the evidence by OEB staff and all other parties. In preparing interrogatories, OEB staff and all other parties should refer to the OEB's approved Issues List. Parties should consult Rules 26 and 27 of the Rules of Practice and Procedure regarding required naming and numbering conventions and other matters related to interrogatories.

Parties should not engage in detailed exploration of items that do not appear to be material. In making its decision on cost awards, the OEB will consider whether intervenors made reasonable efforts to ensure that their participation in the hearing focused on material issues.

If OEB staff or any party seeks information and material with respect to any of the expert reports, and that is relevant to this proceeding, that information shall be requested by written interrogatories filed with the OEB, and copied to all other parties, by August 2, 2024.

OEB staff and all other parties that receive interrogatories on their evidence shall file with the OEB complete responses to the interrogatories and copy the responses to all other parties by August 22, 2024.

### **Presentation Day**

The OEB is making provision for a transcribed Presentation Day for OEB staff and all other parties to make presentations to the panel of Commissioners. The Presentation Day will be on September 5 and will if necessary continue on September 6, 2024, and will be a hybrid meeting.

The OEB will provide each participant and/or their expert with an opportunity to make a presentation on the issues. The Issues List is intended to guide participants in preparing their presentations. The OEB encourages participants where pertinent to consult with one another and make a common presentation representing their shared views.

To ensure ample time for discussion, the OEB asks that presenters complete their presentations within 30 minutes and be available for questions from Commissioners for up to an additional hour. All parties filing evidence must be available for questions from Commissioners.

The OEB has identified the objectives of the Presentation Day as follows:

1. To allow participants to clarify and elaborate on their planned written submissions.
2. To help the OEB gain a clearer understanding of the positions of participants and of significant issues and areas of concern through the presentations and to facilitate an interactive exchange between the panel of Commissioners and the parties with their respective experts.
3. To allow the OEB to seek clarification on interrogatory responses.

In preparation for the Presentation Day, the OEB will require parties to file a description of the specific areas on which they will be focusing and an estimate of time required for each area of focus by August 29, 2024. This will allow a Presentation Day schedule to be developed.

Those interested in attending are requested to register in advance by e-mail to the Registrar by August 29, 2024. Please include your name, organization, telephone number and e-mail address. Participants who intend to make a presentation are asked

to indicate so as part of their registration and to make an electronic copy of any presentation materials available to the OEB in advance. Presentation materials must be sent to the Registrar by August 29, 2024.

Responses to undertakings from the Presentation Day (if any) shall be filed with the OEB and copied to all other parties by September 13, 2024.

### **Oral Hearing**

The OEB has determined that the format of the hearing will be an oral hearing, but in a hybrid format. The hearing will be transcribed.

The hybrid hearing will be held September 25, 26, 27, to October 1, 2, 2024. A total of five hearing days have been scheduled. More details on the hearing will be provided at a later stage.

### **Undertaking Responses**

The OEB requests that parties respond to any undertakings as early as possible while the hearing is ongoing. All responses to undertakings from the oral hearing shall be filed with the OEB and copied to all other parties no later than October 8, 2024.

### **Written Submissions**

OEB staff and all other parties are asked to provide written submissions on all the issues by October 29, 2024.

OEB staff and all other parties may file reply submissions responding to the submissions of other parties by November 12, 2024.

All hybrid meetings and the oral hearing will be held in the OEB's hearing room at 2300 Yonge Street, 25<sup>th</sup> floor, Toronto.

Further procedural orders may be issued by the OEB.

**THE ONTARIO ENERGY BOARD ORDERS THAT:****Issues Conference and Issues Day**

1. An Issues Conference will be held on April 18, 2024, starting at 9:30 a.m. This event will be a hybrid meeting and will be un-transcribed. Further information on how to participate in the event will be communicated to parties closer to the date.
2. An Issues Day may be held on April 23, 2024, starting at 9:30 am, and would be a hybrid and transcribed meeting. Further details will be provided following the Issues Conference.

**Pre-Hearing Procedural Conference**

3. A Pre-Hearing Procedural Conference will be held on May 21, 2024, starting at 9:30 am, and will be a hybrid meeting. Further information on how to participate in the event will be communicated to parties closer to the date. The Pre-Hearing Procedural Conference will be un-transcribed.

**OEB Staff and Parties' Evidence**

4. Parties shall inform the OEB by letter of their plans to file expert evidence in this proceeding by April 30, 2024.
5. OEB staff's expert report shall be filed with the OEB, and copied to all other parties, by June 21, 2024.
6. Parties' expert evidence shall be filed with the OEB, and copied to all other parties, by July 19, 2024.
7. Written interrogatories shall be filed with the OEB, and copied to all other parties, by August 2, 2024.
8. OEB staff and all other parties that receive interrogatories on their evidence shall file with the OEB complete responses to the interrogatories and copy the responses to all other parties by August 22, 2024.



## Presentation Day

9. The OEB will hold a transcribed Presentation Day on September 5, 2024, from 9:30 a.m. to 5:00 p.m. (continuing on September 6 if necessary). All parties filing evidence must be available for questions from Commissioners.

OEB staff and all other parties shall file with the OEB a description of the specific areas on which they will be focusing at the Presentation Day, and time estimates by August 29, 2024. Those interested in attending are requested to register in advance by e-mail to the Registrar by August 29, 2024.

This will be a hybrid meeting.

10. Responses to undertakings from the Presentation Day (if any) shall be filed with the OEB and sent to OEB staff and all other parties by September 13, 2024.

## Oral Hearing

11. The OEB has set aside the following days for an oral hearing: September 25, 26, 27 and October 1, 2, 2024. Each hearing day will begin at 9:30 a.m. Further information on how to participate virtually will be communicated to parties closer to the date. The hearing will be transcribed and will be a hybrid meeting.

12. Responses to undertakings from the oral hearing shall be filed with the OEB and sent to all other parties by October 8, 2024.

## Written Submissions

13. OEB staff and all other parties may make written submissions and shall file these submissions on or before October 29, 2024.

14. OEB staff and all other parties may file reply submissions responding to the submissions of other parties by November 12, 2024 and copy all other parties in the proceeding.

Parties are responsible for ensuring that any documents they file with the OEB, such as parties' evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with Rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0063** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Fiona O'Connell, at [fiona.oconnell@oeb.ca](mailto:fiona.oconnell@oeb.ca) and OEB Counsel, Ian Richler, at [ian.richler@oeb.ca](mailto:ian.richler@oeb.ca).

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Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **March 28, 2024**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar

**SCHEDULE A  
TO  
PROCEDURAL ORDER No. 1  
EB-2024-0063  
INTERVENOR AND PARTICIPANT LIST  
March 28, 2024**

Ontario Energy Board  
EB-2024-0063

**PARTICIPANTS and INTERVENORS**

March 28, 2024

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**PARTICIPANTS and INTERVENORS**

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**PARTICIPANTS and INTERVENORS**

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**SCHEDULE B  
TO  
PROCEDURAL ORDER No. 1  
EB-2024-0063  
DRAFT ISSUES LIST  
March 28, 2024**

**Schedule B**  
To Procedural Order No. 1 Dated March 28, 2024  
EB-2024-0063  
**Draft Issues List**

OEB staff has developed a Draft Issues List, organized into eight areas as follows: A) General Issues, B) Short-Term Debt Rate, C) Long-Term Debt Rate, D) Return on Equity, E) Capital Structure, F) Prescribed Interest Rates, G) Cloud Computing Deferral Account, and H) Mechanics of Implementation. This Draft Issues List was developed as a starting point for discussions at the Issues Conference, and to assist in organizing the issues.

A. General Issues

1. Should the approach to setting cost of capital parameter values and the capital structure differ depending on the source of the capital (i.e., whether a utility finances its business through the capital markets or through government lending (e.g., Infrastructure Ontario, municipal debt, etc.)? If so, what would be the implications, if any, of doing so?
2. How should all identified risk factors (including the energy transition), and current and forecasted macroeconomic conditions be considered in determining the cost of capital parameters and capital structure?
3. Has the transition to fixed electricity distribution rates reduced the business risk to electricity distributors to a degree that would warrant a change to the cost of capital parameters and capital structure that apply to them, and if so, how should this be addressed?
4. Do deferral or variance accounts (DVAs) reduce business risk to utilities to a degree that would warrant a change to the cost of capital parameters and capital structure that apply to them, if so how should this be addressed?

B. Short-Term Debt Rate

5. Should the short-term debt rate for electricity transmitters, electricity distributors, natural gas utilities, and OPG continue to be set using the same approach as set out in the OEB Report?<sup>1</sup>

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<sup>1</sup> EB-2009-0084, *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities* (OEB Report), December 11, 2009, pp. iii, 55-59

6. If no to Issue #5, how should the short-term debt rate be set to appropriately reflect the risk profile and short-term liquidity needs of rate-regulated entities (i.e., electricity transmitters, electricity distributors, natural gas utilities, and OPG)?

C. Long-Term Debt Rate

7. Should the long-term debt rate for electricity distributors, natural gas utilities, and OPG continue to be set using the same approach as set out in the OEB Report and as set out in the Staff Report for electricity transmitters?<sup>2</sup>
8. If no to Issue #7, how should the long-term debt rate be set to appropriately reflect the risk profile and long-term financing needs of rate-regulated entities (i.e., electricity transmitters, electricity distributors, natural gas utilities, and OPG)?

D. Return on Equity

9. Should the ROE for electricity transmitters, electricity distributors, natural gas utilities, and OPG continue to be calculated using the same approach as set out in the OEB Report?<sup>3</sup>
10. If no to Issue #9, how should the ROE be calculated to appropriately reflect the Fair Return Standard and the risk profile of rate-regulated entities (i.e., electricity transmitters, electricity distributors, natural gas utilities, and OPG)?

E. Capital Structure

11. Should the capital structure for electricity distributors, natural gas utilities, and OPG continue to be set using the same approach as set out in the OEB Report and as set out in the Staff Report for electricity transmitters?<sup>4</sup>
12. If no to Issue #11, how should the capital structure be set for the sectors of the industry and to appropriately reflect the risk profile of rate-regulated entities (i.e., electricity transmitters, electricity distributors, natural gas utilities, and OPG)?

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<sup>2</sup> OEB Report, pp. 50-55, 59; EB-2009-0084, OEB Staff Report, *Review of the Cost of Capital for Ontario's Regulated Utilities* (Staff Report), January 14, 2016, p. 3 Table 1

<sup>3</sup> OEB Report, p. 59

<sup>4</sup> OEB Report, pp. 49 & 50; Staff Report p. 3 Table 1

## F. Prescribed Interest Rates

13. Should the prescribed interest rates applicable to DVAs and the construction work in progress (CWIP) account for electricity transmitters, electricity distributors, natural gas utilities, and OPG continue to be calculated using the current approach?<sup>5</sup>
14. If no to Issue #13, how should the prescribed interest rates applicable to DVAs and the CWIP account be calculated for the sectors of the industry (i.e., electricity transmitters, electricity distributors, natural gas utilities, and OPG)?

## G. Cloud Computing Deferral Account

For further detail regarding the scope of matters to be addressed in respect of the Cloud Computing Deferral Account, please refer to the OEB's [Accounting Order](#) (003-2023) for the Establishment of a Deferral Account to Record Incremental Cloud Computing Arrangement Implementation Costs, issued November 2, 2023.

15. How should the costs of cloud computing solutions be recovered? How should the risk profile of both cloud computing solutions and on-premise solutions be assessed in this proceeding, including whether the risk profile of utilities that have adopted cloud computing solutions has changed?
16. Should carrying charges and/or another type of rate apply to the Cloud Computing deferral account? If so, what rate should be applied?

## H. Mechanics of Implementation

17. What on-going monitoring indicators to test the reasonableness of the results generated by its cost of capital methodology should the OEB consider, including the monitoring of market conditions?
18. How should the OEB regularly confirm that the Fair Return Standard continues to be met and that rate-regulated entities are financially viable and earn a fair, but not excessive, return?

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<sup>5</sup> OEB [website](#); EB-2006-0117, OEB [Letter](#), Approval of Accounting Interest Rates Methodology for Regulatory Accounts November 28, 2006; Accounting Procedures Handbook For Electricity Distributors, Issued: December 2011, Effective: January 1, 2012, Article 220, p. 200; Article 410, pp. 27 & 28

19. What should be the timing of the OEB's cost of capital determination, including the timing of the underlying calculations and issuance by the OEB of its annual updates?
20. What should be the defined interval (for example, every three to five years) to review the ROE formula and the capital structure? Should the OEB adopt trigger mechanism(s) for a review and if so, what would be the mechanisms?
21. How should any changes in the capital structure of a utility be implemented (e.g., on a one-time basis upon rebasing or gradually over a rate term)?
22. How should changes in the cost of capital parameters arising out of this proceeding (if any) be implemented for utilities that are in the middle of an approved rate term?