



Toronto Hydro-Electric System Limited

Application for electricity distribution rates and other charges beginning January 1, 2025

PROCEDURAL ORDER NO. 6

May 31, 2024

Toronto Hydro-Electric System Limited (Toronto Hydro) filed an application with the Ontario Energy Board (OEB) on November 17, 2023, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, beginning January 1, 2025, and for each following year through to December 31, 2029.

On May 2, 2024, OEB staff filed Pacific Economics Group Research LCC's (PEG's) Framework Report and on May 6, 2024 OEB staff filed PEG's Clearspring Report.

On May 24, 2024, Toronto Hydro sent a letter to the OEB Registrar attaching a proposed reply report prepared by Scott Madden Management Consultants (ScottMadden), responding to PEG's Framework Report. On May 27, 2024, Toronto Hydro sent additional reply evidence from Clearspring Energy Advisors (Clearspring) responding to PEG's Clearspring Benchmarking Report to intervenors and the OEB Registrar.

On May 27, 2024, the OEB directed Toronto Hydro to file a request for leave to file reply evidence from ScottMadden and Clearspring as required by Rule 13 of the OEB's *Rules of Practice and Procedure* (Rules).

On May 29, 2024, Toronto Hydro responded to the OEB's May 27, 2024 letter. Toronto Hydro submitted that Rule 13 does not require an applicant to obtain leave to file expert evidence in support of its application, including any proper reply evidence from its experts. Toronto Hydro submitted that it was therefore not required to request leave to file the reply reports because they were in support of its application. Toronto Hydro further submitted that PEG raised new issues in both of its reports, and that Toronto Hydro was entitled, as a matter of fairness, to respond.

Toronto Hydro further submitted that the reply reports will help facilitate a just and efficient determination of the application. By providing advance disclosure of

ScottMadden and Clearspring's responses to the new points raised by PEG, it should assist cross-examination at the oral hearing. Finally, Toronto Hydro noted similar reply expert reports from Clearspring, citing EB-2018-0165, EB-2019-0082, and EB-2021-0110.

Findings

The OEB finds that Toronto Hydro's May 29, 2024 letter presents a rather expanded interpretation of Rule 13.02 to include an exemption for the applicant to submit evidence at any time it may be opportune to do so, and/or expands the meaning of the allowance for corrections. The OEB further notes that the precedents cited to support Toronto Hydro's interpretation predate the updates to Rules 13 and 13A.01, which came into effect in March 2024.

It is also not helpful to present an exemption based on the hierarchy of importance of the evidence of the applicant over that from other participants representing various elements of the public interest. Clearly, the applicant's evidence on the whole is vital to the requested relief, but that does not militate for a differential application of the Rules. The intent of Rule 13.02 and the OEB's enforcement of the same is not to prevent or frustrate the submission of reply evidence where it is appropriate. The primary intent is to allow the OEB to consider the timing and fairness of its placement on the record and whether fairness compels the allowance of interrogatories on the evidence or subsequent reply (by the authors of the evidence that has been addressed). In other words, the Rule allows the OEB to control its own processes and the hearing schedule.

Given that most parties have already received the Clearspring and ScottMadden reply evidence, the OEB will allow their filing on the record. The OEB accepts Toronto Hydro's representation that the PEG reports raised new issues and provided new analyses and studies which ScottMadden and Clearspring did not previously have an opportunity to address. However, to be clear, the OEB's expectation is that applicants request leave before filing reply expert reports. OEB has considered the subsequent procedural steps with the goal of maintaining any required oral hearing dates.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Toronto Hydro is granted leave to file the reply evidence of ScottMadden Management Consultants and Clearspring Energy Advisors by **June 3, 2024**.

2. OEB staff and intervenors shall request any relevant information and documentation from Toronto Hydro that relates to the two reply reports, by written interrogatories filed with the OEB and served on all parties by **June 10, 2024**.
3. Toronto Hydro shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors by **June 17, 2024**.
4. OEB staff shall inform the OEB by letter of its plans to file any surreply by **June 19, 2024**.
5. Any surreply report(s) from OEB staff shall be filed with the OEB by **June 26, 2024**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor 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-2023-0195** 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 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, Thomas Eminowicz at Thomas.Eminowicz@oeb.ca and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto, **May 31, 2024**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar