



PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

August 28, 2024

**OEB VIA RESS**

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
Toronto, ON  
M4P 1E4

Dear Ms. Marconi:

**Re: Tillsonburg Hydro 2024 Cost of Service Proceeding  
EB-2023-0053  
Facilitation for Settlement Conference**

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We are in receipt of the Board's letter of August 2, 2024 in regard to the above noted proceeding. In that letter the Board has decided to have a Commissioner act as facilitator in the settlement conference for the Tillsonburg Hydro 2024 Cost of Service application which is scheduled to take place on September 16, 2024. As noted in the letter this course of action is in contravention of the Rules of Practice and Procedure, specifically Rule 29.04.

VECC is writing to express its strong objection to this course of action. While the Board may depart from its own procedural rules, we see no need to do so in this case and more importantly we believe the facilitation of a settlement proceeding by a Commissioner is not only not in the public interest but will be counterproductive. Specifically, we object because:

1. The inclusion of a Commissioner in the settlement process will inhibit a free and frank discussion of the issues among the parties.
2. The presence of a Commissioner prejudices the impartiality of the process.
3. The process outlined in the letter of August 2, is one of mediation – and not as is currently practiced in settlement conferences – free negotiation.

In our view parties participating in the settlement conference will not be willing to openly share their views on the application, their negotiating strategies or their expectations regarding outcomes that might occur before an OEB Panel, if this is done in the presence of a Commissioner. This concern is compounded by the fact that similar issues are likely to be considered in future applications of other utilities where that same Commissioner may participate as a decision maker.

We also take note of the statement that *“Over the course of discussions, the Commissioner may identify areas where a potential settlement may not, in their view, be in the public interest.”* This strikes us as departure from the role of facilitation in settlement conferences. It is our observation, borne from our participation in numerous conferences, that the role of the facilitator is largely administrative. Some facilitators offer meeting services (via ZOOM or other services) and at times (though not always) move between parties to clarify the nature of issues of concern. Facilitators do not convey positions of parties, speak to the merits of positions taken or opine on what is in the public interest. The Board’s letter appears to depart from this traditional role and to replace it with a form of mediation.

The letter also states that *“[I]n the event of a full settlement, with the consent of the parties, the Commissioner who acts as the facilitator will be the panel before whom the settlement proposal will be brought forward for approval.* That is, the Board is replacing the role of facilitation and providing the Commissioner with both mediation and decision-making authority. As a matter of negotiation impartiality this is simply untenable.

Under the current process the Board is free to reject a settlement or ask for clarifications if it believes the agreement is not in the public’s interest. Presumably it holds that if sufficient parties are present (including Board Staff) then it can rely on the outcome as an indication that those interests have been canvassed. Frankly we cannot understand what efficiencies are to be found in a proposal to replace neutral facilitation with a Board decision maker.

We respectfully ask that the Board reconsider its proposal for a Commissioner facilitating the upcoming Tillsonburg settlement conference. If the Board insists on proceeding in the fashion set out in its letter of August 2 VECC will need to reconsider if and how it will participate in this proceeding. However, if we choose to continue our participation, it will be under formal protest, we likely will not agree to participate in conversations with the other intervenor (Energy Probe) in the presence of the Commissioner. We can also see no circumstances under which VECC would consent to have the Commissioner who acts as a facilitator/mediator to be the same Commissioner who approves that settlement – whether full or partial.

Yours truly,

*John Lawford*

Counsel for VECC

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