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September 17, 2026

via RESS

Mr. Ritchie Murray
Registrar
Ontario Energy Board
PO Box 2319
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Mr. Murray:

Re: Toronto Hydro-Electric System Limited ("Toronto Hydro")
Non-Wires Solution Incentive Mechanism Application
OEB File No. EB-2026-0129, Reply Submission

In accordance with Procedural Order No. 2, please find enclosed Toronto Hydro's Reply Submission.

Please do not hesitate to contact us if you have any questions.

Sincerely,

Elissar El-hage
Digitally signed by Elissar El-hage
DN: cn=Elissar El-hage, email=EEl-hage@TorontoHydro.com
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Senior Manager, Rate Applications
Toronto Hydro-Electric System Limited

Cc: Stephanie Cheng, OEB Case Manager
Parties of Record
Andrew Sasso, Toronto Hydro
Jody McEachran, Toronto Hydro

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 Sch. B to the *Energy Competition Act, 1998 S.O. 1998* c. 15

AND IN THE MATTER OF an Application by Toronto Hydro-Electric System Limited ("Toronto Hydro") for an Order or Orders establishing a new deferral account, effective May 1, 2026 to December 31, 2029

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

REPLY ARGUMENT

September 17, 2026

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1.0 OVERVIEW

1. Toronto Hydro requests a 25% Margin-on-Payment ("MoP") incentive to be applied to third-party payments made as part of Toronto Hydro's Local Demand Response ("LDR") program. The LDR program, which is funded through distribution rates approved in Toronto Hydro's 2025-2029 custom rate application (EB-2023-0195),[1] procures market-based demand response services to avoid and defer capital investments. Pursuant to Section 11 of the Distribution System Code ("DSC"), Toronto Hydro is seeking a MoP incentive for this program and is also applying for the creation of a deferral account to record the amounts of the MoP incentive for future disposition.

2. On August 18, 2026, Toronto Hydro submitted its Argument-in-Chief. Subsequently, eight parties filed submissions regarding this Application: OEB Staff, Building Owners and Managers Association ("BOMA"), Environmental Defence ("ED"), Pollution Probe ("PP"), School of Energy Coalition ("SEC"), Consumers Council of Canada ("CCC"), Energy Probe ("EP"), and Power Workers Union ("PWU").[2] This reply submission addresses the arguments made by these parties.

3. Four parties (OEB Staff, BOMA, ED and PP) generally support the approval of a MoP incentive. ED[3] and PP[4] ask the Board to approve the incentive, noting that an approval will encourage the further development of NWS in the province. OEB Staff agrees that Toronto Hydro has satisfied the test in Section 11 of the DSC, though it reached that conclusion on the basis of the original benefit-cost analysis ("BCA") submitted in EB-2023-0195.[5] Finally, BOMA agrees that the LDR Program is eligible for an incentive but disagrees with the size of the incentive the program should receive.[6]

4. Three parties (SEC,[7] CCC[8] and EP[9]) generally oppose the approval of a MoP incentive. These parties invoke a variety of factors and considerations which are not articulated in Section 11 of the DSC, to argue that Toronto Hydro is not eligible and should not be permitted to receive the incentive.

5. Toronto Hydro addresses each of these submissions in more detail below.

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[1] EB-2023-0195, Exhibit 2B, Section E7.2, see Flexibility Services segment under the Non-Wires Solutions program.
[2] PWU neither supports nor opposes the requests sought in this application.
[3] ED Submission (August 28, 2026), at pg. 1.
[4] PP Submission (August 21, 2026), at pg. 2.
[5] OEB Staff Submission (August 27, 2026), at pg. 3.
[6] BOMA Submission (August 28, 2026), at pg. 1.
[7] SEC Submission (August 28, 2026), at pg. 1.
[8] CCC Submission (August 23, 2026), at pg. 1.
[9] EP Submission (August 28, 2026), at pg. 1.

2.0 TORONTO HYDRO MEETS THE ELIBILITY REQUIREMENTS IN SECTION 11 OF THE DSC

6. The core question in this proceeding is whether Toronto Hydro has met the criteria set out in Section 11 of the DSC to receive a MoP incentive.

7. Section 11 is a recent addition to the DSC. It came into effect in November 2025, following extensive consultation on the design of the framework, to incent distributors to leverage customer- and third-party owned distributed energy resources ("DERs") as non-wires solutions ("NWS") to meet distribution system needs.[10] This provision reflects the culmination of a multi-year OEB initiative (the Framework for Energy Innovation or FEI) to develop and implement policies that encourage electricity distributors to meet local system needs through NWS rather than traditional capital infrastructure investments.[11]

8. Section 11 dictates a clear test for MoP eligibility. Distributors are entitled to receive, as an incentive, a share of payments made to third parties for the use of DERs, provided that the following requirements set forth in Section 11.3.3 are satisfied:

   i. The net present value of the forecast net benefit of the third-party DER is greater than zero, and

   ii. The net present value of the forecast MoP incentive amount does not exceed 50% of the net present value of the forecast net benefit of the NWS.

9. When these two requirements are satisfied, Section 11 of the DSC provides that, *"a distributor's rates shall be set by including a Margin on Payments incentive of 25%, or such lesser amount as may be requested by the distributor…"* [emphasis added].[12]

10. In establishing this two-part test, the OEB intentionally rejected a discretionary approval model favoured by some participants during the consultation.[13] Instead, the OEB chose a "new approach" of "*establish[ing] an incentive recovered through rates pursuant to a code*" noting that such an approach would provide greater regulatory certainty and predictability.[14]

11. By establishing clear eligibility criteria and mandating recovery of the incentive where those criteria are satisfied, Section 11 addresses a key barrier to the adoption of NWS identified in the FEI Report: uncertainty regarding cost recovery.[15] In doing so, it

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[10] EB-2025-0083, Ontario Energy Board, Notice of Amendments to the Distribution System Code: Amendments Regarding a Margin on Payment Incentive Mechanism for the Use of Third-Party Distributed Energy Resources as Non-Wires Solutions (hereafter "Notice of Amendments to DSC") (November 25, 2025).
[11] See Ontario Energy Board, Framework for Energy Innovation ("FEI") Report (January 2023), at pg. 13-14.
[12] Distribution System Code (August 1, 2026), Section 11.3.1, at pg. 144.
[13] EB-2025-0083, Ontario Energy Board, Notice of Amendments to the Distribution System Code (November 25, 2025), at pg. 5.
[14] Ibid, at pg. 4.
[15] See Ontario Energy Board, Framework for Energy Innovation ("FEI") Report (January 2023), at pg. 26-27.

reflects the OEB's policy view that greater certainty regarding the availability of the incentive will advance utilities' consideration and adoption of DERs as NWS solutions.[16]

12. The parties opposing this application argue that the OEB should, to varying degrees, reopen debate on the appropriateness of Section 11 and alter the test applicable to this application.[17]

13. Toronto Hydro submits that the appropriate forum in which to challenge Section 11 was during the DSC amendment consultation. Through that process, the OEB considered whether a MoP incentive should be implemented through the DSC and determined that it should.[18]

14. The issue before the OEB in this proceeding is therefore not whether Section 11 was the correct policy choice, but whether the requirements established by Section 11 have been satisfied on the facts of this application. To the extent that SEC[19] and CCC[20] seek to revisit the policy rationale for the incentive or the structure of the approval framework adopted by the OEB, those submissions should be afforded limited weight. The OEB has already considered those issues through the code amendment process and incorporated its determinations into the DSC.

2.1 <u>The DSC Section 11 test is clear and should not be modified</u>

15. Despite the clear and unequivocal two-part test set out in Section 11 of the DSC, in their submissions SEC, CCC and EP propose several additional criteria for MoP eligibility. SEC argues that the MoP incentive should not apply to existing NWS programs and that Toronto Hydro has not demonstrated the incentive is necessary to sustain the LDR Program.[21] CCC submits that the incentive should be limited to new NWS deployments,[22] while EP suggests that incentive eligibility should depend on whether the program would fail absent the incentive.[23]

16. Toronto Hydro submits that had the OEB intended to limit the MoP incentive in this manner, it could have incorporated such criteria into the DSC. It did not do so. The additional requirements proposed by SEC, CCC and EP are not part of the eligibility test established by Section 11 and therefore should be rejected.

17. Furthermore, these requirements should be rejected because they are incompatible with and frustrate the core policy objectives underlying Section 11 of the DSC.

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[16] Ibid, at pg. 28.
[17] SEC Submission (August 28, 2026), at pg. 3.
[18] EB-2025-0083, Ontario Energy Board, Notice of Amendments to the Distribution System Code, (November 25, 2025), at pg. 4.
[19] SEC Submission (August 28, 2026), at pg. 3.
[20] CCC Submission (August 23, 2026), at pg. 3.
[21] SEC Submission (August 28, 2026), at pg. 3.
[22] CCC Submission (August 23, 2026), at pg. 2-3.
[23] EP Submission (August 28, 2026), at pg. 1.

18. In its Notice of Proposed Amendments to the Code, the OEB explained that the MoP program is intended to not only encourage distributors to adopt new DER-based solutions in the short-term, but to also "encourage distributors to *make greater use* of cost-effective NWSs in meeting system needs" over time[24]—that is, to incentivize distributors to both pilot and scale proven NWS offerings.

19. By proposing to narrow the MoP incentive to only those programs that are new, immature or otherwise struggling to get off the ground, SEC, CCC and EP's modified eligibility test prevents the incentive from supporting the NWS advancement that OEB seeks to incentivize through its policies.

20. Moreover, these parties' submissions overlook the practical reality that even established NWS solutions rely on dynamic, market-based operating models that expose distributors to ongoing risks with each deployment. Far from diminishing the need for the MoP incentive, the ability of these more mature solutions to be deployed at scale and deliver substantial customer benefits underscores the importance of providing distributors with the certainty and incentives necessary to pursue them.

21. As ED explained in its submission, there are significant financial and institutional challenges associated with NWSs, and approval of this application is important to avoid putting a chilling effect on NWS efforts by electricity distributors.[25] Toronto Hydro agrees. Denying an otherwise eligible incentive because a distributor has been pursuing NWS would create a perverse result and is ultimately inconsistent with both the OEB's and the Government's objective of encouraging DER adoption and use of NWS.[26]

2.2 <u>The 25% MoP incentive is compliant with the DSC and appropriately recognizes the significant customer benefits of Toronto Hydro's LDR Program</u>

22. CCC[27] and SEC[28] argue that this application is not in the interest of customers and provides no value to ratepayers. These submissions should be rejected as they are contrary to the evidence on the record.

23. First, as shown in the BCA results, Toronto Hydro's LDR Program is highly cost effective and provides demonstrable benefits to ratepayers.[29] Toronto Hydro is not alone in this assessment. PP states Toronto Hydro's cost effectiveness estimate is robust,[30] ED

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[24] EB-2025-0083, Proposed Amendments to the Distribution System Code Regarding a Margin on Payment Incentive Mechanism for the Use of Third-Party Distributed Energy Resources as Non-Wires Solutions (May 16, 2025), at pg. 7.
[25] ED Submission (August 28, 2026), at pg. 1.
[26] Ministry of Energy and Mines, Energy for Generations Ontario's Integrated Plan to Power the Strongest Economy in the G7 (June 2025), at p.89.
[27] CCC Submission (August 23, 2026), at pg. 4.
[28] SEC Submission (August 28, 2026), at pg. 2.
[29] Argument in Chief (August 18, 2026), at pg. 6.
[30] PP Submission (August 21, 20216), at pg. 2.

notes the LDR Program provides clear benefits to customers,[31] and OEB Staff concludes that the record demonstrates the LDR Program's value to ratepayers and supports approval of Toronto Hydro's incentive request.[32]

24. The benefits of the LDR Program are well established in evidence and include the deferral and avoidance of approximately $53.7 million in capital costs through non-wires solutions,[33] resulting in an estimated $15.4 million in net customer benefits.[34]

25. The net present value of Toronto Hydro's proposed MoP incentive represents approximately 7% of these total net benefits, well below the 50% MoP eligibility threshold set by the OEB in the DSC.[35] Put another way, 93% of the savings the utility is generating through the LDR Program will accrue to ratepayers.[36] It is entirely compliant with the DSC, and aligned with OEB policy, to recognize, through the proposed 25% MoP, the significant benefits to customers created by Toronto Hydro's LDR Program.

26. Despite these benefits, BOMA and EP submit that the OEB should approve a MoP value lower than 25%, on the basis that 25% represents the maximum, rather than the default value, and Toronto Hydro failed to sufficiently justify the amount requested.[37]

27. In making this argument, BOMA and EP misread the DSC and incorrectly shift the burden onto Toronto Hydro to justify the 25% MoP rate. The text of the DSC is unambiguous in setting 25% as the default margin on payments. Section 11.3.1 states that where section 11.3.3 of the DSC is satisfied, *"a distributor's rates <u>shall be set by including a Margin on Payments incentive of 25%,</u> or such lesser amount as may be requested by the distributor…"* [emphasis added].[38]

28. Moreover, in both the Notice of Proposed Amendments to the Code[39] and the Notice of the Amendments itself, the OEB repeatedly describes the 25% rate as the "default MoP value."[40] In fact, the OEB's stated intent in codifying the MoP incentive requirements was regulatory certainty through a fixed default value—not an "eligibility ceiling." The explicit language of the DSC, and the OEB's own interpretation of that language, make it clear that BOMA and EP's reading of Section 11 is incorrect.

[31] ED Submission (August 28, 2026), at pg. 2.
[32] OEB Staff Submission (August 27, 2026), at pg. 3.
[33] Argument in Chief (August 18, 2026), at pg. 6.
[34] Schedule 4 – BCA Model (Updated August 6, 2026); Interrogatory Response to OEB Staff-3, at pg.5.
[35] Argument in Chief (August 18, 2026), at pg. 7.
[36] Schedule 3, pg. 11 at lines 8 – 9.
[37] BOMA Submission (August 28, 2026), at pg. 2; EP Submission (August 28, 2026), at pg. 2.
[38] Distribution System Code (August 1, 2026), Section 11.3.1, at pg. 144.
[39] EB-2025-0083, Proposed Amendments to the Distribution System Code Regarding a Margin on Payment Incentive Mechanism for the Use of Third-Party Distributed Energy Resources as Non-Wires Solutions (May 16, 2025), at pg. 3.
[40] EB-2025-0083, Ontario Energy Board, Notice of Amendments to the Distribution System Code (November 25, 2025), at pg. 5.

25% is the default MoP value for eligible programs, not a maximum that the applicant must show is appropriate in a particular case.

29. These submissions effectively seek to introduce an additional element into the eligibility framework established by Section 11 of the DSC, which currently does not require an applicant to justify the application of the default 25% MoP where the prescribed eligibility criteria are satisfied.

30. Moreover, the positions advanced by BOMA and EP are inconsistent with the OEB's stated policy rationale for adopting Section 11.

31. Following careful consideration informed by an external jurisdictional review and extensive stakeholder consultation, the OEB stated in the Notice of Amendments that "*the OEB remains of the view that 25% is an appropriate default MoP value.*"[41] In reaching that conclusion, the OEB considered a lower 15% incentive level but determined that a 25% default value would better support the consideration and adoption of cost-effective NWS across Ontario.[42]

32. In the Notice of Amendments, the OEB also stated that one of the objectives of codifying the MoP framework was to provide greater regulatory certainty regarding the treatment of eligible NWS.[43]

33. Requiring an applicant to provide a separate justification for applying the default 25% MoP, notwithstanding that the eligibility criteria in Section 11 have been satisfied, would be inconsistent with that objective. Such an approach would effectively add a requirement that does not appear in the DSC, undermine the certainty that Section 11 was intended to provide, and reintroduce a degree of regulatory discretion that the OEB sought to reduce through the establishment of a codified MoP framework.[44]

34. Finally, Toronto Hydro respectfully submits that EP has incorrectly referenced Grandbridge Energy's ("GBE") MoP proposal. In its application, GBE initially requested a 25% Margin-on-Payment.[45] But over the course of the proceeding, GBE elected to lower the MoP value to 15% to keep the absolute value of the payment the same, following changes to the program's funding mechanisms.[46] The unique circumstances of the GBE MoP are not applicable here.

35. For these reasons, Toronto Hydro submits that the 25% MoP incentive is appropriate and should be approved in accordance with the DSC.

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[41] EB-2025-0083, Ontario Energy Board, Notice of Amendments to the Distribution System Code (November 25, 2025), at pg. 5.
[42] Ibid.
[43] Ibid.
[44] Ibid, at pg. 4.
[45] EB-2025-0265, GrandBridge Energy Inc. 2026 Non-Wires Application, pg. 23 at line 23.
[46] EB-2025-0265 GrandBridge Energy Inc. 2026 Non-Wires Application Interrogatory Responses, OEB Staff-7 at pg. 16-20.

2.3 Toronto Hydro has submitted a Benefit-Cost Analysis that complies with OEB requirements and expectations

36. This application makes reference to two BCAs that support the LDR Program's benefits: the initial BCA, which was based on the information and system needs known at the time of the 2025-2029 application (EB-2023-0195),[47] and an updated BCA submitted in this application, which reflects the most current and best available information.[48] For example, the updated BCA includes up-to-date loading conditions to support capacity needs as well as updated regulatory and tax parameters,[49] such as the recently enacted 2026 Bill C-15 tax changes and the OEB-approved ROE and interest rates.

37. Both BCAs show that the LDR Program creates significant value for ratepayers; however, compared to the analysis provided in EB-2023-0195, the BCA in this application provides a greater total net benefit to customers. This is attributed to more accurate information regarding the amount of capital being deferred and avoided at the stations targeted for LDR.[50]

38. Only two parties, OEB Staff and EP, commented on the BCAs in their submissions. OEB Staff submitted that the MoP incentive should be approved based on the results of the initial BCA rather than the updated BCA, arguing that the evidentiary record supporting the updated analysis is insufficient to validate the revised results.[51] However, OEB Staff acknowledged that the outcome is the same under either analysis.[52]

39. Toronto Hydro submits that both BCAs satisfy the requirements of Section 11 and demonstrate that the LDR program provides positive value to customers. In any event, the specific BCA relied upon has no bearing on the amount of the MoP incentive requested. Both analyses demonstrate customer benefits well in excess of the 50% threshold prescribed by Section 11 and the MoP incentive itself is calculated based on actual payments made under the LDR program, not the magnitude of net benefits identified in the BCA. Accordingly, regardless of whether the initial or updated BCA is relied upon, the program satisfies the applicable DSC requirements and supports the requested incentive.

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[47] Schedule 3, Table 3 at pg. 7.
[48] Interrogatory Response to OEB Staff-3, Table 2 at pg. 6.
[49] See Schedule 4 – BCA Model (Updated August 6, 2026), Tab Assumptions for descriptions of updated regulatory and tax changes.
[50] Ibid, Tabs "BCA- Reference" and "Avoidance BCA"; Interrogatory Response to OEB Staff-3, at pg. 4-6.
[51] OEB Staff Submission (August 27, 2026), at pg. 3.
[52] Ibid.

40. EP challenges the validity of the updated BCA on the basis that it didn't include the 25% MoP incentive.[53] This argument misconstrues the BCA requirements and should be rejected. Consistent with OEB requirements, the NWS incentive is determined outside of the BCA and is therefore not an input to the BCA filed.

3.0 THIS APPLICATION DOES NOT CONTRAVENE THE SETTLEMENT PROPOSAL

41. SEC argues that Toronto Hydro already sought an incentive for the LDR Program, which was given up through the elimination Performance Incentive Mechanism ("PIM") as part of the Settlement Proposal in its last rebasing application, EB-2023-0195.[54] SEC further submits that approval of the MoP incentive would impact the balance agreed to as part of the Settlement Proposal.[55]

42. These arguments are flawed and should be rejected. They mischaracterize the PIM proposal that Toronto Hydro put forward in EB-2023-0195 with respect to the LDR program. They also attempt to read into the Settlement Proposal terms and expectations that were clearly not part of the agreement, and that would contravene the fundamental principle that parties cannot contract out of legislation.

43. Firstly, as set out in Toronto Hydro's detailed response to the Preliminary Questions[56] and to interrogatory response OEB Staff-1,[57] the NWS incentive regime established by Section 11 of the DSC is distinct from the PIM that Toronto Hydro proposed in its 2025-2029 Custom Incentive Rate setting application. This is evident both in the timing of the incentive regime, which came into effect in November 2025, two years after the application was filed, and in the practical reality that the NWS incentive regime operates in a fundamentally different manner than the PIM.[58] The former provides utilities with a defined financial reward for successfully delivering cost-effective NWS. The latter enabled Toronto Hydro to earn-back a self-imposed proactive stretch factor by achieving certain performance objectives, including with respect to the delivery of the LDR program.[59]

44. SEC points to similarities in the language Toronto Hydro used to describe the PIM and the MoP, including that both would provide "*an appropriate incentive to continue maturing in its journey of developing non-wires capabilities*."[60] This language simply reflects the fact that both mechanisms operate within the broader policy context of

[53] EP Submission (August 28, 2026), at pg. 3.
[54] SEC Submission (August 28, 2026), at pg. 2.
[55] Ibid.
[56] Responses to Preliminary Questions (May 15, 2026), at pg. 1-2.
[57] Interrogatory Response to OEB Staff-1, at pg. 2-4.
[58] Responses to Preliminary Questions (May 15, 2026), at pg. 3.
[59] Ibid, at pg. 2.
[60] SEC Submission (August 28, 2026), at pg. 2.

encouraging NWS adoption. It does not establish that the mechanisms are equivalent or interchangeable.

45. The PIM was an integrated component of Toronto Hydro's custom rate framework, under which a voluntary reduction to revenue could be mitigated by a performance-based earn-back mechanism.[61] The MoP, by contrast, is a stand-alone incentive established by the DSC that compensates a distributor for forgoing the opportunity to earn a return through traditional capital investment. A shared policy aspiration to advance NWS capabilities does not make the PIM and MoP the same, and language articulating that shared aspiration should not be permitted to obscure the substantive differences between these approaches, as SEC proposes.

46. Since there is no duplication or overlap between the two approaches, SEC's claim that Toronto Hydro "*sought an incentive for the LDR program once already, and gave it up as part of a negotiated trade-off*"[62] is thus inaccurate and should be rejected.

47. Secondly, the Settlement Proposal eliminated the PIM as proposed in the 2025-2029 application in lieu of certain concessions on the stretch factor.[63] In doing so, the Settlement Proposal did not include any language explicitly prohibiting NWS incentives. This is a point SEC itself acknowledges in its submission,[64] but then goes on to argue, without any supporting evidence, that the MoP would distort the balance agreed to as part of the Settlement Proposal.

48. It is a well-established principle of contractual interpretation that settlement agreements are to be construed on the basis of their terms, not by reference to imputed or unexpressed intentions.[65] The Settlement Proposal sets out, in clear and specific language, what was agreed: the elimination of the PIM in exchange for certain concessions on the stretch factor. It does not purport to restrict Toronto Hydro's rights under future regulatory instruments, nor does it address NWS incentives of any kind. SEC now asks the OEB to read into that silence a prohibition that the parties themselves did not see fit to include.

49. This approach should be rejected. It was open to the parties to include in the Settlement Proposal language signaling intent to preclude Toronto Hydro from accessing any future NWS incentives. The parties chose not to do so. Where a settlement agreement is silent on a matter, the appropriate interpretive response is

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[61] Responses to Preliminary Questions (May 15, 2026), at pg. 2.
[62] SEC Submission (August 28, 2026), at pg. 2.
[63] EB-2023-0195 Settlement Proposal, at pg. 35.
[64] SEC Submission (August 28, 2026), at pg. 2.
[65] See *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53 at para 57 ("The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement.").

to respect the boundaries of what was actually agreed — not to expand its scope through inference or implication. SEC's attempt to impute a broader restriction from the Settlement Proposal's silence has no basis and should be disregarded.

50. Toronto Hydro also notes that SEC is the only party that raised Toronto Hydro's settlement as an issue, despite all of the parties having participated in the Settlement Proposal.[66] If the proposed MoP incentive did in fact contravene the parties' agreement as SEC suggests, one would reasonably expect all parties to the Settlement Proposal to challenge this application on that basis. They have not done so. Indeed, ED,[67] BOMA,[68] and PP[69] — each of whom was a party to the Settlement Proposal — support approval of the incentive in this application.

51. Lastly, SEC's argument also fails to acknowledge the fundamental principle that parties cannot contract out of their rights and obligations under the DSC or other OEB codes and policy instruments.[70] The MoP incentive regime is established by Section 11 of the DSC, and Toronto Hydro is entitled to bring an application under that provision. Imputing to the Settlement Proposal an intent to preclude the exercise of those statutory rights, especially in the absence of explicit language to that effect, is problematic and should be rejected by the OEB.

4.0 IMPLEMENTATION

52. Toronto Hydro notes that the proposed Margin-on-Payment Deferral Account ("MoPIDA") was uncontested.

4.1 <u>The Margin-on-Payments Incentive Deferral Account balance should not be subject to materiality threshold</u>

53. While no party opposes the creation of the proposed Margin-on-Payment Deferral Account ("MoPIDA"), BOMA,[71] CCC,[72] and EP[73] argue that the OEB should defer any decision on waiving the materiality threshold until Toronto Hydro's next rebasing application. Their position rests on the premise that there is "no harm" in waiting to decide this issue. That premise is wrong.

[66] EB-2026-0129, Procedural Order No. 1 (June 8, 2026).
[67] ED Submission (August 28, 2026), at pg. 1.
[68] BOMA Submission (August 28, 2026), at pg. 1.
[69] PP Submission (August 21, 2026), at pg. 2.
[70] See, e.g., EB-2012-0396, Decision with Reasons (Feb. 7, 2013), at page 15 (explaining that "the Board has exclusive jurisdiction over all matters related to the setting of just and reasonable rates, and no contract can transfer that jurisdiction to a court or any other body").
[71] BOMA Submission (August 28, 2026), at pg. 3.
[72] CCC Submission (August 23, 2026), at pg. 3.
[73] EP Submission (August 28, 2026), at pg. 3.

54. A materiality threshold directly undermines the purpose of the MoP incentive. As discussed in Section 2.2 above, and in Toronto Hydro's Argument in Chief[74] and its response to interrogatory BOMA-2,[75] the MoP incentive is designed to provide regulatory certainty in order to encourage investment in non-wires solutions. A materiality threshold destroys that certainty and dilutes the effectiveness of the incentive to encourage investment – particularly for emerging and developing programs that are smaller in scale. If a distributor faces a real risk that the MoP balance will fall below the materiality threshold and never be recovered, the rational response could be to forgo or second-guess the very investments the incentive was created to promote. The result is a policy that exists on paper but fails to achieve its purpose in practice.

55. The intervenors offer no explanation of what would be gained by deferring this decision. The issue has been fully briefed, and a complete record has been developed. All parties are seized of the question. Deferral would only require the OEB and the parties to revisit an issue that is ripe for determination now. Toronto Hydro submits that this would be an inefficient use of future regulatory resources with no corresponding benefit.

56. Importantly, waiving the materiality threshold does not predetermine recovery of any MoPIDA amounts. Toronto Hydro will remain required, at its next rebasing application, to establish that the balance was prudently incurred and causally linked to the MoP incentive before any clearance can be approved.[76] The requested materiality exemption merely removes a procedural threshold that would otherwise preclude consideration of the account. The substantive safeguards with respect to the recovery of any balances in this account remain intact through the OEB's prudence review at rebasing.

57. While BOMA is correct that Toronto Hydro is not aware of any other account for which the materiality threshold has been waived,[77] Toronto Hydro submits that there is likewise no other account that records an incentive, rather than costs, established and mandated by the DSC to advance a specific policy objective. The materiality threshold is appropriately applied to costs because it reflects an expectation that distributors will manage immaterial amounts as part of their normal operations. That rationale does not apply to the NWS incentive. The MoP was deliberately established to remove barriers for the use of NWS and to advance the OEB's policy objectives. Applying a materiality threshold would undermine that purpose by

[74] Argument in Chief (August 18, 2026), at pg. 8.
[75] Interrogatory Response to BOMA-2, at pg. 1.
[76] Schedule 3, pg. 12 at lines 14 – 19.
[77] BOMA Submission (August 28, 2026), at pg. 3.

denying recovery of the incentive in circumstances where the eligibility requirements prescribed by the DSC have otherwise been satisfied.

4.2 <u>The effective date of the proposed Margin-on-Payments incentive term should begin on May 1, 2026</u>

58. In the MoP Application, Toronto Hydro proposes an effective date of May 1, 2026 for the MoP incentive term.[78] Only CCC disputes the appropriateness of this date, arguing that there is no reason why the effective date should predate the date of the OEB's decision.[79]

59. May 1, 2026 is not an arbitrary date; it is directly aligned with the operation of the LDR program in the current year, which runs from June through September.[80] This alignment is consistent with Section 11.3.2(b) of the DSC, which contemplates that the incentive applies for the remainder of the current rate term.[81]

60. CCC's characterization of the May 1, 2026 effective date as "retroactive" is, with respect, a misnomer: the application was filed, and the OEB was seized of the matter, before the proposed effective date.

61. Moreover, due to the time it takes to prepare and adjudicate an application, setting effective dates that predate a Decision and Order is not an uncommon occurrence in rate-setting applications. For example, in EB-2024-0115, the OEB issued its Decision and Order on June 4, 2026, more than five months after the effective date of January 1, 2026.[82]

62. For all these reasons, Toronto Hydro submits that the OEB should reject CCC's submission and approve the proposed effective date of May 1, 2026.

5.0 RESPONSE TO LDR PROGRAM-SPECIFIC SUBMISSIONS

63. EP's submission raises several concerns regarding the LDR Program, particularly with respect to data centres,[83] program operation, administration, and participation.[84] However, EP does not explain how these concerns relate to the eligibility requirements set forth in Section 11 of the DSC.

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[78] Schedule 1, at pg. 3.
[79] CCC Submission (August 23, 2026), at pg. 3.
[80] Schedule 3, pg. 8 at lines 1-2.
[81] Ibid, pg. 10 at lines 19-21.
[82] EB-2024-0115, Decision and Rate Order, Hydro Ottawa Limited, Application for Electricity Distribution Rates and Other Charges Beginning January 1, 2026 (June 4, 2026).
[83] EP Submission (August 28, 2026), at pg. 3.
[84] Ibid.

64. Toronto Hydro's LDR Program is funded as a NWS through distribution rates approved as part of the 2025-2029 CIR Application.[85] Toronto Hydro is not seeking approval for any modifications to that program in this Application.[86] Therefore, any requests regarding the justification and approval of this program in general are out of scope of this proceeding, which is limited to the applicability of Section 11 of the DSC.

- ALL OF WHICH IS RESPECTFULLY SUBMITTED -

[85] OEB Staff Submission (August 27, 2026), at pg. 1.
[86] Responses to Preliminary Questions (May 15, 2026), at pg. 3.