



Ontario Energy Board
Commission de l'Énergie
de l'Ontario

RP-2000-0021
EB-2000-0078

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

AND IN THE MATTER OF an Application by Toronto
Hydro-Electric System Limited for an interim order or orders
approving or fixing just and reasonable rates.

DECISION WITH REASONS

Introduction

Toronto Hydro-Electric System Limited (“Toronto Hydro”) filed with the Ontario Energy Board (“the Board”) an Application (“the Application”) dated April 14, 2000 for an order or orders approving or fixing just and reasonable rates and other charges for the distribution of electricity commencing July 1, 2000. As part of its Application Toronto Hydro sought an interim order, should a final decision not be rendered by the Board on or before July 1, 2000. This latter request was given Board File EB-2000-0078.

On June 7, 2000 the Board received a Ministerial Directive directing the Board to: give primacy to the objective of protecting the interests of consumers with respect to prices and the reliability and quality of electricity service; and, invite representations from the council(s) of the municipal corporation(s) within the service area of the distributor before making a rate order for the distributor.

In a letter to the Chair of the Board, dated June 8, 2000, the Minister asked the Board to provide him with a plan outlining how the Board will implement the Directive prior to making any rate decisions.

Pursuant to Procedural Order No. 3, dated June 8, 2000, a hearing was set for June 15, 2000 to hear the following matters:

1. Submissions regarding the approval, on an interim basis, of the rates as filed by Toronto Hydro, or as adjusted if necessary in accordance with the Directive, for implementation July 1, 2000.

2. Submissions regarding the request of certain intervening parties that the Board, in setting final rates, proceed by way of oral hearing.

The following parties participated actively in the hearing:

Ms Jennifer Lea for the Board in cross examination.

Mr. Murray Klippenstein for Pollution Probe in cross examination and argument.

Mr. Mark Matson for Energy Probe in cross examination and argument.

Mr. Robert Warren for the Consumers Association of Canada via a written submission.

Toronto Hydro was represented by Mr. Bruce MacOdrum. The witnesses for Toronto Hydro were Ms Catherine David Nolan, Ms Susan Davidson and Mr. Rick Zebrowski.

The full record of the hearing is available at the Board's offices.

On June 19, 2000 the Board submitted to the Minister a plan to deal with the implications of the Directive. The plan contemplates a generic proceeding in mid-July, 2000.

Board Findings

First, the request for interim rates.

Toronto Hydro states that it requires interim rates for the distribution of electricity effective July 1, 2000 to avoid financial hardship and to have information systems operating at market opening. Toronto Hydro notes that it requires a Board decision no later than June 23, 2000 to implement the new rate structure and rates by July 1, 2000.

The tests for permitting interim rate relief can vary, depending on circumstances. A necessary consideration is whether *prime facie* the proposed rates are within a band of reasonableness. In this regard, Toronto Hydro argues that the proposed rates are just and reasonable in that they conform to the requirements of the Rate Handbook.

On the basis of the current provisions in the Rate Handbook, the Board has no basis *prime facie* to dispute Toronto Hydro's contention. However, given the Minister's Directive, the Board has adopted a plan to hold a generic proceeding commencing some time in mid-July 2000 to consider the implications of the Directive on the Rate Handbook.

The Board therefore concludes that the band of reasonableness test of Toronto Hydro's final rate proposals cannot be assessed under the circumstances.

Given the unique circumstances of the transition of the electricity distribution sector in bringing this sector into the new regulatory framework for market opening, in its November 15, 1999 memorandum to the electricity distribution utilities, the Board adopted the following test:

“... the Board may also grant interim rate approval where evidence filed in support of changes to residential and general service rates demonstrates financial distress, such as that indicated by a cash deficiency which cannot be financed”

Toronto Hydro states that current rates are insufficient to service the approximately \$1 billion debt held by the City of Toronto, Toronto Hydro's debt holder and shareholder. Servicing the debt payments is, according to the Company, the trigger for the requested interim rate increase. However, insufficiency does not equate to financial distress. When Toronto Hydro's witnesses were asked about the utility's ability to meet the June 30 and September 30 scheduled debt payments of approximately \$17 million each, they responded that they could meet these payments from the credit facility with a Canadian chartered bank. Therefore, no financial distress was demonstrated, at least not within the meaning and intent of the Board's November 19, 1999 memorandum. Having made this finding, the Board need not comment on Energy Probe's perception of the situation being a “self-created emergency of financial instability”.

Also, Toronto Hydro was not able to demonstrate its concern that the use of the Bank credit line towards the payment of servicing the debt until final rates are in place would jeopardize its credit ratings. There were no specific plans provided for the possible issuance of debt instruments to third parties, only a general concern that unless rates are increased Toronto Hydro would not be able to obtain third party financing to replace bank line borrowings. If such financing plans were imminent and within the period from now until final rates are put in place, Toronto Hydro should have put those forward. It did not. Neither did Toronto Hydro demonstrate that its capital program or operating budget would be impaired, as it alluded to, as a result of possible re-channeling of funds to meeting debt interest payments to the City of Toronto.

On the matter of Toronto Hydro being able to roll out its new information and billing system incorporating the provisions in the Rate Handbook in advance of market opening, the Board is sympathetic to Toronto Hydro's dilemma. The Board does not dispute the soundness of an early roll out approach, given the substantial complexities involved in transferring customer information from the current system to an entirely new system and the need to be ready for market opening.

The Board sees merit in not unnecessarily or unduly delaying the roll out of the new information system and billing system, which may jeopardize Toronto Hydro's readiness for market opening. The issue is whether the early roll out should be determinative of the need for the requested interim rates on July 1, 2000.

In light of the Board's findings that no financial distress has been demonstrated, the Board is willing to approve the new rate structure as proposed by Toronto Hydro, including its harmonization proposals, but without any additional revenue to be generated overall to Toronto Hydro from the new rate structure. Harmonization, according to Toronto Hydro's proposal, will result in rate increases for some customers in the general service class, while other customers in that class will experience rate decreases. Given that harmonization, has already been accomplished for the residential class, any impact on residential bills would result only from the Rate Handbook's rate restructuring requirements. Overall, the rate changes would be revenue neutral for Toronto Hydro.

The Board appreciates Toronto Hydro's efforts which addressed the issue of proration given the limitations of the current information and billing system. However, in light of the effort and cost required to effect proration for consumption occurring prior to the implementation date, and in light of the Board's finding for revenue neutrality for Toronto Hydro, the Board is willing to approve the new rates for all bills issued on or after the implementation date, without proration.

The Board notes Toronto Hydro's testimony that its new information system will allow retroactive bill adjustments, as long as the rate structure remains unchanged. For example, should for whatever reason the final rates approved require adjustments, the Board notes that Toronto Hydro would be able to accommodate any such direction.

Should Toronto Hydro wish to proceed on the basis found appropriate by the Board, it must file a Draft Interim Rate Order with the Board. The proposed implementation date for the new rates must allow adequate time for the Board to verify the accuracy of the proposed rates.

Now on the second matter, the request by some parties for an oral hearing.

At a general level, the Board is impressed with the argument by Mr. Klippenstein, Counsel to Pollution Probe, as to the merits of oral hearings. However, the specific Demand Side Management related reasons cited by Mr. Klippenstein in support for arguing for an oral hearing in this specific case are less persuasive since this matter has already been dealt with by the Board in the Rate Handbook. Toronto Hydro's application does not appear to deviate from the provisions in the Rate Handbook. Any residual issues regarding Demand Side Management could, in the Board's view, be adequately dealt with through a written process. The argument by Mr. Matson, Counsel to Energy Probe, goes to issues that are beyond the more narrow scope of the appropriate implementation of the Rate Handbook by one utility.

In any event, a final determination regarding the form of the hearing for setting final rates will have to await the results of the generic proceedings contemplated by the Board on certain matters arising from the Directive.

The Board will defer the issue of costs and cost awards to the final proceeding.

DATED at Toronto, June 22, 2000

On behalf of the Board Panel of Mr. Paul Vlahos and Mr. Art Birchenough

Original signed by

Paul Vlahos
Vice Chair and Presiding Member