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June 30, 2020

Sent by Email (Christine.Long@oeb.ca)

Ms. Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: OEB Seeks Input on Virtual Hearings

In its letter dated June 17, 2020, the Ontario Energy Board (“**OEB**”) advised that, as a result of the COVID-19 pandemic, it is beginning to take steps to ensure that it is ready to hold virtual oral hearings in the event it becomes necessary to do so. As part of the initial planning stage, the OEB requested feedback on the following questions:

1. What issues should the OEB consider as it plans for the ability to conduct a virtual hearing?
2. Are there any technical obstacles which would prevent stakeholders from participating in a virtual hearing?
3. Are there matters that should be specifically discussed at a pre-hearing conference in advance of a virtual hearing?

Toronto Hydro-Electric System Limited (“**Toronto Hydro**”) thanks the OEB for taking this initiative and for the opportunity provide comments at this initial planning stage.

1.0 INTRODUCTION

Toronto Hydro supports the OEB’s initiative to enable virtual hearings. Given the current uncertainty surrounding public health measures going forward, there is a distinct possibility that physical distancing requirements will be in place for the remainder of the year and perhaps into 2021. Toronto Hydro agrees that the resolution of applications should not be delayed pending the ability to conduct traditional in-person hearings.

Toronto Hydro believes that a “one-size-fits-all” approach to virtual hearings may result in both unnecessary technical hurdles and avoidable procedural fairness issues. As the OEB is well aware,

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there is significant variation in the scope, volume and complexity of OEB applications. While simpler applications may lend themselves to efficient resolution by way of virtual hearings, the same procedures may not necessarily be transferable to larger-scale applications.

Toronto Hydro respectfully submits that the OEB’s approach to virtual hearings should reflect an understanding that each application will require its own tailored approach, and that in some cases, a virtual hearing may not be appropriate at all. Accordingly, Toronto Hydro respectfully submits that the OEB should maintain a high degree of flexibility to determine, on a case-by-case basis, (i) whether a virtual hearing is appropriate in the circumstances and (ii) if so, the particular procedural framework and safeguards necessary to preserve a fair and just process.

2.0 A TAILORED APPROACH

Toronto Hydro notes that the OEB contemplates a framework whereby “*pre-hearing conferences will be held well in advance of actual hearing dates, in order to seek input from the applicant and intervenors, and to establish procedures specific to that virtual hearing.*” While it generally supports this approach, Toronto Hydro submits that the approach appears to pre-suppose that virtual hearings will be proceeding in each case for which a pre-hearing conference is held. Toronto Hydro submits that this should not be presumed, and that the case management process should include consideration of whether a virtual hearing is appropriate in the circumstances. Toronto Hydro does not suggest that all parties’ consent is required to proceed with a virtual hearing; however, to preserve procedural fairness, Toronto Hydro encourages the OEB to consider the parties’ positions on the issue in determining whether a virtual hearing is suitable in the specific circumstances of the application in question.

Toronto Hydro notes that more complex applications will likely require more creative and adaptive measures. This need for flexibility is consistent with the OEB’s general approach to incorporating technology into oral hearings. For instance, in its recent announcement of the Digitization Program, the OEB noted: “*Although we are eliminating the need for parties to submit a paper copy of their filing, on a case-by-case basis, the OEB may request working copy documents in large and complex applications*”. Toronto Hydro believes that this statement reflects the OEB’s understanding that large and complex applications may warrant their own tailored procedures which deviate from the *status quo*. Similarly, a “one-size-fits-all” virtual hearings approach that overlooks case-by-case assessments could prejudice the applicant’s procedural fairness, as well as the efficient conduct of the application.

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Toronto Hydro has not turned its mind to consider all the potential issue that may arise from proceeding with a virtual hearing in a particular case. From our perspective, the critical point is that the procedural framework should provide sufficient flexibility to consider and address any such issues in the specific circumstances. However, there is one particular issue that in Toronto Hydro’s view, may become salient in a number of cases and therefore warrants specific mention: the relative locations of the various parties and their witnesses.

Toronto Hydro submits that the fact that *certain aspects* of a hearing are virtual does not entail that *all aspects* of the hearing must be virtual. From the applicant’s perspective, there is considerable value in having company witnesses, representatives and counsel attend jointly. These arrangements would be impossible if every person were required to join a virtual hearing through a separate Zoom account. However, in the context of a “partially virtual” hearing, smaller scale, in-person interactions could be preserved by allowing parties to participate in the hearing in self-contained groups. For example, a full witness panel along with counsel and key company representatives, all located at a distributor’s head office, could join a virtual hearing as a unit via a single Zoom account. Toronto Hydro believes that this type of flexible arrangement would be invaluable in maintaining fairness and efficiency in circumstances where in-person hearings cannot be accommodated. Similarly, the OEB should consider, where possible and in accordance with applicable public health and safety principles, holding “partially virtual” hearings at the OEB’s offices, in which some participants would be present in-person and others would be required to join the hearing via Zoom or teleconference.

3.0 CONCLUSION

The considerations set out above are not exhaustive – each application will have its own challenges and issues to address. Toronto Hydro believes that with a flexible and adaptive approach, which tailors each virtual hearing to the unique requirements of the case, the OEB will be well-positioned to proceed with virtual hearings in a fair, reasonable and efficient manner.

Respectfully,

A handwritten signature in black ink, appearing to read "Daliana", written over a horizontal dotted line.

Daliana Coban

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Toronto Hydro-Electric System Limited