



ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION

**Application by 1798594 Ontario Inc. for a distribution licence;
Applications by Toronto Hydro Energy Services Inc. for leave to sell
streetlighting assets; and**

**Application by Toronto Hydro-Electric System Limited and
1798594 Ontario Inc. for leave to amalgamate**

EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183

November 27, 2009

1. INTRODUCTION

On June 15, 2009, 1798594 Ontario Inc. (“NewCo”), Toronto Hydro Energy Services Inc. (“THESI”) and Toronto Hydro-Electric System Limited (“THESL”), collectively referred to as the “Applicants” filed applications with the Ontario Energy Board (“the Board”) under sections 60(1), 86(1)(a)(b)(c) and 77(5) of *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the “Act”). The applications were later amended to include among other things, a request for an order under section 18(2) of the Act.

This submission reflects Board staff’s observations resulting from its review of the pre-filed evidence and interrogatory responses made by the Applicants as well as the oral cross-examination of the Applicants’ witnesses. The submission is intended to assist the Board in evaluating the applications.

2. THE APPLICATION

The applications by NewCo, THESI and THESL collectively seek a declaration by the Board that the assets associated with streetlighting in the City of Toronto (the “SEL System”) are deemed a distribution system and, ultimately, to make the streetlighting assets owned by THESI part of a new amalgamated distribution company consisting of THESL and NewCo (“NewTHESL”). Specifically, NewCo has applied for a distribution licence under section 60(1) of the Act to own and operate the streetlighting system in the City of Toronto. In the same application, NewCo seeks a declaration by the Board that the SEL System is deemed a distribution system. THESI currently owns, and pursuant to a service agreement with the City of Toronto, operates and maintains the SEL System. THESI has applied to the Board for leave to sell the SEL System to NewCo under sections 86(1)(a) and (b) of the Act. If all Board approvals sought are granted, THESI intends to transfer the SEL System and its service agreement with the City of Toronto to NewCo. Furthermore, NewCo and THESL applied under section 86(1)(c) of the Act for an order granting leave to amalgamate. If the Board grants leave to THESL and NewCo to amalgamate, THESL and NewCo request:

- (a) an order cancelling the electricity distribution licence of NewCo under section 77(5) of the Act; and

- (b) an order assigning THESL's electricity distribution licence to the amalgamated entity, NewTHESL, under section 18(2) of the Act.

The effect of the proposed licensing, asset transfer and merger transactions is to create an electricity distribution company for the City of Toronto, which includes the SEL System.

3. BOARD STAFF'S SUBMISSION

Board staff's comments are focused on four areas relating to these applications as follows:

1. Whether or not the SEL System is so integrated with and central to the remaining electrical distribution system in the City of Toronto that it should be included in Toronto Hydro's distribution business?
2. Whether or not the SEL System as an entirety meets the definition of the distribution system as defined in the Act? If not,
3. Whether or not THESL can service that part of the SEL System that is considered a non-distribution system asset? and
4. Whether or not the proposed transactions would have an adverse effect relative to the status quo of the Applicants and their customers in relation to the Board's statutory objectives in relation to electricity.

Each of these points is discussed below. It should be noted that Board staff's comments and submissions throughout this document are specific to the circumstances of the subject applications based on the evidence and the testimonies of the witnesses and should not be construed as a generic submission applicable to other streetlighting systems in Ontario

3.1 Does the SEL System constitute part of the distribution System serving the City of Toronto?

Board staff notes that one of the issues before the Board is whether or not the SEL System constitutes part of the distribution system in the City of Toronto and whether it can be separated from the distribution system effectively. Board staff believes that in its

assessment of this issue, the Board should consider the historical and ongoing utilization of the SEL System and whether there have been changes in the use of the SEL System as a result of changes in regulatory and government policies relating to ownership and operations of streetlighting assets.

The evidence indicates and the Applicants' witnesses testified that the SEL system was designed and installed as part of an integrated distribution system for the City of Toronto, with no provision being made for definitive demarcation points to effectively separate THESL distribution assets from the SEL System. Furthermore, the evidence demonstrates that the SEL system has been and continues to be used for the purpose of connecting and distributing electricity to numerous end use customers including The City of Toronto (to provide street lighting and expressway lighting services throughout the City), Toronto Transit Commission (street car signals, transit facilities, etc.), Toronto Transportation and Works (traffic lighting and cross walks), Business Improvement Areas, Parks and Recreation, COGECO Data Services Inc., Bell Canada, Rogers Communications and various other customers (signage boards, banners, etc.)

The evidence shows and it is apparent that there have been changes in the legal and regulatory framework pertaining to the electricity distribution sector since the 1980s that had direct impacts on electricity distributors' involvement with streetlighting ownership and activities. Specifically, in 1985, the former Ontario Hydro instituted a policy requiring electric commissions to transfer ownership of their streetlighting system to their respective municipalities, which according to the Applicants' evidence led to the transfer of the SEL System from THESL's predecessor, Toronto Hydro-Electric Commission to the City of Toronto in 1989. In addition, in 2000 electricity distributors were prohibited from carrying on business activities other than distributing electricity, which as confirmed by the Applicants' witnesses, ultimately led to the creation of THESI's predecessor, Toronto Hydro Street Lighting Inc. in 2002 to carry on the streetlighting activity.

However, it is noteworthy that despite those policy changes, there have been no changes in the utilization of the SEL System. The evidence demonstrates that the SEL system has been used in the same fashion as it always has been, back to the date it was owned and operated by Toronto Hydro-Electric Commission. The SEL System continues to be used to connect various loads within the City of Toronto. This point was established during the second day of the oral hearing and is noted at transcript volume 2, pages 63-67. In fact, it appears from the testimony of Mr. LaPianta of THESL

that since 2000, there has been a heavier reliance on the SEL System in the City of Toronto to connect unmetered scattered load customers. Below is Mr. LaPianta's response to a question by Mr. Quesnelle, Board Member respecting the use of the SEL System asked on the second day of the hearing:

"MR. LaPianta: Just to add on to what Mr. Couillard just said, in general, yes, nothing has really changed other than the -- the exponential growth of unmetered scattered load connected to these assets. It has proliferated, really since about 2000.

There is much more street furniture, many more of these billboards. A lot of people are trying to connect to that particular portion of the system"

Board staff submits that the fact that THESL has been and continues to use the SEL System to connect loads throughout the City of Toronto demonstrates that the SEL System in the City of Toronto was designed as part of the overall distribution system and was built in such a way that it could be leveraged later on. This is evident in the following exchange between Mr. Buonaguro, counsel to the Vulnerable Energy Consumers Coalition and Mr. LaPianta of THESL:

"MR. Buonaguro: In terms of leveraging the existing streetlighting structure, is it essentially -- it sounds like it's an accident of the physical characteristics of street lights, that they're useful to THESL in hanging wire, for example, as opposed to a TTC shelter or a telephone booth.

MR. LaPianta: Perhaps. But I think the larger reason, the bigger reason, is that, quite frankly, the streetlighting system grew up with the electrical distribution system for the past 90 years. It was part and parcel of the electrical distribution system. It is not by coincidence that we have the ability now to leverage -- to use a street light concrete pole to feed what is otherwise an unmetered scattered load.

The systems have always been very integrated and continue to be integrated, and that is what is posing, to a large extent, the problem that we face today.

MR. Buonaguro: Okay. What I am understanding from that is that it is not an accident, which is the word I used. You're saying part of it is that they were built in such a way that they could be leveraged later on?

MR. LaPianta: Absolutely."

In summary, Board staff submits that the ongoing and increased reliance on the SEL System as distribution assets within the City of Toronto irrespective of ownership and changes in policies demonstrates that the SEL System is in fact a central part of the

distribution system that in Board staff's view cannot be effectively separated from THESL's distribution system.

This conclusion leads to the next issue that requires the Board's consideration, which is whether or not the SEL System as an entirety meets the definition of the distribution system as defined in the Act.

3.2 Does the SEL System as an entirety meet the definition of the distribution system as defined in the Act?

The term "distribute" and "distribution system" are defined in the Act as follows:

- (a) "distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less.
- (b) "distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose.

The evidence indicates that the infrastructure associated with the Streetlighting System conveys electricity at voltages of 0.120 kV (which is the typical secondary supply voltage) and that limited application/areas of higher secondary voltage associated with the SEL System reflect operating voltages of 0.347 kV and 0.600 kV.

On the first day of the hearing, the witnesses presented a series of diagrams demonstrating different scenarios where the SEL System is being utilized to convey electricity to various loads such as telephone booths, bus shelters, and billboards, among other things through connections made at various parts of the system.

Board staff submits that the evidence does confirm that most components of the SEL System meets the definition of the distribution system as defined in the Act in that they convey electricity at a voltage of less than 50 kilovolts and include structures, equipment or other things used for that purpose.

However, in Board staff's view, it is also a fact that the SEL System consumes electricity at some point. "Streetlight" is a class of customer currently charged for distribution services by THESL. Therefore, it is Board staff's position that not all components of the SEL system meet the Act's definition of the distribution system as at a certain point the system does act like a load and consumes electricity. It is Board staff's position that

distribution stops at the luminaire. As stated above, through presentation of a series of diagrams showing different scenarios where the SEL System was being utilized to convey electricity, it was demonstrated by the Applicants' witnesses that connections through the SEL System are made at various parts/components of the system.

However, neither the pre-filed evidence nor the testimony of the witnesses demonstrated that the luminaire was used for the purpose of conveying electricity. Board staff therefore submits that the luminaires cannot be characterized as distribution assets as they do not meet the statutory definition of a distribution system.

Board staff's conclusion that the SEL System excluding the luminaire should be deemed a distribution system, as was sought in the applications, leads to the third issue that requires the Board's consideration, which is whether THESL can service that part of the SEL system that is considered non-distribution assets (i.e. provide lighting services to the City of Toronto).

3.3 Can THESL service the non-distribution components of the SEL System?

The Applicants' witnesses expressed their views on the overall efficiencies that will be gained through servicing the SEL System as an entirety. Mr. Sardana of THESL indicated that leaving the luminaires behind introduces one more level of inefficiency into the system. Board staff agrees that it would be more efficient for one entity to service the SEL System. However, Board staff is also aware of statutory prohibitions in this regard. Specifically Section 71 of the Act prohibits electricity distributors from carrying on business activities other than distributing electricity subject to a number of exceptions. Accordingly, any activities relating to that part of the SEL System that is not a distribution system asset is not considered a distribution activity. However, there are a number of exceptions made to section 71 of the Act. They are provided under section 71(2) of the Act as follows:

Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the Electricity Act, 1998 that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

- (a) the promotion of electricity conservation and the efficient use of electricity;
- (b) electricity load management; or

- (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. 2004, c. 23, Sched. B, s. 12.

Board staff submits that the Board should consider whether streetlighting services fall under one or more of the above exceptions

It is Board staff's view that if the Board finds that THESL could provide streetlighting services to the City of Toronto, this activity should be carried out separate from the regulated electricity distribution activities. Accordingly, the luminaires should be excluded from THESL's distribution asset-base and any associated costs and expenses should not be dealt with through distribution rates.

3.4 Would the proposed transactions have an adverse effect relative to the status quo of the applicants and customers in relation to the Board's statutory objectives contained in Section 1 of the Act?

In determining applications under section 86 of the Act, the Board has been guided by the principles set out in the Board's decision in RP-2005-0018/EB-2005-0234/EB-2005-0254 and EB-2005-0257. The Board's decision established the scope of issues that the Board will consider in determining applications under section 86 of the Act and ruled that the "no harm" test is the relevant test. The "no harm" test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo of the applicants and their customers in relation to the Board's statutory objectives in section 1 of the Act. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, the application should be granted.

In their applications, the applicants state that adequacy, reliability and quality of electricity service will be enhanced by allowing a single, integrated workforce to respond to the overall system rather than duplicating service arrangements as is the case under status quo. The evidence further indicates that the proposed transactions will serve to protect public safety through safety by design and consistent application of engineering design and construction standards. Although the Applicants could not quantify the operational efficiencies and savings anticipated from the proposed transactions, the evidence suggests that savings could be achieved from among other things, the integration of the operations and maintenance of the systems, integration of computer record systems and consolidation of maintenance crew programs. The evidence also indicates that the transactions will eliminate the need for redundant infrastructure

thereby reducing capital and maintenance costs.

With respect to rate impacts on customers, the evidence suggests and the witness testified that customer classes other than streetlighting and unmetered scattered load customers will not be affected by the proposed transactions. All costs and offsetting revenues will be directly allocated to the specific streetlighting and unmetered scattered load customers served by those assets. The evidence indicates that the amalgamation is not expected to have a material impact on THESL's financial position and that the inclusion of the SEL System into THESL is not expected to change the overall risk profile of NewTHESL. The evidence further indicates that THESL's overall level of debt is not forecast to change with the inclusion of the SEL System.

If the Board grants the application, Board staff notes that the rate impact on the streetlighting and unmetered scattered load customers will depend on what part of the SEL System will be deemed distribution assets and the amount that the Board will allow to be added to rate-base.

Generally, subject to submissions made in the previous sections of this document, Board staff believes that the proposed transactions will not have an adverse effect relative to the status quo of the Applicants and their customers in relation to the Board's statutory objectives in relation to electricity.

All of which is respectfully submitted