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October 25, 2010

Kirsten Walli  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

**Delivered by Email**

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited EDR 2011  
OEB File No. EB-2010-0142**

Toronto Hydro-Electric System Limited (“THESL”) is in receipt of Procedural Order No. 1 dated October 18, 2010 and our client submits the following on the Board’s draft issues list as attached to the Procedural Order as Appendix B.

**Draft Issues List**

**Issue 1.4 Is the overall increase in the 2011 revenue requirement reasonable given the overall bill impact on consumers?**

While information on overall consumer bill impacts has been provided by THESL in the prefiled materials, THESL is concerned that issue 1.4, as currently worded, can be interpreted to give more prominence or weight to one specific criterion in determining “just and reasonable” rates and thereby excluding or de-emphasizing other relevant and important criteria.

For example, Section 1(1) of the *OEB Act* requires that the Board, in carrying out its responsibilities under the Act in relation to electricity, shall be guided by, among other things, the objectives of protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service. In THESL’s view issue 1.4 should either reference all the relevant objectives which the Board must consider or make the issue more generic.

THESL recommends that Issue 1.4 be changed to the following:

Is the overall increase in the 2011 distribution revenue requirement reasonable given its impact on the overall bill for consumers, and given the requirement to maintain the adequacy, reliability and quality of electricity service?

THESL acknowledges that the impact of any distribution increase on the total (current) bill faced by consumers is a key indicator for the Board to consider. However, that is a distinctly different exercise than what would be involved under an improper interpretation of the existing question, namely that THESL's proposals should be judged not on their own merits but instead with reference to factors that are completely exogenous to the distribution of electricity, such as movements in transmission, commodity, and other rates or regulated charges. THESL does not and cannot have any control or accountability for these kinds of exogenous factors, which should be taken as given and not be considered relevant to the merits of THESL's proposals.

**Issue 1.5      When would it be appropriate for Toronto Hydro to commence filing rate applications under incentive regulation? Is this application an appropriate base case for a future IRM application? If not, why not?**

THESL submits that this issue is not relevant to the current proceeding, which is focused on approval of just and reasonable distribution rates effective May 1, 2011, and that it should be removed from the issues list. In its previous rate applications and in the current rate application before the Board, THESL has presented clear evidence that the utility is in the midst of a substantial infrastructure renewal effort associated with its aging distribution network as well as a timely replacement of a significant portion of its workforce as many of its workers retire. At this time THESL anticipates filing separate cost of service applications until an alternative mechanism is in place which accommodates and does not prejudice the merits of capital spending and other factors which cause revenue requirements to increase apart from the influence of inflation and productivity growth. The development and implementation of such a mechanism cannot be forecast with certainty at this time. THESL submits that it would not be a productive use of hearing time and resources to entertain a speculative discussion around how the existing incentive regulation mechanism might be changed in order to accommodate THESL's specific circumstances.

THESL is also concerned that any consideration or ruling on proposed issue 1.5 could in the future be interpreted as somehow binding a future panel, which THESL submits is clearly inappropriate and beyond the Board's jurisdiction in any event.

Accordingly, THESL submits that issue 1.5 be removed from the issues list.

**Issue 3.8      Is Toronto Hydro's proposal to recover a one-time late Payment Penalty Settlement expense in the amount of \$7.75 million appropriate?**

THESL submits that the procedural approach to this issue needs to be clarified. THESL is requesting that the \$7.75M in expenses be recovered as a rate rider. The allocation of this cost and the duration of the rate rider are issues which THESL expects to be reviewed and decided upon in this proceeding.

However, THESL along with substantially all other distributors considers any questions concerning the prudence of the late payment settlement to be a generic issue facing the entire Ontario distribution sector, and has requested that the Board sever the question of prudence and any other generic issues from the proceeding for review and consideration by the Board in a generic proceeding instead. The Board should indicate at this stage what procedural approach it will use to address these issues, and if the Board declines to hear the generic issues generically, THESL will file further evidence in this proceeding addressing the preliminary questions of prudence etc.

THESL submits that issue 3.8 be amended as follows, assuming that the generic issues are severed:

Are THESL's proposals regarding the derivation and duration of rate riders to cover the one-time late Payment Penalty Settlement expense in the amount of \$7.75 million commencing in 2011 appropriate?

**Issue 6.1 Is the proposal for the amounts, disposition and continuance of Toronto Hydro's existing Deferral and Variance Accounts appropriate?**

THESL accepts this issue on the understanding that the Board's findings as contained in the July 28, 2009 OEB Report on the Transition to International Financial Reporting Standards (EB-2008-0408) apply in this case, wherein the Board decided that it will continue to use deferral and variance accounts for rate making in appropriate circumstances, whether or not these accounts are recognized under IFRS.

**Issue 7.2 Is Toronto Hydro's suite metering cost allocation study appropriate?**

THESL recommends that the word "study" be deleted from the statement of this issue as the proper focus of this issue should be on the whether the cost allocation proposed is appropriate, and not whether the study itself is appropriate.

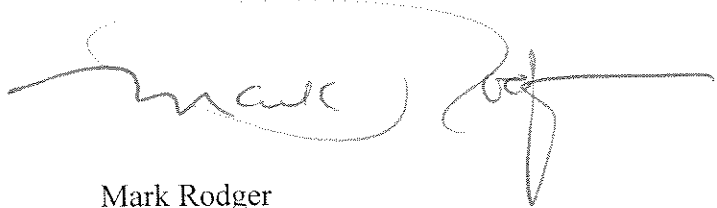
**Schedule**

The Board has directed that THESL file its report on the Suite Metering Cost of Study by December 1, 2010. Anticipating that Board Staff and intervenors may wish to submit interrogatories on this evidence, and given various key THESL staffing constraints and limitations over the Holiday Season, THESL submits that it would be appropriate for the Board not to schedule any filing deadlines or other dates associated with this proceeding beyond Friday December 17, 2010 until the New Year.

Finally, THESL will provide any response to intervenor submissions on the draft issues list by Friday October 29, 2010.

Yours very truly

**BORDEN LADNER GERVAIS LLP**

A handwritten signature in black ink, appearing to read "Mark Rodger", with a long horizontal flourish extending to the right.

Mark Rodger

copy to:

Glen Winn, Toronto Hydro-Electric System Limited  
All Parties