



EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

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

AND IN THE MATTER OF an application pursuant to section 60(1) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking an electricity distribution licence;

AND IN THE MATTER OF an application pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets as an entirety or substantially as an entirety to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(b) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets necessary in serving the public to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(c) by Toronto Hydro-Electric System Limited and 1798594 Ontario Inc. seeking leave to amalgamate;

AND IN THE MATTER OF a request pursuant to section 77(5) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking the cancellation of the distribution licence applied for in a separate application under section 60 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application pursuant to section 18(2) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited for an order assigning Toronto Hydro-Electric System Limited's electricity distribution licence to a proposed amalgamated entity consisting of 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited.

PROCEDURAL ORDER NO. 5

On June 15, 2009, Toronto Hydro Corporation's subsidiaries, 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 a request for an order under section 18(2) of the Act and to withdraw the request which had been made under section 77(5) of the Act. The Board assigned the applications file numbers EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183.

The applications collectively sought a declaration by the Board that streetlighting assets in the City of Toronto, owned by THESI, are deemed to be a distribution system and, ultimately, to make those assets part of a new amalgamated distribution company consisting of THESL and NewCo.

The Board issued its Decision and Order on the applications on February 11, 2010 (the “Decision”). In the Decision, the Board approved the transfer of assets that it considered to be distribution assets. Those assets were specifically identified in the Decision. The approval was conditional on the Applicants filing additional evidence setting out the revised transactions including an asset valuation within 90 days. The filing date was later extended to January 31, 2011.

In accordance with the Board’s Decision and the Board’s letter of March 9, 2010, the Applicants filed additional evidence with the Board on January 31, 2011 (the “Additional Evidence”).

On February 18, 2011, the Board issued Procedural Order No. 4, in which it made provisions for interrogatories (“IRs”) and submission on the Additional Evidence. Board Staff, the Electrical Contractors Association of Ontario/Greater Toronto Electrical Contractors Association and the School Energy Coalition filed IRs. The Applicants’ responses to the IRs were filed with the Board on March 23, 2011.

The Board has now reviewed the Applicants’ responses to the IRs. Based on this review, the Board has determined that it requires additional information to that provided by the Applicants in order to complete the record of this proceeding. Specifically, the Board requires further information related to Board Staff’s IR No. 4.1. The Board has determined that the information originally requested by Board Staff is necessary for purposes of reviewing the Applicants’ proposed transfer price.

IR No. 4.1 reads as follows:

Recognizing that depreciated replacement cost is generally higher than depreciated historical acquisition cost due to the effects of inflation, and with reference to the distribution assets being transferred to THESL, for a representative sample of like assets from within the THESL distribution system, please state the approximate percentage amount by which depreciated replacement cost exceeds depreciated historical cost for the assets sampled.

The Applicants responded that THESL does not have the depreciated replacement costs (“DRC”) information on its distribution assets and, as such, did not provide the requested information.

The Board accepts that THESL does not have the DRC information on its distribution assets. However, the Board is of the view that the production of such information is warranted.

THESL seeks to revert to the net book value amount originally filed in the first phase of this proceeding (the “Original NBV”). THESL uses this Original NBV as the basis to establish the value of that portion of the total streetlighting assets that has been determined by THESL to provide distribution functionality. The evidence shows that the value established based on the Original NBV is considerably less than the value derived using the DRC methodology.

The Board notes that it did not accept the Original NBV of the streetlight assets filed in phase one of this proceeding as being a relevant indicator of the appropriateness of the applicant’s proposed transfer price. The record is clear that the Original NBV submitted then is based on a discounted cash flow (“DCF”) of the streetlight businesses’ future revenue stream. The Board rejected the premise that that valuation methodology had any correlation with the depreciated historic cost (“DHC”) of the assets.

The Board would like further evidence on the matter of depreciated historic cost for purposes of considering the relationship between depreciated historic cost and depreciated replacement cost and assessing the appropriateness of the Applicants’ proposal.

With this objective, the Board expects that THESL can assemble a sample group of assets from within its distribution system that resembles and is suitably comparable (in terms of life expectancy and functionality) to the assets to be transferred. The Board

expects that THESL can establish, or reasonably estimate, a DHC based value for the sample group.

The Board further expects that THESL can perform the same type of DRC valuation on the created sample group that it performed on the assets to be transferred and produce a DRC value of the sample group. The Board would then be informed as to the comparative ratio of the outcomes of the two valuation methodologies on the same group of assets.

THESL should provide whatever caveats or qualifiers it considers necessary in the reporting of its analysis and outcomes so as to inform the Board as to how THESL considers the information should be interpreted and used.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may amend this procedural order or issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. The Applicants will file with the Board a complete response to Board Staff interrogatory 4.1 in the manner required by the Board and deliver it to the intervenors in this proceeding on or before **April 27, 2011**.
2. Intervenors or Board Staff wishing to file a written submission on the Applicants' Additional Evidence shall file their submission with the Board and serve it on the Applicants and all intervenors on or before **May 24, 2011**.
3. If the Applicants wish to file a written reply submission, they shall file their reply submission with the Board and serve it on all intervenors on or before **June 14, 2011**.

Any filings to the Board must quote file numbers EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca If the web portal is

not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS OF THE BOARD

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

Tel: 1-877-632-2727 (toll free)
Fax: 416-440-7656
E-mail: Boardsec@ontarioenergyboard.ca

DATED at Toronto, April 6, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary