

Toronto Hydro-Electric System Limited  
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July 9, 2009

*Via RESS e-filing – signed original to follow by mail*

Ms. Kirsten Walli, Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge St, 27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited's ("THESL")  
Application for Approval and Recovery of Amounts  
Related to 2007 CDM Activities  
EB-2008-0401**

Pursuant to the Board's Procedural Order #2, issued on June 23, 2009, please find attached two hard copies of THESL's reply submission.

Please contact me at 416-542-2517 or at [regulatoryaffairs@torontohydro.com](mailto:regulatoryaffairs@torontohydro.com) for any inquiries regarding this proceeding.

Sincerely,

*[original signed by Jack Lenartowicz for]*

Glen Winn, Manager  
Regulatory Applications & Compliance

att.

cc: Intervenor on Record for EB-2008-0401

**EB-2008-0401**

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

**AND IN THE MATTER OF** an Application by Toronto  
Hydro-Electric System Limited for an Order or Orders granting  
approval and recovery of amounts related to Conservation and  
Demand Management activities.

**RESPONDING SUBMISSIONS OF TORONTO HYDRO-ELECTRIC SYSTEM  
LIMITED**

Filed: July 9, 2009

**A. INTRODUCTION AND PROCEDURAL MATTERS**

1. Toronto Hydro-Electric System Limited (“THESL”) provides these responding submissions pursuant to the direction provided by the Ontario Energy Board (“Board”) in its Procedural Order No. 2, issued on June 23, 2009 under docket number EB-2008-0401. That proceeding concerns an application for recovery of amounts related to Conservation and Demand Management (“CDM) programs in 2007, associated with the Lost Revenue Adjustment Mechanism (“LRAM”) and the Shared Savings Mechanism (“SSM”).
2. These submissions respond to the arguments of Energy Probe (“EP”) and the Vulnerable Energy Consumers Coalition (“VECC”). THESL did not receive submissions from any other party.
3. THESL acknowledges the supporting submissions filed by Pollution Probe (“PP”).

**B. INPUT ASSUMPTIONS**

4. In its filed submission VECC makes the argument that the “best available” input assumptions, contrary to THESL’s assertion, were not used as per the Board’s direction in its Guidelines for Distributor Conservation and Demand Management (“CDM Guidelines”), released on March 28, 2008 under docket number EB-2007-0037.
5. It is VECC’s position that instead of the OEB Assumptions and Measures List, THESL should have used the OPA’s Measures and Assumptions List (issued on February 15, 2008) for all components of its LRAM claim, arguing that this information was the “best available” at the time THESL had prepared its application and engaged in a Third Party Evaluation of its results.
6. THESL respectfully disagrees with VECC’s position, and observes that the proper use of input assumptions in LRAM and SSM claims has been clearly established by the Board.
7. On October 2, 2006, under docket number EB-2005-0523, the Board approved its latest version of the TRC Guide, which includes an Input and Assumptions List for use by distributors for the purposes of LRAM and SSM claims.

8. In THESL's EB-2007-0096 application for 2005 and 2006 LRAM and SSM, the Board, in its decision, made further observations and updates concerning the Input and Assumptions list.
9. On March 28, 2008 the Board approved the CDM Guidelines, intended to consolidate regulations governing utilities' CDM activities. On page 28 the guidelines state that "The input assumptions used for the calculation of LRAM should be the best available at the time of the third party assessment referred to in section 7.5."
10. On November 4, 2008, the Board initiated a proceeding under docket number EB-2008-0357 to determine whether to adopt the OPA's Measures and Assumptions List for use by distributors for the purposes of LRAM and SSM claims. The Board's letter, on page 1, formally noted that at the present time "Distributors are expected to use the Board's inputs and assumptions when doing a cost-benefit analysis of their CDM programs." In the resulting decision on January 27, 2009, the OPA's Measures and Assumptions List was adopted for use by distributors. The Board states on page 2, "The Board has determined that it will endorse the OPA List for use by distributors for the purposes of applications for new distribution rate-funded CDM programs, Lost Revenue Adjustment Mechanism ("LRAM") and Shared Savings Mechanism ("SSM") at this time."
11. In its comments, THESL sought further clarification as to the appropriate input assumptions to use in CDM applications. In response as part of its decision, the Board states:

"Toronto Hydro Electric System requested clarification on LRAM and third party assessments. At this time, the Board would like to clarify that the estimates of savings and adjustment factors used for the calculation of LRAM should be the best available at the time of the third party assessment referred to in section 7.5 of Guidelines for Electricity Distributor Conservation and Demand Management ("Guidelines")."
12. Contrary to VECC's suggestion, THESL maintains that it would be unreasonable to expect THESL to use a set of input assumptions in its CDM application that was not approved by the Board for distributor use until over four months after THESL's Third Party Evaluation had been completed. This would also be an unreasonable interpretation of the Board's decision. It is clear to THESL that in formally endorsing the OPA Measures and Assumption List, the Board could not in any reasonable way expect distributors to make use of it for the purposes of

- third party LRAM and SSM evaluations in any period prior to January 27, 2009, and consequently, did not expect distributors to use it for the purposes of calculating and submitting their LRAM and SSM claims.
13. THESL observes that the reliance on adopted Board decisions and principles is critical to a stable and efficient regulatory environment. Any suggestion that the at-the-time unapproved OPA input assumptions should have been used in place of the adopted and formally approved OEB Assumptions and Measures List would, in THESL's opinion, be blatantly contrary to the Board's authority and direction and the proper function of the regulatory environment.
  14. Furthermore, THESL notes that VECC offers no evidence to suggest that the OPA Measures and Assumptions List was in fact the "best available" prior to January 27, 2009, other than that according to VECC's estimates it produces savings results lower than the OEB Assumptions and Measures List, and that it was the "latest available" at the time THESL prepared its application.
  15. In a related statement, VECC asserts that THESL's third party (SeeLine Group Ltd) review was misguided in auditing THESL's results against the OEB's Assumptions and Measures List, arguing instead that the Third Party Assessment should have analyzed whether the OEB Assumptions and Measure List was the appropriate set of input assumptions to be used.
  16. THESL disagrees with this position.
  17. On page 29 of the CDM Guidelines, the Board explicitly states that among the objectives of the Third Party Assessment, is for the audit to: "Confirm that the input assumptions are those posted on the Board's website." and "Where any input assumptions have changed in previous years, confirm that the input assumptions were implemented consistent with section 7.3;"
  18. THESL reasserts that it has complied with all Board requirements, and has used the correct input assumptions in its LRAM and SSM claims.

**C. OPA PROGRAMS LRAM ELIGIBILITY**

19. The submissions of EP request that the Board disallow THESL's claim for LRAM resulting from OPA programs.
20. EP puts forward the position that the purpose of the LRAM is to eliminate a disincentive for utilities to both funding *and* implementing successful CDM programs. Consequently, it is EP's assertion that the LRAM resulting from

- THESL's OPA programs should be denied on the basis that the programs, while implemented by THESL, were funded by the OPA and not directly by THESL.
21. THESL disagrees with this position on both policy and regulatory grounds.
  22. It is THESL's position that the LRAM is intended to keep both distributors and ratepayers whole respecting CDM-related revenue variances. As noted in its response to interrogatories from EP, THESL believes that there is no reasonable policy basis to allow utilities to recover (or return) revenue variances due to CDM program performance variances for ratepayer-funded, utility-run CDM programs, but deny the same treatment for programs funded by the government or other sources and run within THESL's service territory. No relevant difference exists to support such a distinction. To take EP's view on the matter would mean that ratepayers would not be protected in the case of a substantial shortfall in CDM program performance simply because the operating expense related to the program was not in the utility revenue requirement. EP's position that applicability of the LRAM is limited by program operating expense funding is clearly misguided and misses the point.
  23. Furthermore, the Board has on multiple occasions expressly permitted the use of LRAM for recovery of lost revenues as a result of OPA programs. Most notably, on page 18 of the CDM Guidelines, the Board states:

“LRAM is available regardless of whether the programs are funded by the OPA or through distribution rates. The LRAM applies to programs implemented by the distributor, within its licensed service area, including programs delivered by the distributor itself and/or programs delivered for the distributor by a third party (under contract with the distributor, either in relation to rate-funded programs, or where the distributor has contracted with the OPA but has outsourced CDM program delivery to a third party).”
  24. THESL maintains that the Board's direction leaves no doubt as to the eligibility for OPA programs to qualify for a distributor's LRAM claim, and requests that the Board reject EP's suggestion that LRAM should only be claimed for programs funded directly by the utility.

**D. CONCLUSION**

25. For all of the foregoing reasons and those set out in its Application and its Interrogatory responses, THESL requests that the Board approve its LRAM and SSM claims in the total amount of \$3,489,822 (which is composed of the original total claim of \$3,702,236 net of carrying charges of \$212,414, as calculated up to April 2009). Given that rate implementation on May 1, 2009 is no longer possible, THESL also requests that the Board approve new carrying charges, to be calculated up to the date of rate implementation, based on the Board's prescribed interest rates and methodology. To avoid the burden to customers of unnecessarily frequent rate changes, THESL would like to avoid a November 1, 2009 implementation, and instead requests that recovery take place over a one year period commencing May 1, 2010.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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Glen Winn,  
Manager, Regulatory Applications & Compliance

JULY 9, 2009