



ONTARIO ENERGY BOARD

STAFF SUBMISSION

APPLICATION FOR RECOVERY OF CONTACT VOLTAGE COSTS

Toronto Hydro-Electric System Limited

EB-2009-0243

October 22, 2009

INTRODUCTION

On June 30, 2009 Toronto Hydro-Electric System Limited (“THESL” or the “Applicant”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”) requesting the Board’s approval of rate riders to recover costs incurred by THESL for the remediation of contact voltage conditions on its system, effective May 1, 2010.

The Vulnerable Energy Consumers’ Coalition (“VECC”), the School Energy Coalition (“SEC”), the Energy Probe Research Foundation (“Energy Probe”) and the Canadian Union of Public Employees, Local One (“CUPE One”) were granted intervenor status in this proceeding.

This submission reflects observations and concerns which arise from Board staff’s review of the pre-filed evidence and interrogatory responses made by THESL as well as the oral cross-examination of THESL’s witnesses, and is intended to assist the Board in evaluating THESL’s application and in setting just and reasonable rates.

THE APPLICATION

THESL applied under Section 78.(3) of the *Ontario Energy Board Act* for disposition and recovery through rates of certain qualifying costs incurred by THESL arising from the emergency correction of contact voltage occurrences on its electricity distribution system (the “Level III Emergency”). THESL stated that the costs were incurred from February through March of 2009, although one category would be continued to year end 2009, and were unforeseen and incremental to its existing approved revenue requirement. THESL further stated that the Application was brought to demonstrate that the costs in question met the eligibility requirements of the Board (Incrementality, Exogeneity, Materiality and Prudence) pertaining to “Z-factor” type costs and that the recovery of these costs through rates would be proper, just and reasonable.

THESL specifically sought an Order of the Board that would: (i) approve the recovery through definite-term rate riders of a total amount of \$14.35 million, allocated between THESL’s various rate classes in the manner outlined in the application, and (ii) implementation of the approved definite-term rate riders for a period of one year commencing May 1, 2010 for classes other than Streetlighting and Unmetered Scattered Load, and for three years for these classes.

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The contact voltage remediation costs for which THESL is seeking recovery are summarized in Table 1 below, which is reproduced from THESL's application¹:

TABLE 1
CONTACT VOLTAGE REMEDIATION EXPENDITURES

	Col. 1	Col. 2
R 1	Description	Expenditure
R 3	Level III Emergency Expenditures	\$millions
R 5	Labour - Regular time	\$ 3.37
R 6	Labour - Overtime	\$ 2.15
R 7	Labour - Total	\$ 5.52
R 9	Electrical Contractor Cost	\$ 0.67
R 10	Scanning Contractor Cost	\$ 4.15
R 11	Inventory and Materials	\$ 1.01
R 12	Other	\$ 0.59
R 13	Total - Non Labour	\$ 6.42
R 15	Total Level III Expenditures	\$ 11.94
R 17	Continued Scanning Expenditures	\$ 2.41
R 19	Total Contact Voltage Expenditures	\$ 14.35

Board staff's comments are focused on two areas related to this application: The first is whether or not THESL's application meets the eligibility requirements established by the Board for "Z-factor" recoveries and the second is whether or not THESL's proposal for the allocation of recovery amounts between the various classes is appropriate.

¹ EB-2009-0243, Toronto Hydro-Electric System Limited, *Application for Recovery of Contact Voltage Costs* Filed 2009 June 30 ("Application"), page 5 of 11

Z-FACTOR RECOVERIES

Basis for Recovery

Background

THESL has stated that its Application was brought to demonstrate that the costs in question met the eligibility requirements of the Board (Incrementality, Exogeneity, Materiality and Prudence) pertaining to “Z-factor” type costs and that the recovery of these costs through rates would be proper, just and reasonable.

Discussion and Submission

Staff would note that the first issue requiring consideration by the Board is whether or not the basis on which THESL is claiming that it is eligible for a Z-factor recovery is a valid one. During the oral hearing, THESL cited the July 2008 *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* (the “3GIRM Report”) as the basis for its claim². However, the validity of THESL's claim was the subject of cross examination during the oral hearing relating to the issue that THESL's rates in place at the time of the Level III emergency were not set based on one of the Board's IRM plans, but instead arose from a two-year cost of service approval granted by the Board's Decision on THESL's 2008 application³.

Staff submits that THESL's application would not meet the eligibility requirements for a Z-factor recovery under the 3rd Generation IRM criteria, as THESL is not presently under this regime. However, staff further submits that regardless of whether this application was filed under the authority of the Board's 3GIRM report and the related Z-factor provisions, or whether THESL simply requested the disposition of an amount in deferral account 1572, the tests applied in the examination of the validity of these costs would be generally the same⁴.

² Transcript of Proceeding (“T1”), p.137 L13- L17

³ T1, p.74 L19 to p.75 L27

⁴ Accounting Procedures Handbook, Article 220, page 30, Account 1572 Extraordinary Event Costs

Exogeneity

Background

THESL stated that the exogeneity of costs refers to their character as having been externally imposed or required, as distinct from being discretionary and voluntarily undertaken. THESL concluded that the Level III costs it incurred met the exogeneity criterion because it was imperative for reasons of public and worker safety to correct any instances of faulty electrification as soon as possible using all reasonable measures. THESL added that while management judgement was required and exercised with respect to how to respond to the situation, an issue which THESL saw as relating to the prudence criterion, no discretion could have been exercised as to whether or not to respond since there was no uncertainty as to whether hazardous situations could exist. This, in THESL's view, had already been amply demonstrated by the contact voltage occurrences described in the application⁵.

Discussion and Submission

The Board's 3GIRM Report states that "Z-factors are events that are not within management's control."⁶ The Report also states that "The Board requires that any request for a Z-factor will be accompanied by a clear demonstration that the management of the distributor could not have been able to plan and budget for the event...." As noted above, THESL's position is that the exogeneity criterion related to costs having the character "as having been externally imposed or required, as distinct from being discretionary and voluntarily undertaken."

In response to a Board staff interrogatory⁷, THESL expanded on its views on the meaning of exogeneity, stating that "the term "exogeneity" is simply a synonym for the term "inability of management to control."

Staff notes that within the context of Z-factor recovery claims, exogenous events are normally considered to be externally imposed events such as major storms or unexpected tax changes, occurrences that are clearly beyond management control.

⁵ T1, p.74 L19 to p.75 L27

⁶ *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors*, July 14, 2008, Appendix, p. IV

⁷ Exh J/Tab 1/Sch. 7, b

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THESL was asked in the same Board staff interrogatory⁸ to state what was the exogenous event that precipitated these costs. THESL's response was that "No single event (such as an ice storm etc.) caused the contact voltage remediation costs. However, the proximate cause of the costs was the discovery of a possibly widespread system condition in which contact voltage could occur." This discovery would appear to be an effect, not a cause, with the cause being insufficient maintenance of THESL's secondary distribution system, whether justified or not.

This is evident in the following exchange between Mr. LaPianta of THESL and Mr. Shepherd⁹:

MR. SHEPHERD: Okay. Your evidence is that you have never had a maintenance program for the secondary system; is that right?

MR. LaPIANTA: A specific program, no, that's correct.

During cross-examination by Mr. Faye, Mr. LaPianta explained why THESL had not, prior to recent developments, had a regular maintenance program for the handwells:¹⁰

THESL has very little reason on a regular basis to enter the handwells. Typically, we interface at the first handwell which supplies power to the streetlighting infrastructure, and subsequently downstream at the last handwell.

We don't have, in practice - have never had - a regular maintenance program for the handwell itself. Being a secondary voltage, very low risk up until the findings of what has transpired over the past six, eight months, there was never really any maintenance programs that addressed the inspection of handwells.

The above comments by Mr. LaPianta would indicate to staff that if THESL had had a secondary system maintenance program in place, the contact voltage costs arising from the Level III emergency could have been averted. This would suggest that these specific costs arose from an internal management decision not to undertake such a maintenance program, whether justified or not, rather than an external event, as is suggested by THESL's evidence.

It is staff's view that THESL has not demonstrated that it could not have planned or budgeted for preventative contact voltage maintenance. THESL made a decision not to implement such a program. Thus THESL has not demonstrated that an external event beyond management's control precipitated the costs for which it is seeking recovery in

⁸ Exh J/Tab 1/Sch. 7, a

⁹ T1, p. 142, L 28 to p. 143 L3

¹⁰ T1, p.89, L17 to L27

this application. However, it is also staff's view that the unique nature of the emergency in which the contact voltage remediation costs were incurred may allow for a broader application of the exogeneity test. This is due to the specific circumstances confronting THESL at the time these costs were incurred, in particular the external public demand that arose for a prompt response to the contact voltage conditions, given the extent of the danger to the public that was demonstrated by the electrocution of two dogs and the mild shocks received by five children, as discussed in the application.

Materiality

Background

THESL stated that the incremental costs of \$14.35 million related to the Level III emergency meet the Board's criteria for materiality expressed in its 3GIRM Report. THESL characterized the Level III emergency as a single event that would be material, relative to the materiality threshold of \$1 million for distributors with a distribution revenue requirement of more than \$200 million¹¹.

Discussion and Submission

Board staff is in agreement with THESL that the costs sought for recovery meet the materiality criterion established by the Board, irrespective of whether this is properly framed as a Z factor application or not.

Incrementality

Background

THESL's application stated that the incremental character of expenditures refers to whether or not those expenditures are already included in the allowed revenue requirement, or are incremental to the allowed amount. THESL further stated that it does not seek recovery in the present application of any amount that forms part of the approved 2009 revenue requirement and that the expensed costs incurred in connection with the Level III emergency were unforeseen and truly incremental to the requested and allowed operating expenditure ("opex") amounts for 2009.

¹¹ Application, p.7

THESL submitted that its claim of incrementality rested fundamentally on the facts that the necessity of the expenditures was unforeseen and that the expenditures were novel, as no such work had been necessary previously and the project overall was unprecedented on the THESL system. As a result, THESL stated that neither it, nor any other party had knowledge beforehand that such expenditures might be necessary and it clearly did not include these as part of its requested opex budget for 2009.

THESL stated that if the expensed costs were examined category by category, those for Electrical Contractors, Scanning Contractors, Inventory and Materials, and Other (including External Services, Rental Vehicles and Communication) were directly caused by the Level III emergency situation and would not have been incurred but for that event.

With respect to regular labour and other miscellaneous internal costs charged to the Level III emergency project, THESL submitted that these were properly considered incremental to the approved revenue requirement because THESL is committed to achieving its planned and approved levels of operations and maintenance and capital work in 2009 and will therefore at least exhaust its approved revenue requirement in this category¹².

Discussion and Submission

THESL has stated its commitment to achieving its planned and approved levels of operations, maintenance and capital work in 2009. During cross-examination by SEC, THESL's panel was asked about THESL's 2009 Bridge Year forecast contained in its 2010 Electricity Rate Application (EB-2009-0139). This showed a level of expenses in the "Operations" and "Maintenance" expense categories of \$96 million, \$12 million below the 2009 Board approved level provided in that application.

Staff notes that these numbers would suggest that while THESL has stated its commitment to achieving its planned and approved levels of operations, maintenance and capital work in 2009, the present under spending of \$12 million in the "Operations" and "Maintenance" categories would be sufficient to cover most of the costs of the Level III emergency.

However, during cross-examination by Board staff counsel, THESL took the position that these costs should be viewed in isolation of its other costs as they are a Z-factor

¹² Application, pp. 5-6

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claim. This is evident in the following exchange between Board staff counsel and Mr. McLorg in relation to a hypothetical Z-factor example¹³:

MR. MILLAR: -- this Z factor project costs \$10 million. As it turns out however the utility only spent \$80 million of its Board approved \$100 million budget. And then comes in and seeks this \$10 million for this discrete project.

I think, by the way you read the guidelines, they should be entitled to recover that \$10 million even though they underspent their total -- on their total revenue requirement. Have I got that right?

MR. McLORG: Well, we interpret the Board's own guidelines to, as I say, draw a fence around the costs -- costs and/or revenues that are subject of the Z factor.

So to flip the question around, if it were the case that a utility overspent its approved revenue requirement because there was a series of storms that it had to restore power from, and let's make it even worse by saying that revenue was down because of mild weather, et cetera, et cetera, it would still be -- it would still follow from our understanding and our position that if there were a tax rate decrease that hadn't been factored into the approved revenue requirement, that despite the very poor financial results for the utility that year, the utility would still be liable for that, because it is not -- the threshold test does not consider the Z factor itself in relation to the results of the rest of the normal operation of the utility.

If that is the threshold, then that is a very different case that we have to meet.

As discussed above, SEC's cross-examination has demonstrated that currently, THESL is approximately \$12 million under its forecasted target of opex spending for the 2009 calendar year in the "Operations" and "Maintenance" categories. THESL has also testified that it expects to exhaust its total 2009 approved revenue requirement.

Staff acknowledges that in its normal practice, the Board does not implement rate adjustments in order to reconcile approved forecast to actual revenue requirements. However, Z-factor applications are filed in a year in which a utility is under IRM. THESL's case appears to be unique in that it has sought a Z-factor type adjustment in a year in which it has also filed for a cost of service review, on the heels of a Board approved two year cost of service application. It is the view of staff that the status of 2009 actual spending is relevant to this particular case and should be the basis for testing the incrementality of the costs incurred.

¹³ T1, pp. 175, L18 to p.176, L16

Prudence

Background

THESL stated that the prudence of the Level III costs refers to whether the costs were reasonable and effective in producing the required results, in the circumstances and with the information available to management at the time. THESL submitted that the assessment of prudence should be undertaken with due regard to THESL's responsibility to respond immediately and effectively to a demonstrated and serious threat to public safety and that consideration of approaches that might be taken in non-emergency circumstances are irrelevant to a determination of prudence in this case. In addition, THESL stated that the reasonableness of the measures and costs undertaken should be assessed by considering whether available alternative approaches, given the information and resources available, might have instead been used with greater effectiveness or lower cost.¹⁴

Discussion and Submission

Board staff notes that THESL's view is that the Board should be assessing the prudence of its actions from the perspective of what it did once the contact voltage situation had come to its attention, not what it had done before that time. This is evident in THESL's response to a Board staff interrogatory¹⁵ where THESL was asked to state whether its view was that the Board should be assessing the prudence of these costs solely from the perspective of THESL's actions from the time the contact voltage problem came to THESL's attention and if so, why. THESL's response was that:

THESL does not seek to limit the perspectives from which the Board might consider the prudence of the contact voltage remediation costs. However, it is not clear what relevance any period before the contact voltage problem came to THESL's attention might have to this Application, since in the first instance no such problem has been defined and in any case THESL is not claiming any costs for such a period nor have such costs ever formed a part of a previous revenue requirement.

Board staff is of the view that had there been an external event that precipitated these costs, such as an unexpectedly severe storm, THESL's position that it is not clear what relevance any period before the contact voltage problem came to THESL's attention would have would be understandable. As has been discussed earlier, it is staff's submission that THESL has not been able to identify such an exogenous event. Accordingly, it is the view of staff that in assessing whether or not the amounts sought

¹⁴ Application, p.7

¹⁵ Exh J/Tab 1/Sch 8

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for recovery in this application have been prudently incurred, the Board must look both at the period after the problem came to THESL's attention and the events leading up to the occurrence of this problem. Such an examination should include consideration as to whether or not THESL management acted prudently in terms of its maintenance of the secondary system prior to the Level III emergency.

Board staff notes, in this context, that Mr. LaPianta acknowledged during cross-examination, that THESL had experienced three contact voltage occurrences on its system prior to the incidences referenced in this application.¹⁶ However, Mr. LaPianta stated that THESL did not undertake any investigations to determine whether or not these were indications of any type of systemic problem.

MR. SHEPHERD: What I am trying to understand is why, prior to 2008 when you had these three incidents at various times, that you did nothing; right?

MR. LaPIANTA: No.

MR. SHEPHERD: You had no investigation.

MR. LaPIANTA: No. It is not that we didn't do nothing. We investigated it. We rectified the situation. But the conclusion was that these were one-offs. These were isolated instances and not likely to occur again.

MR. SHEPHERD: You did not review or investigation to determine whether they really were one-offs or not, did you?

MR. LaPIANTA: No, we didn't.

Subsequently, Mr. LaPianta discussed the approach which American regulators and utilities are taking with respect to the contact voltage issue. In response to a question from Mr. Faye as to whether or not any other Canadian utilities have experienced contact voltage problems, Mr. LaPianta stated that he was not aware of any that have experienced the contact voltage problem to the frequency or extent that THESL had experienced this year, but cited a number of American jurisdictions where action has been taken¹⁷:

I know that in the US jurisdictions, they have been a little bit more aggressive there. The Power Services Commission of the State of New York has mandated scanning there. As a matter of fact, they need to scan the entire city of Manhattan and the five boroughs within 48 hours of a snow fall. So they have taken it to another extreme.

I know they're scanning in 12 states in the midwest. I know they're

¹⁶ T1, p.145 L6 to L18

¹⁷ T1, p.122 L 16 to L 27

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scanning in Baltimore, they're scanning in Boston. They have even begun to scan as far south as Florida Light & Power, particularly in the summer months when the rains come.

Board staff notes that Mr. LaPianta's testimony and THESL's interrogatory responses would indicate that there is an awareness of contact voltage issues in the United States and this awareness has existed for some time. This is evident in the example cited by THESL in response to a Board staff interrogatory¹⁸ of Consolidated Edison of New York, which experienced contact voltage conditions similar to those of THESL in January 2004, roughly five years before THESL's Level III emergency.

During cross-examination by Board staff Counsel, a number of instances of contact voltage occurrences were reviewed with both Mr. LaPianta and Mr. McLorg.¹⁹ These included the 2004 Consolidated Edison incident, which all members of THESL's panel stated they were not aware of at the time of occurrence, but had only become aware of in the previous 12 months, as well as the instances in Baltimore, Boston and Florida noted above.

Mr LaPianta stated in fact that no one at THESL had been aware of any of these instances prior to THESL's own problems with contact voltage:

MR. MILLAR: No one at Toronto Hydro, at least to your knowledge, was aware of any of these cases prior to the Level III emergency in Toronto, or in the events immediately leading up to that?

MR. LaPIANTA: Not that I am aware of, no, other the Jodie Lane incident, no.

MR. MILLAR: Well, I thought you said you weren't aware of the Jodie Lane incident.

MR. LaPIANTA: In the months leading up to the Level III. I mean only recently, in the past six, 12 months.

In this context, staff submits that the Board could consider when assessing whether or not all of the claimed costs were prudently incurred whether or not the Level III emergency would have arisen if THESL had been more closely monitoring the U.S. situation and, with a correspondingly greater awareness of the contact voltage issue, had undertaken relevant preventative maintenance of its secondary distribution system.

That said, staff notes that the absence of a secondary system maintenance and contact voltage scanning program likely resulted in reduced costs sought by THESL for

¹⁸ Exh J/Tab 1/Sch 3

¹⁹ T1, p. 165 L 23 to p. 168 L19

recovery in past cost of service applications. Staff notes that had THESL included annual costs for system maintenance for the purpose of scanning and remediating any contact voltage occurrences, the Board may very well have accepted these costs as part of THESL's normal operations. In effect, THESL is now asking for ratepayers to pay for these costs over a much shorter time period.

Board staff notes that these costs would have been lower in the event that they had been incurred under non-emergency conditions. Staff further notes that included in the \$14.35 million of costs for which THESL is seeking recovery are \$2.15 million of overtime costs. In addition, in response to a Board staff interrogatory, which asked THESL whether the costs incurred to correct the contact voltage conditions would have been lower if the need for this remediation had been identified as part of its ongoing maintenance program²⁰, THESL stated that:

THESL does not believe that there would have been any difference in the contact voltage emergency remediation costs stemming from how the underlying condition came to be discovered. If the thrust of the question is rather whether costs would have been lower had an emergency condition not existed, THESL acknowledges in the hypothetical that they would have been. THESL has no basis upon which to estimate the difference between actual costs and hypothetical costs which might have been incurred under different conditions.

Board staff is of the view that to take into account THESL's acknowledgement these costs would have been lower in a non-emergency situation, as well as its inability to quantify the magnitude of this differential, a further 15% disallowance in addition to the \$2.15 million of overtime costs would be appropriate, should the Board determine that THESL be allowed some level of recovery of these costs.

Non-Recovery of Costs From Asset Owners

Background

THESL includes in its application a letter from the Board dated March 4, 2009 entitled "Wiring faults – servicing unmetered load connections," which was sent to all licensed electricity distributors²¹. The letter states that distributors are expected to recover from the customer the cost of repairs or isolation of customer owned equipment or connections through the use of a one-time billing charge or direct invoice.

THESL stated that, in this context, the Level III emergency situation was distinctly and significantly different from business as usual. This was because, in contrast to the

²⁰ Exh J/Tab 1/Sch. 8b

²¹ Application, Appendix 1

situation where a discrete piece of work is done on equipment for which the ownership is clear, the Level III emergency involved work on underground assets which in many cases were only nominally demarcated, with the practical reality being that it was often difficult to distinguish whether the secondary equipment was a THESL, streetlighting, or other third party asset²².

THESL also noted that the Board's letter stated as follows²³:

"Public safety is of primary importance. Uncertainty as to connection demarcation points should not inhibit or delay the correction of unsafe wiring of unmetered load. Distributors should ensure that any unsafe wiring encountered on public walkways is addressed immediately."

As such, THESL submitted that the situation did not permit the time and effort to disentangle, analyze and record whose was the faulty asset, and, in short, the circumstances did not support the usual recognition of and billing for work done on customer-owned equipment.

However, THESL stated that its recovery proposal, as discussed in the cost allocation section of its evidence, would mean that costs would be recovered in a manner that would result in an outcome substantially similar to that which likely would have prevailed had it been possible to discretely record and cost each individual piece of remediation work²⁴.

Discussion and Submission

Board staff's comments on this aspect of THESL's application are contained in the following section of this submission.

COST ALLOCATION AND RATE RIDERS

Cost Segregation & Cost Allocation

Background

THESL stated that it is proposing the \$14.35 million of incremental costs for which it is seeking recovery be segregated into two categories for this purpose: The first is scanning costs, which represents \$6.56 million of the \$14.35 million total. THESL stated that the scanning costs were undertaken to ensure the safety of the entire distribution

²² Application, p.9

²³ Application, p.7

²⁴ Application, p.9

system and, as an operational matter, could not have been and should not have been, confined to a particular class or classes of customers. As such, THESL proposed that these costs be allocated to all customers, while the remaining balance of \$7.79 million related to the remediation of existing contact voltages and inspection and remediation of handwells be recovered from the Streetlighting and USL classes only.

THESL proposed that the scanning costs be allocated to all classes based on the methodology embodied in the Board's Cost Allocation Model using customer numbers approved for purposes of its 2009 Distribution Rate Update. THESL noted that in practical terms, this resulted in the large majority of these costs (86%) being allocated to residential and small general service customers, with substantially all of the remainder being allocated to the Streetlighting and USL classes.

THESL further proposed that the remaining remediation costs be specifically allocated to the Streetlighting and USL classes in proportion to the number of connections in those classes respectively. THESL submitted that as explained in its evidence, a strictly accurate determination of the allocation of remediation costs was not possible in the situation, but given the circumstances and the information available, its proposal produced as reasonable an outcome as could be suggested.

THESL noted that the result of this proposal is to produce amounts to be recovered of \$5.071 million for the Residential class, \$0.549 million for the General Service less than 50 kW class, \$7.126 million for Streetlighting, \$1.576 million for USL and lesser amounts for the remaining classes²⁵.

Discussion and Submission

Staff notes that THESL was subjected to extensive cross examination related to its approach to the segregation of these costs and the extent any of them could be directly attributed to classes other than Streetlighting and USL. During cross-examination by Mr. Buonaguro, THESL was unable to provide the number of contact voltage occurrences that could be specifically attributed to classes other than Streetlighting and USL.²⁶

MR. BUONAGURO: I understand that. But your evidence is that the problems that you detected as a result of the scan entirely related to streetlighting USL.

MR. McLORG: That's not our evidence.

²⁵ Application, pp.9-10

²⁶ T1, p.61 L 5 to L 19

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MR. BUONAGURO: Okay. So how many contact voltage problems did you detect as a result of the scan that did not relate in some way, shape or form to USL or streetlighting?

MR. McLORG: Mr. Buonaguro, in our tracking of the Level III emergency, we didn't gather information on the basis that you request.

We gathered information primarily as it related to our assets, but we did not track and record information as to the assets of every other non-Toronto Hydro entity in the city.

As noted earlier, THESL stated that it had allocated 86% of the scanning costs to residential and small general service customers.²⁷ In response to an interrogatory from Energy Probe,²⁸ THESL stated that 21% of the contact voltage problems were caused by THESL equipment, while the remaining 79% was caused by THESI, customer, BIA (business improvement areas), TTC and Toronto Traffic assets.

While the meaning of these numbers was subject to much discussion and debate during the hearing, staff submits that THESL did not provide any evidence which suggested that anywhere close to 86% of contact voltage occurrences were related to equipment belonging to residential and small general service customers. It would appear that most of the evidence provided suggested that the percentage was in fact much lower.

Staff recognizes that in the context of a general rate application, the use of the Board's cost allocation model would normally result in an allocation of the scanning costs to customer classes similar to what THESL's application is proposing. However, staff notes that the purpose of THESL's application is to isolate these costs and to seek a special recovery of them. In this context, given that the scanning indicated that the vast majority of the remediation costs related to the Streetlighting and USL classes and since THESL is proposing to allocate 100% of the remediation costs to these two classes, staff is unclear as to why, in the event the Board was to grant THESL's request, a similar percentage of the Level III emergency scanning costs should not also be allocated to the Streetlighting and USL classes.

²⁷ Application, p.10

²⁸ Exh J/Tab 2/Sch 2

Recovery and Rate Riders

Background

THESL proposed that the recovery of amounts allocated to classes other than Streetlighting and USL be recovered over 12 months commencing May 1, 2010 by way of rate riders calculated as fixed monthly amounts per customer as applicable. For the USL and Streetlighting classes, THESL proposed that in view of the significant bill impacts involved, the costs should be recovered over three years²⁹.

Discussion and Submission

Board staff is in agreement with this aspect of THESL's proposal.

- All of which is respectfully submitted –

²⁹ Application, pp. 10-11