



**EB-2009-0308**

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

**AND IN THE MATTER OF** a Notice of Intention to Make an  
Order for Compliance against Toronto Hydro-Electric System  
Limited.

### **PROCEDURAL ORDER NO. 3**

The Ontario Energy Board (the “Board”), issued a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited (“THESL”) under section 112.3 of the *Ontario Energy Board Act, 1998* (the “Act”) on August 4, 2009. By way of letter dated August 17, 2009, THESL gave notice to the Board requiring the Board to hold a hearing on this matter. THESL also informed the Board that it intends to be present at the hearing, and to adduce evidence and make submissions to defend against the allegations. The Board assigned the proceeding File No. EB-2009-0308.

On October 23, 2009, the Board issued its Amended Decision and Order on a motion brought by THESL for the production by Compliance counsel of certain materials (the “Decision”). The Decision required Compliance counsel to produce some of the materials requested except where these materials were protected by privilege, in which case a list of such documents was to be provided, though not the documents themselves. Compliance counsel provided a package of materials, and a list of documents over which privilege was claimed, to counsel for THESL on October 26, 2009.

On November 5, 2009, THESL filed a motion with the Board seeking:

- (i) an order of the Board requiring Compliance counsel to produce additional materials that, in THESL's view, should have been produced previously in accordance with the Decision;
- (ii) that the Board panel review the documents for which privilege has been claimed to determine if the claims of privilege are appropriate; and
- (iii) an order requiring Compliance counsel to file pre-filed evidence and respond to interrogatories.

The Board has determined that it will hear this motion by way of an oral hearing.

In the event that the Board decides that it will determine whether or not the documents for which privilege is claimed are indeed privileged (as requested by THESL in (ii) above), Compliance counsel is requested to have copies of the documents available for the Board to review.

Please be aware that this Procedural Order may be amended, and further procedural orders may be issued from time to time.

#### **THE BOARD ORDERS THAT:**

1. **The hearing of the Motion** will be held at 2300 Yonge Street, 25<sup>th</sup> floor, Toronto, Ontario in the Board's North Hearing Room on November 16, 2009. The hearing will commence at 9:30 a.m.
2. **Compliance counsel will file** materials responding to the Motion by Thursday, November 12, 2009.

All filings to the Board must quote file number EB-2009-0308, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.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 email address. Please use the document naming conventions and document submission standards

outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document. 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 and be received no later than 4:45 p.m. on the required date.

**DATED** at Toronto, November 10, 2009

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary