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November 19, 2009

BY COURIER

Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto ON M4P 1E4

Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

**Re: Suite Metering
Board File EB-2009-0308**

This letter is filed on behalf of Toronto Hydro-Electric System ("THESL") in response to the letter from the Compliance Team dated November 18, 2009.

Section 1.01 of the OEB's Rules of Practice and Procedure (the "Rules of Practice") provide that they "apply to all proceedings of the Board." While a Board panel does have the power to control the hearing before it, it should only depart from the Rules of Practice where there is a compelling case that it is in the public interest to do so. The Compliance Team's letter requests material and unprecedented exemptions from the Rules of Practice, but it has not provided any grounds for the Board to conclude that any of the exemptions sought are in the public interest. Further, all of these proposed exemptions will have the effect of prejudicing THESL's current procedural entitlements to test the case against it under the Rules of Practice.

First, the Compliance Team is apparently asking the Board to direct THESL to agree to an agreed statement of facts. THESL is of the view that it may be possible to identify areas where there is substantial agreement and thus confine the hearing to more contentious areas. This may help with the efficient review of this matter. However, this does not take away from the requirement that the Compliance Team has the obligation to prove its case as alleged. Most importantly, given that the Compliance Team has not yet filed any evidence, and THESL has not

had the opportunity to test any of that evidence, it is premature to commit to agree to any alleged facts at this stage.

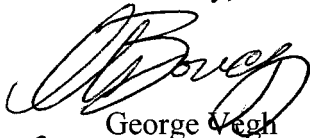
Second, the Compliance Team is asking the Board to dispense with Rule 13 (requiring pre-filed evidence) and Rules 28 and 29 (requiring responses to written interrogatories). The Compliance Team provides no reason to support this request other than the statement that the approach in the Rules of Practice is “not customary or appropriate in a compliance proceeding of this nature.” No basis is put forward for this assertion. The consequences of granting this exemption would be that evidence will have to be tested for the first time at the hearing (which is an inefficient way to proceed) and THESL will not have any of the rights currently granted to parties to pre-hearing discovery under the Rules of Practice.

Third, the Compliance Team is asking the Board to impose a new requirement on THESL – one which also has no basis in OEB Rules of Practice. This request is that the Board direct THESL to file a response to the allegations contained in the Notice of Intention. The OEB has never required parties to specifically plead defences. Again, no reason is provided in support of this request. In this regard, THESL has already advised the Hearing Team that it presently intends to file pre-filed evidence. If filed, that evidence will, of course, be tested through the interrogatory process, so the Compliance Team will have notice of THESL’s factual case. However, a final decision on this will have to await the Compliance Team’s responses to written interrogatories on its pre-filed evidence. This has been the Board’s practice in every case of which THESL is aware.

For all of these reasons, it is respectfully requested that the Board not provide the Compliance Team with the exemptions requested and, instead, set a schedule for filing pre-filed evidence and responding to interrogatories.

All of which is respectfully submitted.

Sincerely,



George Vegh
Counsel for THESL

c: Maureen Helt – Ontario Energy Board
Michael Millar – Ontario Energy Board
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