



**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. 4**

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.

On November 12, 2009, THESL withdrew its motion.

On November 16, 2009, the Board issued a letter to all parties requesting proposals for procedural steps to bring this process to an oral hearing. The Board received submissions from THESL and Compliance Counsel; each filed a letter on November 18, 2009 and each filed a responding letter on November 19, 2009. The Board has reviewed the submissions and has determined that it is appropriate to establish a procedure for the filing of evidence and interrogatories in accordance with the Board's standard practice for oral proceedings. The Board considers it necessary to make provision for the following matters related to this proceeding.

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. Compliance Counsel will file evidence (including witness statements) and copies of all documents upon which it intends to rely with the Board and delivered to all parties by Monday, November 23, 2009.
2. If THESL wishes to have information and material that is in addition to Compliance Counsel's evidence, it shall request the same by written interrogatories filed with the Board and delivered to all parties by Monday, November 30, 2009.
3. Compliance Counsel will file responses to written interrogatories with the Board and delivered to all parties by Monday, December 7, 2009.
4. If THESL wishes to file evidence it will file such evidence (including any witness statements and copies of all documents upon which it intends to rely) with the Board by Monday, December 14, 2009 and deliver a copy to each party.

5. If Compliance counsel wishes to have information and material that is in addition to THESL's evidence, it shall request the same by written interrogatories filed with the Board and delivered to all parties by Monday, December 21, 2009.
6. THESL will file responses to the written interrogatories with the Board and delivered to all parties by Monday, December 30, 2009.
7. The hearing of this proceeding will be held at 2300 Yonge Street, 25<sup>th</sup> floor, Toronto, Ontario in the Board's North Hearing Room on January 5, 2010 and January 7, 2010, if required. The hearing will commence at 9:30 a.m.
8. 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 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.
9. 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 dated.

**DATED** at Toronto, November 20, 2009.

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary