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February 19, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto, ON M4P 1E4

Dear. Ms. Walli:

RE: EB-2009-0139 Toronto Hydro Electric System Limited 2010 Rates – Final Argument – Building Owners and Managers Association of the Greater Toronto Area

Please find attached the final argument of the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") in the above noted proceeding.

Sincerely,

Randy Aiken

Randy Aiken
Aiken & Associates

cc: Glen Winn, Toronto Hydro-Electric System Limited
J. Mark Rodger, Borden Ladner Gervais LLP
Chris Conway, BOMA

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

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE GREATER TORONTO AREA ("BOMA")

FINAL ARGUMENT

February 19, 2010

A - INTRODUCTION

This is the Argument of the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") related to the setting of 2010 rates for Toronto Hydro-Electric System Limited ("THESL") effective May 1, 2010.

B – SETTLEMENT AGREEMENT

Pursuant to the Board's Procedural Order No. 1 dated October 19, 2009, a settlement conference was held commencing December 8, 2009. The settlement conference continued until December 18, 2009. BOMA was an active participant in the settlement conference.

On January 22, 2010 the Settlement Agreement reached by the parties was filed with the Board. The Settlement Agreement resulted in the complete settlement of 20 issues and the partial settlement of 7 issues. BOMA was in agreement with the partial settlement of each of theses 7 issues. A total of 2 issues were not settled.

Appendix B to the Settlement Agreement reflected the impact on the revenue requirement of THESL of the agreed upon issues. The overall base revenue requirement was reduced from $528.7 million dollars as originally proposed by THESL in their application and evidence to $507.0 million.

The reduced revenue requirement reflected a reduction in the 2010 capital expenditure forecast from $423.6 million to $350.0 million. In addition, the agreement included a deferral account for an additional $27.8 million in capital spending for Transit City.

OM&A expenditures were reduced from $212.1 million to $195.4 million. These figures are both exclusive of property taxes of $6.7 million and a capital tax of approximately $2 million.

Upon commencement of the oral hearing on February 4, 2010, the Board accepted the Settlement Agreement (Tr. Vol. 1, page 5).

C – CAPITAL STRUCTURE AND COST OF CAPITAL

There were two unsettled issued related to the capital structure and the cost of capital. Each of these issues is discussed below.

As shown in Appendix B to the Settlement Agreement, the impact of the capital structure and cost of capital on the revenue requirement is significant. Based on a return on equity of 9.75% and a short term debt rate of 2.30% the revenue requirement increases from $507 million to more than $530 million, more than offsetting the reductions agreed to in the Settlement Agreement. BOMA notes that the Board has not yet determined the final return on equity and short-term debt rates to be used by distributors in calculating their cost of capital for 2010. As a result, these figures are likely to change, but not substantially.

Issue 5.1 – Is the proposed Capital Structure, Rate of Return on Equity, and Short-Term Debt Rate appropriate?

The EB-2009-0084 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities dated December 11, 2009 indicates that result of the Report is Board policy and that the process was not a hearing process that did not, and indeed could not, set rates. The Report goes on to state that the refreshed cost of capital policies will be considered through rate hearings for the individual utilities, at which time it is possible that specific evidence may be proffered and tested before the Board. Specifically, the Report states:

> *"Board panels assigned to these cases will look to the report for guidance in how the cost of capital should be determined. Board panels considering individual rate applications, however, are not bound by the Board's policy, and where justified by specific circumstances, may choose not to apply the policy (or a part of the policy)."* (page 13)

BOMA submits that based on the December, 2009 Report of the Board and the evidence on the record in this proceeding there are two adjustments that Board should make to the cost of capital for the distributor. The first of these adjustments relates to the deemed capital structure and the second relates to the allowed return on equity.

a) Deemed Capital Structure

Short-term debt was not factored into electricity distribution and transmission rate-setting prior to 2008. As part of the December 20, 2006 Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors, the Board adopted a deemed short-term debt component of 4% of the capital structure. As part of that Board Report, the Board stated:

> *"As a general principle for ratemaking purposes, the Board believes that the term of the debt should be assumed to be similar to the life of the assets that are to be acquired with that debt. This suggests that, in theory, for an industry with long-lived assets, the majority of debt should be long-term. However, in reality, some short-term debt is a suitable tool to help meet fluctuations in working capital levels."* (page 10)

As noted in the December, 2009 Report of the Board, capital structure was not a primary focus of the consultation. The Board determined that the split of 60% debt and 40% equity is appropriate for all electricity distributors (page 50). The Board did not explicitly state that the 60% debt component of the capital structure should remain at 56% long term debt and 4% short term debt, although Table 2 provided in the Summary section of the Board Report reflects the continuation of these figures.

BOMA submits that the evidence in this proceeding indicates that the 4% deemed level of short-term debt is not reasonable and that the incremental costs imposed on ratepayers by this are neither just nor reasonable.

BOMA agrees with the Board's comments provided in the December, 2006 Report of the Board that the term of the debt should mirror the life of the assets that the debt is used to finance. By its very nature, equity is long-term financing. This leaves the mix of long-term and short-term debt to be used to provide an appropriate balance within the capital structure to reflect the actual mix of assets being financed.

As noted by the Board in the December, 2006 Report, short-term debt is a suitable tool to help meet the fluctuations in working capital levels. The working capital requirements have been determined on the methodology stemming from the lead/lag study approved in EB-2007-0680 (Exhibit D1, Tab 14, Schedule 1). Further, as shown in Exhibit J1, Tab 2, Schedule 7 the working capital allowance has been calculated using specific working capital factors that range from 7.7% to 14.1% for specific types of non-GST costs. For example, the cost of power, which is the largest expense shown, has a factor of 10.6%. This is equivalent to a net lag of about 39 days. The average net lag in days of the non-GST related components of the working capital allowance, which accounts for approximately 97% of the total working capital allowance, is less than 40 days. Similarly, the net lags for the GST related costs range from (18.5) days to 46.9 days. This analysis reflects the short-term nature of the working capital requirement.

Based on the information provided in Appendix B to the Settlement Agreement, the working capital allowance component of rate base in 2010 is projected to be $273.7 million when the cost of capital component is included in the revenue requirement calculation. This represents 12.8% of the total rate base shown of $2,140.9 million.

Table 1 in Exhibit D1, Tab 1, Schedule 1 illustrates that the percentage of rate base related to the working capital allowance has been very stable. In 2008 the working capital allowance represented 13.0% of total rate base, while in the 2009 bridge year, the estimate was 12.9%.

At the same time, using the 4% deemed shot-term debt component to finance total rate base, the deemed amount of short-term debt is only $85.6 million in 2010 based on the rate base of $2,140.9 shown in Appendix B to the Settlement Agreement. The resulting shortfall in deemed short-term debt in 2010 as compared to the working capital level is therefore $188.1 million ($273.7 minus $85.6).

BOMA submits that the mismatch between the amounts of deemed short-term debt and the working capital level included in rate base is not appropriate. The distributor is effectively financing short term assets through long-term debt. This means that ratepayers are being asked to pay long-term interest rates to finance short-term assets.

The impact on the revenue requirement of this unjustified mismatch can be calculated based on the difference between the long-term and short-term interest rates as shown in Appendix B of the Settlement Agreement. In particular, the following table utilizes the long-term debt rate of 5.37% and the short-term debt rate of 2.30%.

	2010
Long-term Debt Rate	5.37%
Short-term Debt Rate	2.30%
Difference	3.07%
Deemed Shortfall (millions)	$188.1
Interest Cost Impact (millions)	$5.77

BOMA is aware that the differential between the long-term and short-term interest rates may be different than that shown above when the Board determines the deemed short-term debt rate to be used by distributors. However, the magnitude of the difference is not likely to be materially different.

As noted above, THESL is effectively financing a significant portion of short-term assets with long-term financing at a higher rate. It has a significantly different level of short term working capital levels in relation to rate base than a deemed short-term debt component of 4% would imply. In this particular instance, short term assets represent more than 3 times the percentage of rate base as does the short term debt in the capital structure of the company.

BOMA submits that it is neither just nor reasonable for the Board to expect ratepayers to pay long-term interest costs to finance short-term assets. This is no more appropriate that if the distributor applied a high depreciation rate associated with computer software to long lived assets such as poles that should have a low depreciation rate, reflecting much longer useful lives. In both cases the resulting revenue requirement is artificially inflated.

As noted above, the Board, in its December, 2009 Report indicated that panels assigned to individual utility rate cases are not bound by the Board's policy where justified by specific circumstances. BOMA submits that the evidence is clear. A 4% deemed short-term debt component is not appropriate when the distributor has a short-term asset component of rate base of more than three times that amount or 12.8%.

Finally, BOMA notes the Board's comments at page 52 of its December, 2009 Report:

> *"The Board wishes to emphasize that the long-term debt guidelines relating to electricity distribution utilities are expected to evolve over time and are expected to converge with the process used by the Board to determine the amount and cost of long-term debt for natural gas distributors."*

BOMA submits it is time for the evolution to begin.

b) Allowed Return on Equity

The Board has determined a methodology to determine the return on equity as part of the December, 2009 Board Report. Based on this methodology and based on the September, 2009 information the return on equity would be 9.75%. This figure will be updated by the Board based on January, 2010 information.

The Board determined the 9.75% figure based on a long term Government of Canada bond yield of 4.25% and an initial equity risk premium of 550 basis points. This equity risk premium includes an implicit 50 basis point for transactional costs (page 37 of the December, 2009 Report). This is the same amount included in the equity risk premium as determined in the Boards December, 2006 Report. In that Report the Board noted that it would continue to include an implicit premium of 50 basis points for flotation and transaction costs. The Board further noted that this inclusion had been the case ever since the Board first introduced the premium in the early 1990s.

Flotation costs of capital are applicable in cases where a particular distributor releases some new stocks in the market or if it issues debt. These costs generally consist of charges for underwriters, commissions to be paid to brokers, legal fees and cost of administration.

As shown in Appendix B of the Settlement Agreement, the common equity forecast for 2010 is $856.36 million, based on 40% of the rate base of $2,140.9 million. Based on this figure, the 50 basis point allowance for the flotation and transactional costs represent a significant amount of the revenue requirement. This cost amounts to $4.28 million and when grossed up for taxes is more than $6.2 million.

BOMA submits that inclusion of the implicit 50 basis points for transactional costs is not appropriate for this distributor. There is no evidence to support that the distributor expects to incur any flotation or transaction costs in the test year. In fact, the opposite is true. There is clear evidence in this proceeding that THESL will not incur any such costs in the test year.

Mr. Sardana explained that THESL does not issue equity and has never incurred a flotation cost associated with the issuance of equity (Tr. Vol. 1, page 34). Further, THESL has no current expectation that it will incur flotation costs in the foreseeable future.

As noted above, the inclusion of some provision for flotation or transactional costs in the equity risk premium component of the return on equity has been long standing at the Board, and indeed, at other regulators across North America. BOMA submits that distributors that have such costs should be able to recover them. BOMA makes no comments as to whether an allowance of 50 basis points is appropriate, is too high, or is too low. In any case, that is irrelevant in the current situation.

The evidence in this proceeding is that the flotation costs associated with equity for THESL is $0.

As noted earlier in the submissions on the capital structure, the Board panel assigned to individual utility rate cases are not bound by the Board's policy where justified by specific circumstances. BOMA submits that the evidence is clear. The specific circumstance in this case is that there are no flotation or transaction costs associated with equity that needs to be recovered from ratepayers.

The Board should not, indeed cannot, allow a distributor to recover costs that the Board knows do not exist. To do so would not result in just and reasonable rates.

The Board would not allow a distributor to include a capital expenditure that it knew would not take place in the test year to be added to rate base. The Board would not allow a depreciation expense to be included in the revenue requirement if that depreciation expense was calculated on an asset that did not exist. The Board would not allow an OM&A expense to be included in the revenue requirement if the evidence indicated that the money would not be spent or the addition to staff was not going to take place. The Board would not allow a cost of debt of 6% if the evidence indicates that the forecasted cost of debt for the test year is 5.75%. Why would the Board allow recovery of any cost that the evidence clearly indicates does not exist?

In this particular case, THESL has forecasted financing costs of $695,698 associated with the issuance of medium and long term debt instruments (Exhibit E1, Tab 4, Schedule 2, updated February 3, 2010). This cost represents approximately 0.055% of the total amount of long term debt forecast to be outstanding in 2010 of $1.277 billion.

The Board has not provided an allowance for the financing costs associated with debt of 50 basis points or any amount for that matter. The onus is on the distributor to justify the costs that it is seeking to recover.

Mr. Sardana indicated that these costs were costs beyond those associated with the normal operating treasury costs which are included in the OM&A expenses. The $695,698 in financing costs associated with the long term debt is related to the issuance costs of the debt instruments such as charges for underwriters, commission, brokers and legal fees (Tr. Vol. 1, pages 52-53). If THESL is successful in persuading the Board that these costs are legitimate costs to be recovered, these costs will form part of the revenue requirement top be recovered from ratepayers. BOMA submits that the Board should apply the same consideration to the flotation costs associated with equity.

BOMA submits that it would be grossly unfair to ratepayers to expect them to pay for equity-related costs that THESL has clearly stated do not exist.

BOMA also submits that this would be unfair to other distributors that do have flotation and transaction costs. In the case of such a distributor, it would earn 9.75% on its deemed equity and some portion of that would be related to costs that were actually incurred. If the 50 basis point allowance is appropriate and accurate, then the shareholder effectively earns an after cost return on equity of 9.25%. The shareholder of the distributor that has no such costs, however, is allowed to earn an after cost return on equity of 9.75%. BOMA submits that the Board should not discriminate on this basis. Shareholders of all distributors should be allowed the opportunity to earn the same after cost return on equity.

c) Short Term Debt Rate

BOMA submits that the short term debt rate should be updated to reflect the Board's methodology as outlined in Appendix D of the EB-2009-0084 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities.

Issue 5.2 – Is the Long-Term Debt Rate appropriate?

As shown in Exhibit E1, Tab 4, Schedule 2, updated on February 3, 2010, THESL is forecasting an average debt rate of 5.38% for 2010. This rate would be applied to a deemed amount of long-term debt based on 56% of total rate base. Based on the rate base figure of $2,140.9 million shown in Appendix B of the Settlement Agreement, this would result in a deemed long-term debt amount of $1,198.9 million. At a rate of 5.38%, the cost of this deemed long-term debt would be $64.50 million.

The calculation of the 5.38% rate shown in Exhibit E1, Tab 4, Schedule 2, Updated is based on a total of 5 debt instruments, four of which are currently in place and a fifth forecast to be issued June 1, 2010 for an amount of $200 million at a rate of 5.79% for a 30 year term (Tr. Vol. 1, page 49).

BOMA submits that there are two issues related to this forecast for long-term debt. Both issues deal with the forecasted capex debt issue scheduled for June 1, 2010 for a 30 year term for an amount of $200 million at a rate of 5.79%.

a) Amount of Debt

BOMA submits that the $200 million amount of the June 2010 forecasted issue is overstated and should be reduced to more closely match the deemed amount of long-term debt. As noted earlier, this is approximately $1,198.9 million.

As shown in the February 3, 2010 update to Exhibit E1, Tab 4, Schedule 2, the average of monthly long-term debt outstanding is forecast to be $1,277.5 million. This amount is based on the inclusion of the $200 million issue for 214 days in 2010. Excluding this $200 million in debt, the average of the monthly long-term debt outstanding from the other four debt instruments is $1,160.2 million.

BOMA submits that on an annualized basis, THESL needs to issue only approximately $38.7 million in additional debt. This would bring the actual long-term debt outstanding to$1,200 million, in line with the deemed amount included for rate making purposes.

Based on an issue date of June 1, 2010, this would translate into an amount of $66 million, as illustrated in the following table, which is a reproduction of Exhibit E1, Tab 4, Schedule 2 replacing the $200 million issue on June 1, 2010 with a $66 million issue.

Description	Issue Date	Maturity	Principal	Coupon Rate	Effective Days	Carrying Cost
$980 City Note	May 6, 2003	May 6, 2013	490,115,467	5.36%	365	26,270,189
$180 Debenture	May 6, 2003	May 6, 2013	180,000,000	6.16%	365	11,088,000
1st tranche City Note Replacement	No 14, 2007	Nov 2017	245,057,739	5.20%	365	12,743,002
2nd tranche City Note Replacement	Nov 13, 2009	Nov 2019	245,057,739	4.54%	365	11,125,621
Capex Debt Issue	June 1, 2010	June 2040	66,000,000	5.79%	214	2,240,492
Financing Costs						695,698
Avg of Monthly Debt Outstanding			1,198,926,835	5.35%		64,163,003

As the above table illustrates, with $66 million issued on June 1, 2010, the average of the monthly debt outstanding now closely approximates the deemed level of long-term debt. The lower amount of debt to be issued in June of 2010 also results in a lower overall rate associated with the long-term debt of 4.35%, as compared to the forecast of 5.38%. When applied to the deemed long-term debt of $1,198.9 million this reduction of 3 basis points results in a reduction of approximately $360,000 in interest costs.

THESL states that the $200 million capex debt issue is needed to finance long-term assets (Tr. Vol. 1, pages 50-51). However, the $1,277.5 million shown as the average monthly long-term debt outstanding shown in Exhibit E1, Tab 4, Schedule 2, updated as of February 3, 2010 is virtually identical to total deemed debt (short-term and long-term) component of the rate base shown in Appendix B to the Settlement Agreement. The deemed debt component of 60% of the $2,140.9 rate base represents $1,284.5 in deemed debt. In other words, THESL has used long-term debt to finance the deemed debt portion of its assets despite the fact that a significant portion of rate base is made up of short term assets such as the working capital allowance, computers and software.

BOMA submits that this is not appropriate and respectfully submits that the Board should limit the June 2010 long-term debt issue to $66 million to calculate the appropriate long-term debt rate to be used for rate making purposes for 2010.

<u>b) Debt Rate</u>

The second issue with the long-term debt is the rate used by THESL for the June , 2010 debt issue. THESL has used a forecast of 5.79%. This figure is based on the 10+ year Government of Canada bond yield forecast shown in Exhibit E1, Tab 5, Schedule 1, updated on February 3, 2010 that is taken from the December, 2009 Conference Board of Canada forecast of 3.74%, a corporate spread of approximately 200 basis points over the long Canada forecast (Tr. Vol. 1, pages 23-28) and a fee of five basis points (Exhibit E1, Tab 1, Schedule 1, page 2).

There was some discussion as to why THESL was not borrowing the $200 million need for capital expenditures from Infrastructure Ontario (Tr. Vol. 1, pages 55-59). It appears to BOMA that the only issue that THESL has with borrowing from Infrastructure Ontario is related to the need to subordinate the affiliate loans to the Infrastructure Ontario loan. BOMA notes that the $200 million in debt to be issued in June of 2010 represents less than 15% of the total long-term debt that would be in place at that time.

BOMA does not believe this should be a roadblock to THESL borrowing from Infrastructure Ontario at rates that are substantially below that of the rate from its affiliate. In particular, the Infrastructure Ontario rates form 30 year loans are currently approximately 50 basis points lower than the 5.79% forecast provided by THESL. The Infrastructure Ontario rates are publicly available on it is website at http://www.infrastructureontario.ca/en/loan/rates/sectors/local_distribution_rates.asp.

The following table revised the calculation of the overall cost of long-term debt provided in Exhibit E1, Tab 4, Schedule 2 to reflect a 50 basis point reduction in the June 2010 issue of $200 million.

Description	Issue Date	Maturity	Principal	Coupon Rate	Effective Days	Carrying Cost
$980 City Note	May 6, 2003	May 6, 2013	490,115,467	5.36%	365	26,270,189
$180 Debenture	May 6, 2003	May 6, 2013	180,000,000	6.16%	365	11,088,000
1st tranche City Note Replacement	No 14, 2007	Nov 2017	245,057,739	5.20%	365	12,743,002
2nd tranche City Note Replacement	Nov 13, 2009	Nov 2019	245,057,739	4.54%	365	11,125,621
Capex Debt Issue	June 1, 2010	June 2040	200,000,000	5.29%	214	6,203,068
Financing Costs						695,698
Avg of Monthly Debt Outstanding			1,277,491,219	5.33%		68,125,579

This reduces the long-term debt rate from 5.38% to 5.33%. Applied to the deemed long-term debt amount of $1,198.9 million, this would result in a reduction in interest expense of approximately $600,000.

BOMA submits that THESL has not provided sufficient justification for not borrowing from Infrastructure Ontario at significantly lower rates. BOMA respectfully submits that the Board should use the 30 year term rate from Infrastructure Ontario for the $200 million loan (or a reduced amount as submitted above) in the calculation of the weighted average cost of long-term debt.

D – INCOME TAXES

The Settlement Agreement dated January 22, 2010 dealt with the calculation of income taxes. In particular, Section 3.7 of the Settlement Agreement stated that:

> *"For the purposes of settlement, the intervenors accept THESL's evidence that it has followed the Board's methodology to determine PILs, however the amount of PILs is dependent on the net income, and therefore the PILs amount to be included in revenue requirement is dependent on the determination of Issues 5.1 and 5.2."*

The Board's policy in cost of service rebasing applications has been to require distributors to reflect the most current information in the draft rate order when a Decision is rendered. In particular, the Board stated in the EB-2009-0245 Decision and Order dated June 3, 2009 for Thunder Bay Hydro Electricity Distribution Inc. that:

> *"The Board notes the general acceptance of Energy Probe and Thunder Bay of the Board's general policy that the PILs allowance should accurately reflect the most current information."*

The Decision and Order then goes on to state"

> *"In filing its Draft Rate Order, Thunder Bay should incorporate all known income and capital tax changes into its PILs calculations for 2009 that have arisen since the application was filed."*

BOMA submits that the Board's policy is appropriate. BOMA also notes that in the response to Undertaking J2 THESL has indicated that it intends to reflect the changes in provincial tax rates and tax credits in the final tax rate calculation for rate finalization.

BOMA submits that there are five adjustments that should be made to accurately reflect the most current information and the known changes beyond what THESL had already incorporated into its evidence. These changes relate to the provincial corporate tax rate, the small business deduction changes, changes to the Co-operative Education Tax Credit, changes to the Apprenticeship Training Tax Credit and the application of the federal apprenticeship job creation tax credits.

a) Provincial Corporate Tax Rate

As shown in Exhibit P1, Tab 2, Schedule 2, page 5 of 30, THESL has used a provincial corporate tax rate of 14.0%.

Effective July 1, 2010 this rate has been reduced to 12.0%. The resulting average tax rate for calendar 2010 is therefore 13.0%. THESL acknowledged this change in the response to BOMA Interrogatory #34 (a). THESL also indicated in the response to part (b) of that interrogatory that it would update its calculation of income taxes (PILs) to reflect substantively enacted rates or other changes ordered.

BOMA submits that the Board should order THESL to reflect this change in the provincial corporate tax rate.

b) Small Business Deduction

As confirmed and calculated by THESL in the response to BOMA Interrogatory #35, parts (c) and (d), the reduction in the small business rate from 5.5% to 4.5% on the first $500,000 of taxable income and the elimination of the 4.25% surtax on taxable income over $500,000 up to $1.5 million, both effective July 1, 2010, results in a reduction in income taxes payable by $18,904.

BOMA submits that the Board should direct THESL to reflect this reduction in taxes due to the small business deduction in its revenue requirement.

c) Co-operative Education Tax Credit

The Co-operative Education Tax Credit ("CETC") is a refundable tax credit available to businesses that employ postsecondary students enrolled in qualifying co-operative education programs at eligible education institutions. The CETC was a 10 percent refundable tax credit on salaries and wages paid to a maximum of $1,000 per work placement.

Effective March 26, 2009 the CETC was increased to 25 percent of salaries and wages paid to a maximum of $3,000 per work placement.

THESL indicates that their forecast was based on the average of the actual tax credits claimed from taxation years 2005 to 2008 (BOMA Interrogatory #37 (d)). On the assumption that the 2010 test year will have the same number of eligible positions as there was in 2008, the CETC would total $153,000 (BOMA Interrogatory #37 (d)). This would replace the forecasted amount of $49,000 included in the original calculation (BOMA Interrogatory #37 (b)).

BOMA submits that this increase in the CETC tax credit is appropriate as it reflects the change in the amount eligible to be claimed. It reflects both the change in the level of the amount for each eligible position and the expected number of eligible positions in 2010, being the same level as were eligible in 2008 (BOMA Interrogatory #32). BOMA submits that the Board should direct THESL to reflect the increased claim in the draft rate order.

d) Apprenticeship Training Tax Credit

The provincial Apprenticeship Training Tax Credit ("ATTC") is a refundable tax credit available to businesses on the salaries and wages paid to eligible apprentices in designated construction, industrial, motive power and service trades. The ATTC credit has been increased from a 25 percent refundable tax credit on the salaries and benefits paid during the first 36 months of an apprenticeship program to a maximum annual credit of $5,000 per eligible position to 35 percent of the salaries and benefits paid during the first 48 months of the apprenticeship program to a maximum annual credit of $10,000 per eligible position.

THESL has included a tax credit related to the provincial ATTC of $131,000 (BOMA Interrogatory #37 (b)) in the calculation of 2010 income taxes. As indicated in the response to part (c) of the same interrogatory, this forecast was based on the average of the actual tax credits claimed from taxation years 2005 through 2008.

THESL had a total of 62 eligible positions for the ATTC in 2008 (BOMA Interrogatory #32). Based on the response to BOMA Interrogatory #37 (c), THESL indicates that the upper limit impact of increasing the maximum ATTC to $10,000 from $5,000 is approximately $254,000. BOMA questions this calculation.

To be eligible for the maximum eligible ATTC credit of $10,000, an apprentice need only have a salary of $28,571 ($28,571 x 35% = $10,000). It can be assumed that the 62 apprentices that were included in the calculation for 2008 are making more than this in 2010. These 62 positions would then qualify for a total ATTC amount of $620,000.

In addition, as noted above, THESL has based this credit based on historical numbers from 2005 through 2008. In addition to the doubling of the maximum available credit per eligible position, THESL has provided clear evidence that it is projecting a significant increase in the number of apprentice positions in 2009 and 2010 over and above the actual level of 2008. THESL indicates that it will be hiring approximately 57 trades apprentices in 2009 and 2010 (Exhibit C2, Tab 1, Schedule 5, page 7). Table 4 in Exhibit C2, Tab 1, Schedule 5 shows the headcount for the Apprenticeship Program in 2010. THESL is forecasting that the number of individuals in Apprenticeship Program will be 117 in the 2010 test year. This figure reflects the 62 apprentices in 2008, the graduation of 2 employees from the program (Table 2 of Exhibit C2, Tab 1, Schedule 5) and the addition of the 57 positions noted above.

The wages and salaries and benefit costs associated with these 117 positions, along with the associated training costs, have been included in the revenue requirement for the 2010 test year. BOMA submits that the provincial ATTC available for these 117 positions should also be reflected in the revenue requirement. In particular, at a credit of $10,000 per position, BOMA submits that the appropriate ATTC tax credit applicable is $1,170,000.

e) Federal Apprenticeship Job Creation Expenditures Credit

In addition to the provincial ATTC tax credit there is a federal apprenticeship job creation tax credit available to THESL. This credit is $2,000 per eligible position per year for the first 24 months of the apprentice job.

As shown in the response to BOMA Interrogatory #37 (a), THESL has included a federal tax credit of $87,000 in the calculation of taxes in 2010. BOMA submits that this number should be updated to reflect the 57 apprenticeship positions forecast to be added in 2009 and 2010, as noted above. The existing apprentice positions as of 2008 will not be eligible for this credit as the 24 month horizon will have expired by 2010 for these positions. The 57 positions to be added in 2009 and 2010, however, will qualify for this credit in 2010.

BOMA submits that the appropriate federal tax credit associated with the 57 apprentice additions is $114,000. BOMA submits that the Board should direct THESL to reflect the increased claim in the draft rate order.

E – COSTS

BOMA requests that it be awarded 100% of its reasonably incurred costs. BOMA was an all-issues participant in this process, including the review of evidence, preparation of interrogatories and participation in the settlement conference.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 19, 2010

Randy Aiken

Consultant to BOMA