

THE ONTARIO ENERGY BOARD

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.

**Written Argument Of
The Consumers Council of Canada**

WeirFoulds LLP

Barristers and Solicitors
Suite 1600 Exchange Tower
130 King Street West
Toronto, Ontario M9N 2H6

Robert B. Warren

(416) 365-1110

(416) 365-1876 (FAX)

Counsel to the Consumers Council of Canada

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WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

I INTRODUCTION

1. This is the Written Argument of the Consumers Council of Canada ("CCC") in Toronto Hydro-Electric System Limited 's ("THESL") application to the Ontario Energy Board ("Board") for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

2. The Written Argument addresses only those issues which remain unsettled.

II Capital Structure and Cost of Capital

3. In its application, THESL sought approval of a return on equity ("ROE") of 8.01%. It now seeks an approval of a ROE of 9.75%. The impact, on the revenue requirement, of the increase in the ROE, is approximately \$23 million.

4. THESL presented no evidence that a ROE of 9.75% was appropriate, based on its circumstances. Indeed, the evidence it did present, particularly the DBRS rating report of

November 19, 2009 (**Ex. E1, Tab 6, Sch. 1**), discloses that the rating agencies were prepared to upgrade the status of Toronto Hydro Corporation, notwithstanding its ROE of 8.01%.

5. In seeking a higher ROE, THESL is relying solely on the *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities, EB-2009-0084* ("*Cost of Capital Report*"). (**Tr., Vol. 1, pp 42-43**)

6. Approval of any application under section 78 of the *Ontario Energy Board Act* (the "Act") must be based solely on the evidence before the Board. Parties affected by the Board's decision must be given an opportunity to cross-examine on that evidence. If no evidence is provided in support of the approval sought, or if no opportunity is given to cross-examine on that evidence, then the Board is without jurisdiction to grant the approval sought.

7. The CCC submits that the Board's *Cost of Capital Report* is not evidence that the Board can rely on in support of THESL's application for an ROE of 9.75%. There was no evidence in the Cost of Capital proceeding which was specific to the circumstances of THESL. Indeed, there was no "evidence" at all in that proceeding, given that any information provided, with respect to THESL or any other utility, was not given under oath. There was no opportunity to cross-examine on any information provided about THESL or, indeed, about any utility. The CCC submits, therefore, that the Board is without jurisdiction to grant THESL's request for an ROE of 9.75%. The only relief which the Board can grant is the ROE originally applied for, namely 8.01%.

8. As noted above, the impact of the increased ROE on THESL's revenue requirement is approximately \$23 million. THESL takes the position that the impact of that increase on ratepayers will be minimal. (**Settlement Agreement, Appendix B**)

9. The increases in rates, resulting from THESL's revenue requirement, cannot, and should not, be seen in isolation. THESL's ratepayers will also see their rates increase as a result of a number of factors, including the cost of implementing green energy initiatives, by THESL and others, the impact of the "special fund" levied to support government research, and the global adjustment, the increases in which THESL's witness described as "dramatic". (**Tr., Vol. 1, p. 44**)

10. The CCC submits that it is incumbent on THESL, or indeed on any utility, to track the cost of these various factors and include them in their proposals for rate increases. If the utilities do not do that, then the OEB should. Unless the Board considers the impact of those factors, the CCC submits that it cannot carry out its statutory obligation to protect the interests of consumers with respect to prices.

11. THESL's witness was candid in saying that THESL has no estimate of what the cost of those factors are likely to be. (**Tr., Vol. 1, p. 44**) THESL's witness also conceded that the question of whether THESL should take the benefit of the increased ROE, in light of the rate increases faced by its ratepayers, was not put to the Board of Directors of Toronto Hydro.

12. CCC submits that the Board should not approve THESL's rate increase unless and until it knows the impact on THESL's ratepayers, not just of THESL's own revenue requirement, but of the "external" factors, such as the global adjustment. In the absence of that information, the CCC submits that the OEB should deny THESL's requested increase in its ROE.

13. In the alternative, if the Board believes it has evidence to support THESL's requested increase in its ROE, it should exclude from that increase the implicit 50 basis points for transactional costs. THESL's witness conceded that THESL had never incurred a flotation cost associated with the issuance of equity and that THESL had no current expectation that it will even happen in the foreseeable future. In those circumstances, the CCC submits that it would be appropriate to reduce the ROE by the implicit 50 basis points.

III Suite Metering

14. The Settlement Agreement sets out the unresolved issue regarding suite metering. Specifically, the issue to be considered by the Board has been defined as, "Is Toronto Hydro's cost allocation in respect of residential customers residing in individually metered multiple units (suite metered customers) appropriate?". The Smart Sub-Metering Working Group ("SSMWG") retained Mr. Philip Hanser of the Brattle Group to prepare evidence on the issue.

15. In his evidence Mr. Hanser sets out his analysis of the cost allocation issue. Specifically he concludes, "Whether viewed from an incremental standpoint for 2010 or viewed cumulatively, it appears THESL is not recovering sufficient revenues from its suite meters to

offset the increase capital and OM&A expenditures associated with the installation and the operation of the suite meters." Thus it appears that THESL is cross-subsidizing its suite meter revenues from its customers. **(Ex. K.6)**

16. The CCC is unclear as to what specific relief the SSMWG will be seeking from the Board. Based on the conclusions reached by the SSMWG witness the CCC submits that there was not sufficient evidence produced in this proceeding to conclude that in fact there is a cross-subsidy of the suite meter activities by THESL's other residential consumers. That does not necessarily mean that some form of subsidy does not exist. The CCC agrees that a full cost-of-service study would be required in order to make that determination.

17. The difficulty with this issue is that suite metering activities are contestable, but also imposed on regulated distributors. Local distribution companies ("LDCs") are permitted to install smart meters in condominiums. In addition, they are, under certain circumstances, mandated to provide such services despite the fact that other service providers are active in the market. In effect, this is both a regulated and unregulated activity. The Board must ensure that LDCs are able to comply with their licence conditions as set out in the Distribution System Code, while at the same time ensure that the market remains contestable.

18. Given the lack of evidence that the suite metering activities are being cross-subsidized, the CCC submits that the Board should approve THESL's metering costs and revenues as a part of its 2010 revenue requirement. However, as the Board put in its Decision in THESL's last cost of service rate proceeding, and in the most recent Powerstream Inc. Decision these matters should be considered in a generic context. The CCC submits that a generic process should follow the finalization of the new rules regarding suite metering that will be determined through the new *Energy Consumer Protection Act, 2009*.

19. A generic process should include, at a minimum a consideration of the following issues:

1. How to reconcile the fact that these activities are provided by both regulated and unregulated entities;

2. Whether LDCs should be required to undertake cost allocation studies to determine whether the costs of these activities are being subsidized by the other LDC activities;
3. Whether a separate rate class should be established for residential suite metering;
4. Whether LDCs should be required to provide these services through an affiliate;
5. What type of costing should apply if LDCs are permitted to continue to carry out suite metering activities.

20. The CCC submits that all of these issues need to be resolved to ensure that the interests of utility customers are protected. A consideration of these issues through a generic process will ensure that all of the relevant stakeholders can be heard and will allow the Board to develop a consistent policy that can be applied across the Province.

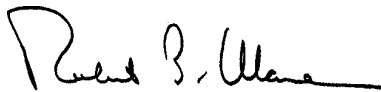
IV Proceeds from the Sale of Building

21. The CCC adopts the position on this issue set out in Board Staff's submission.

V Costs

22. The CCC asks that it be awarded 100% of its reasonably-incurred costs for its participation in this matter.

All of which is respectfully submitted.



Robert B. Warren

Counsel to the Consumers Council of Canada

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