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March 24, 2010

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

Attention: Kirsten Wall
Board Secretary

Dear Ms. Walli:

Re: Toronto Hydro Electric System Limited
Board File: EB-2009-0308

This is in reply to the letter from counsel for the Working Group and Avonshire and Metrogate dated March 22, 2010.

In that letter, counsel submits that the Board's Rules of Practice and Procedure (the "Rules") and the Practice Direction on Cost Awards (the "Practice Direction") should not apply to their claims for costs. This is a remarkable assertion.

The ability to award costs for reimbursement is a statutory power, not a discretionary practice. The Board's cost award power is governed by the Rules and its Practice Direction. Although acknowledging that it is seeking an "extraordinary" remedy, counsel claims that it is entitled to a departure from the Rules and Practice Direction so that the Board may punish Toronto Hydro for defending its case and reward its clients for defending "their rights and the public interest". There are many intervenors before the Board who would characterize their activity as pursuing the public interest. The purpose of cost awards is not to choose favourites among intervenors and applicants. It is to provide "reimbursement" for participating in a proceeding, which is the term used in Section 6 of the Practice Direction.

That reimbursement is governed by rules. The Board has, so far, conducted this case within its Rules. For example, it ordered the production and discovery of documents to be carried out "in accordance with the Board's standard practice for oral proceedings." (P.O. 4, November 20, 2009). The Board has the authority under the Rules to find parties eligible for costs (which it has obviously done here), and to order any other party to pay those costs. Toronto Hydro submits that those orders are not to be discretionary and arbitrary directions, but must be made in accordance with the Rules and the Practice Direction.

All of which is respectfully submitted.



George Vagh

c: Maureen Helt – Ontario Energy Board
Michael Millar – Ontario Energy Board
Guru Kalyanraman – Electricity Distributors Association
Glen Zacher – Stikeman Elliott
Colin McLorg – Toronto Hydro Electric-System Limited
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