



April 22, 2010

**BY COURIER AND RESS**

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

Dear Ms. Walli,

**RE: Whitby Hydro Electric Corporation  
Application for Approval of 2010 Electricity Distribution Rates  
EB- 2009-0274**

Whitby Hydro Electric Corporation has completed all remaining interrogatories submitted by the School Energy Coalition (SEC) on March 29, 2010. A complete copy of all SEC responses has been included in the attached document. For clarification purposes, there have been no modifications made to any of the responses that were originally submitted on April 16<sup>th</sup>, 2010.

Should you require any further information or clarification, please contact me directly.

Respectfully submitted,

*Original signed by*

Ramona Abi-Rashed  
Treasurer

Cc: Neil Mather (email)  
All Intervenors (email)

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

**AND IN THE MATTER OF an Application by Whitby Hydro Electric Corporation for an order or orders approving just and reasonable distribution rates commencing May 1, 2010.**

**INTERROGATORIES  
OF THE  
SCHOOL ENERGY COALITION**

- 1. [Page 11] Please provide a full timeline showing all reasons for the late filing of the application, and the time lost for each reason.**

**Response:**

On August 14, 2009, Whitby Hydro notified the Board that it would not be able to meet the August 28, 2009 filing deadline as more time was required to complete the rebasing application in a cost effective manner which would meet the Board's minimum filing requirements. The application was filed on that basis on January 18, 2010 and a notice of application was issued February 8, 2010. Energy Probe and VECC applied for intervenor status on February 10th and 16th respectively, followed by SEC on March 2, 2010.

Whitby Hydro required the extra time to prepare its application with the expectation that it would minimize its preparation costs by completing most of the work internally and that it would ensure that the application was complete and accurate so that the time required for other parties and the Board to review and assess the application would be reduced.

Whitby Hydro is a medium sized high growth utility with a small compliment of managers and employees who are required to multi-task and share the day to day administration and operation activities of running the utility. In order to complete an accurate and cost effect application, Whitby Hydro decided to prepare the evidence internally as much as possible. This was considered prudent for two reasons.

First and foremost, Whitby Hydro staff has the best understanding of customer information, financial data, utility operations and shareholder expectations. Access to this in-house knowledge was the only way to ensure a thorough and concise filing that would allow the Board to process the application in an efficient and timely matter.

Secondly, Whitby Hydro was concerned about the costs of preparing the application and the resulting costs that could be placed on its ratepayers if staff took a less active role relying solely on third parties to prepare the application. Whitby Hydro made a decision for the minimal use of external resources in an effort to control the cost of the application process.

During the preparation of the application, staff shortages and the need for managers to continue the day-to-day operations of the utility, had an adverse impact on the ability of Whitby Hydro to meet the filing deadline. Due to the limited resources, managers and employees assigned to the application had to be reassigned to backstop employees unexpectedly absent.

In addition to the unplanned resource shortages, Whitby Hydro was required to confirm the billing determinants used by the IESO to invoice to Whitby Hydro for wholesale purchases. While this exercise took additional time away from the application, the confirmation of the wholesale supply point attributes assisted in verifying a reduction in distribution line losses. The revised line losses are reflected in the application.

The delay in filling the application also allowed Whitby Hydro to confirm costs related to major capital projects such as the Hwy #7 reconstruction project and the extension of the Hwy 407. Overall, the extra time provided an opportunity to collect, verify and tabulate all of the material required to meet the Board's new filing requirements.

Notwithstanding the delays that were experienced in the preparation of the application, Whitby Hydro under estimated the amount of work and range of resources needed to file a cost of service application under the Board's filing guidelines. Whitby Hydro applied its best efforts under the circumstances and is prepared to continue on that basis working cooperatively with intervenors and Board staff to complete the process in an efficient manner so that rates can be implemented close to May 1, 2010.

2. [Page 28] Please provide any Shareholder Direction or other similar documents or instructions from the shareholder under which the operation or administration of the Applicant is carried out.

**Response:**

The Shareholder Direction has been attached.

3. [Page 28] Please provide a copy of the December 1, 2006 letter from the CCO, with all attachments. If the letter responds or refers to an ARC compliance plan by either the Applicant or the Board, please provide that plan.

**Response:**

Whitby Hydro has attached the December 1, 2006 letter from the CCO, as well as the relevant portion of the ARC compliance plan.

**4. [Page 30] With respect to the organization structure chart:**

- a. Please confirm that each of the senior management personnel listed – Lavelle, Watt, Abi-Rashed, and Sanderson – is legally employed by the Applicant. If that is not the case, please advise the name of the legal employer of each.**

**Response:**

Jim Lavelle, Ramona Abi-Rashed and Marion Watt are all Officers of Whitby Hydro. Jim Lavelle is President/CEO, Ramona Abi-Rashed is Treasurer and Marion Watt is Corporate Secretary.

John Sanderson is Vice President but is not an officer of Whitby Hydro. The Vice President is an employee who is 100% dedicated to Whitby Hydro with the payroll function for that employee being processed through Whitby Hydro Energy Services

- b. Please advise which other related or affiliated companies or entities (including, if applicable, the shareholder), employ or receive services from any of those four officers. If they are employees or provide direct services to any entity other than the Applicant, please provide details of the relationship and financial reconciliation.**

**Response:**

Jim Lavelle, Ramona Abi-Rashed and Marion Watt also serve as President/CEO, Treasurer and Corporate Secretary, respectively, of both Whitby Hydro Energy Services Corporation ("WHES") and Whitby Hydro Energy Corporation ("HOLDCO"). The cost of services they provide to WHES and HOLDCO in their capacity as officers is allocated to WHES and HOLDCO based on time spent. As John Sanderson provides dedicated services to Whitby Hydro, 100% of his time is allocated to Whitby Hydro.

- c. Please advise whether any of the four officers report, either on a direct line or dotted line basis, to any person or persons who is employed by any related or affiliated company or entity. Please describe in detail any such reporting relationships.**

**Response:**

Jim Lavelle, Ramona Abi-Rashed and Marion Watt, in their capacity as officers of Whitby Hydro, WHES and HOLDCO report to the Boards of Directors of all three entities. John Sanderson exclusively reports to Jim Lavelle in his capacity as President of Whitby Hydro.

This structure remains unchanged from that which was reviewed and found compliant by the CCO during the 2006 Compliance Review.

5. **[Page 34] Please confirm that the Applicant has forty publicly-funded elementary and secondary schools in its franchise area. Please advise how many are in each of the GS<50 and GS>50 classes. Please advise how many schools, if any, are also sentinel light customers.**

**Response:**

According to Whitby Hydro's record, there are 41 schools in its distribution service area. The breakdown by customer class is as follows:

GS< 50 kW – 7 schools

GS>50 kW – 34 schools

None of the schools are sentinel light customers.

6. **[Page 36] Please file the three year capital and operating budget for 2010-2012, together with all presentations and supporting materials provided to the Board of Directors or senior management or the Town of Whitby related to that budget. Please also file the approved three year capital and operating budgets for 2009-2011 and 2008-2010.**

**Response:**

Whitby Hydro has provided its three year capital and operating budgets for 2010-2012 in response to VECC interrogatory #5. Whitby Hydro declines to provide all related presentations and supporting materials provided to the Board of Directors or senior management or the Town of Whitby on the basis of relevance. Whitby Hydro filed its 2010 capital and operating budgets as evidence in support of just and reasonable distribution rates. The budgets have been supported by extensive evidence that demonstrates the prudence of the underlying costs. That evidence complies with the OEB's filing requirements, and the OEB is able to make a ruling on the Application with the evidence before it. The OEB has issued many decisions without materials presented to Boards of Directors. The reason for this is that prudence can be established based on the information required by the Board's filing requirements. If supporting materials for capital and operating budgets presented to an Applicant's Board of Directors for approval were truly relevant, we believe that the OEB would require that such materials be filed as part of its filing requirements. Rather, the OEB's filing requirements only require Applicants to file the following statement with respect to budget approval by Boards of Directors:

"A statement is to be provided as to when the forecast was prepared and when it was approved by utility management and/or Board of Directors for use in the application"

The budgets for use in the application were approved by Whitby Hydro Board of

Directors on December 17, 2009.

In regard to the request for historic capital and operating budgets, Whitby Hydro declines on the basis of relevance. The proposed revenue requirement for the Test Year included in the Application is supported by the budgets filed in response to VECC interrogatory #5.

**7. [Page 36] Please provide the prioritized list of capital projects referred to, together with details of the top five capital projects that were not approved for the test year.**

**Response:**

The following is a list of 2010 Capital Projects which have been categorized (prioritized) using the following indices:

- 1 – Customer Demand
- 2 – Reliability
- 3 - Regulatory

Substations	Project Category
Distribution Station Equipment Substation - M.S. 6	2
Distribution Station Equipment Substation - M.S. 8	2
Distribution Station Equipment Substation - M.S. 9	2
Distribution Station Equipment Substation - M.S. 10	2
Distribution Station Equipment Substation - M.S. 11	2
Distribution Station Equipment Substation - M.S. 13	1
General Allowance & Contingency	2

Subtransmission	Project Category
Extend 2 feeders on Victoria Street from M.S. 12 to Jeffrey Street	1
Installation of one L.I.S. switch on the 44 kV sub transmission system	2
Extension of 1 - 44 kV Feeder, South on Lakeridge Road, to Dundas Street (Phase 1)	1
Sub transmission work for M.S. 13 Substation on Centre Street North	2

Distribution	Project Category
2 - 13.8kV feeders from M.S. 13 - Centre Street, 1- north and 1 - south,	2
Distribution portion for the extension of 1 - 44 kV Feeder, South on Lakeridge Road, to Dundas Street (Phase 1)	1

Overhead Rebuilds / Underground Rehabilitation	Project Category
<b>TOTAL Overhead Rebuilds</b>	<b>2</b>
Diamond St	
Scott Street	
Parkview	

<b>TOTAL Rehabilitate Underground</b>	<b>2</b>
Michael Boulevard	

<b>MISCELLANEOUS SYSTEM IMPROVEMENTS</b>	<b>Project Category</b>
<b>Rotten Pole Replacements</b>	<b>2</b>
<b>Switchgear, Overhead switch Replacements and Fault Indicator Installations</b>	<b>2</b>
<b>Transformer and Elbow Replacements</b>	<b>2</b>
<b>Overhead conductor Replacements</b>	<b>2</b>

<b>DESCRIPTION</b>	<b>Project Category</b>
<b>Region of Durham</b>	<b>3</b>
Thickson Road (CN Rail, South to Wentworth Street) widening to 4 lanes Reg. Rd. No. 26	
Victoria Street West (Lakeridge Rd. to Seaboard Gate)	
Thickson Road Intersections - Consumers Drive & Victoria Street	
<b>Town of Whitby</b>	<b>3</b>
Dundas Street (Craydon Rd. to John St.) installation of sewer	
Palace St., Athol St., Clemence St., St. Lawrence St., St. Peter St. - reconstruction/urbanization	
<b>Ministry of Transportation</b>	<b>3</b>
Winchester Road West (Highway No. 7) Widening-continuation from 2009	
Highway 407 (Engineering)	

The following is a list of the top five capital projects that were not approved for the test year (2010):

Project	Project Category	COMMENTS
Victoria Street– Lakeridge to Halls Road	3	Road widening - utility relocation work (ph 1) scheduled for 2011
Michael Blvd Phase II	2	Deferred to 2011 to complete the replacement of primary cables
HWY 407 Link and extension	3	New Hwy 407 - utility relocation work scheduled for 2011
Feeder extension on Victoria St from MS12 to Jeffrey	1	Rescheduled to 2013 to correspond with utility relocation work scheduled on Victoria St.
44 kV feeder extension Dundas to Victoria St	1	Rescheduled to 2011 to follow 2010 feeder extension from Rossland Road to Dundas St on Victoria St.

8. [Pages 38-45] Please recalculate the Revenue Requirement Workform using the values for cost of debt and equity contained in the Board's February 24, 2010 letter.

**Response:**

See response to Energy Probe interrogatory #5.

9. [Page 50] Please advise the date the 2009 audited financials will be released, and file those audited financials as soon as they are available.

**Response:**

We expect to receive the audited statements by May 12th, 2010 and will file them with the Board on a timely basis.

10. [Page 52] Please provide the current dividend policy of the Applicant, as well as the immediately preceding dividend policy if the policy has been changed after 2006.

**Response:**

Dividend payments are provided to the Shareholder based on the Working Capital position exceeding 10% (% of Net Expenses) at year end with variances excluded from calculating the Working Capital position. This policy has been in place from 2006- 2010 with the exception of 2009 which is at 9.0% of Working Capital



**11. [Page 57] Please provide a status report on the Applicant's review of the impact of IFRS.**

**Response:**

Whitby Hydro has not completed assessing the impact of IFRS.

**12. [Page 58] Please provide copies of all agreements and resolutions (including resolutions or by-laws of the Town of Whitby) related to the promissory notes referred to. Please provide all information in the Applicant's possession related to the market interest rates at the time each promissory note was executed.**

**Response:**

Whitby Hydro has no agreements or resolutions in its possession related to the promissory notes, nor does Whitby Hydro possess any information related to the market interest rates at the time each promissory note was executed.

**13. [Page 65] Please provide any board resolutions or other documents dealing with the target "financial returns to the shareholders" for any year in the period 2008 through 2012. Please provide any studies, reports, analyses, or other documents relating to the use of a capital structure that includes a significantly higher percentage of equity than the Board's standard equity thickness. Please provide a calculation of the impact on ROE resulting from the higher equity thickness.**

**Response:**

The evidence at page 65 refers to the objective to "deliver appropriate financial returns to the shareholder". There is no reference to target "financial returns to the shareholder as set out in this interrogatory. Other than the dividend policy described in response to SEC IR #10, no target returns have been set by the shareholder and the use of leverage or a higher equity ratio has not been considered by the shareholder.

**14. [Page 84] Please reconcile the figure of \$40,226,942 in account 2505 with the figure of \$28,337,942 in the 2008 financials and in the 2009 pro forma. If the difference is new debenture or note transactions in 2010, please provide details on the timing, amount and purpose of those transactions.**

**Response:**

The \$11.9M difference is due to new borrowing scheduled to commence in the summer of 2010. The new borrowing is required to finance new capital requirements in the Smart Meter program (\$8M) as well as the 2010 capital program (\$4M).

**15. [Page 103] Please confirm that the budgets prepared by the AMP committee are the same budgets referred to on page 36 and requested in question 6 above.**

**Response:**

The budgets that are prepared by the AMP committee are the same budgets that are referred to on page 36.

16. [Page 106] Please describe the relationship, if any, between the tree trimming activities of the Applicant and the tree trimming activities of the Town of Whitby. Please describe any cost-sharing or resource-sharing arrangements relating to those activities. Please provide details, including source documents, with respect to any tree trimming operational parameters imposed on the Applicant by the municipality.

**Response:**

Whitby Hydro has an annual tree trimming maintenance program as outlined on page 106 of the application. There is no sharing of resources or cost sharing with the Town of Whitby related to tree trimming activities. There are also no operational parameters imposed on Whitby Hydro by the municipality.

17. [Page 107] Please provide a summary of any planned or proposed renewable energy projects in the Applicant's franchise area that are known to the Applicant.

**Response:**

The following is a summary of planned and proposed renewable energy projects in our franchise area:

Embedded Generator Name	Generator Capacity (kW)	Generation Type	Contract Type	Contract Status
1	1.95 kW	Solar PV	Transition RESOP to Micro Fit	Approved
2	0.975 kW	Solar PV	Net meter	Approved
3	21 kW	Wind	FIT	Pending
4	78 kW	Solar PV	FIT	Pending
5	500 kW	Solar PV	FIT	Pending
6	100 kW	Solar PV	FIT	Pending
7	1 kW	Solar PV	Micro FIT	Pending
8	1.53 kW	Solar PV	Micro FIT	Pending
9	7.5 kW	Solar PV	Micro FIT	Pending
10	3.6 kW	Solar PV	Micro FIT	Pending
11	10 kW	Solar PV	Micro FIT	Pending
12	5 kW	Solar PV	Micro FIT	Pending
13	4.2 kW	Solar PV	Micro FIT	Pending
14	9.87 kW	Solar PV	Micro FIT	Pending

18. [Page 111 and following] Please confirm that the Town of Whitby pays capital contributions on the same basis as any other government body that requires capital expenditures by the Applicant. If the Town contributes on a different basis, or does not contribute, please provide full details and background documents.

**Response:**

The Town of Whitby follows the Public Transportation and Highway Improvement Act, R.S.O. 1990 and the Public Service Works on Highways Act with respect to the sharing of relocation costs, the same as the other road authorities that have jurisdiction within Whitby Hydro's service area.

19. [Page 136] Please provide further detail on the Hwy #7 construction project, including details on the total project costs and the calculation of the contribution from the MTO.

**Response:**

Whitby Hydro's cost estimate is based on drawings approved by MMM Group working on behalf of Ministry of Transportation (MTO) dated October 20<sup>th</sup>, 2009. Cost sharing is according to MTO's Policy (Corridor Control and Permit Procedures Manual provided by MTO), the Public Service Works of Highways Act and the Public Transportation and Highway Improvement Act.

MTO is responsible for 50% labour, trucks and equipment.

**TOTAL COST ESTIMATE**

Labour: \$1,850,000  
Equipment 500,000  
Material 525,000

Total Cost \$2,875,000

MTO Share: 50% of labour \$925,000 and Equipment \$250,000 = \$1,175,000

Gross Addition	Contributed Capital	Net Addition
\$ 2,875,000	\$1,175,000	\$ 1,700,000

20. [Page 141, 145] Please provide further detail on the three phase Hwy 407 construction project, including details on the total project costs and the calculation of the contribution from the MTO.

**Response:**

The Hwy #407 project will entail the extension of Hwy #407 through the entire service area from west to east. Also, there is to be a link constructed between Hwy #401 running north to connect to Hwy 407, in a location east of Whitby's westerly boundary.

We have been in discussions with Ministry of Transportation's consultants since early 2009 and preliminary conceptual design drawings that have been provided to Whitby Hydro have indicated that utility plant relocation work will be extensive. Whitby has provided a preliminary estimate in the amount of \$15M based on the Ministry's conceptual design and it is understood through our consultations with the Ministry's consultants that the utility relocation work within Whitby Hydro's service area will take place over a three to four year period. Whitby Hydro has provided a preliminary plant relocation design and cost estimate based on information that is available to date.

This regulatory project is different than what the utility would normally be asked to do when required to relocate is distribution plant. The relocation work will take place over a number of years and although the normal cost sharing will apply where applicable, the majority of the utility plant relocation will take place where the MTO has no existing permits (i.e., not an MTO right of way) and therefore the normal cost sharing does not apply and Whitby Hydro will be eligible to recover 100% of cost in those areas.

The following chart outlines the Gross Additions, Contributed Capital and Net Additions as currently estimate bases on the best available information to date.

**Hwy # 407 Extension Project**

<b>Year</b>	<b>Gross Additions</b>	<b>Contributed Capital</b>	<b>Net Additions</b>
<b>2011</b>	3,736,000	2,610,000	1,126,000
<b>2012</b>	3,792,000	3,000,000	792,000

**21. [Page 148] Please provide a more detailed explanation of the Adjustment of \$678,000.**

**Response:**

The detailed calculation of the \$678,000 is provided in Table 2-14 page 149 under the column "Net Book Value".

**22. [Page 175] Please provide the report prepared by Harris North Star.**

**Response:**

Harris North Star was engaged to develop a program to track information for accounts that had different customer classifications over the 2002-2008 timeframe as compared to their customer classifications at the time the historical data was being gathered. The program did not produce an end-use report, but was used to "mine" data which was then downloaded to Excel. Once the raw data was in Excel, there was additional effort required to sort, analyze, format and "scrub" to ensure

that the required information to make the appropriate adjustments between customer classifications was summarized. Summaries of the adjustments by customer class and year are provided below:

**Summary of Customer Classification Adjustment**

<b>Summary - Net kWh Changes</b>					
	GS<50	GS>50	USL	Res	
2002	(9,451,178)	8,529,086	1,116,719	(194,627)	0
2003	(4,319,948)	3,300,146	1,167,575	(147,773)	0
2004	(3,669,795)	2,602,073	1,168,440	(100,718)	(0)
2005	798,200	(892,877)	260,735	(166,058)	0
2006	1,873,369	(1,780,312)	37,269	(130,326)	0
2007	1,037,009	(888,330)	14,379	(163,058)	(0)
2008	491,207	(342,069)	856	(149,994)	0

<b>Summary - Customer Count/Connection Changes</b>					
	GS<50	GS>50	USL	Res	
2002	(465)	233	263	(31)	0
2003	(235)	45	228	(38)	0
2004	(200)	79	153	(32)	0
2005	(5)	(31)	70	(34)	0
2006	51	(67)	40	(24)	0
2007	15	(16)	29	(28)	0
2008	74	(55)	2	(21)	0

**23. [Page 180] Please provide a summary of all investigations of, or discussions with, the seven key account customers to determine their expected business activity level and/or load in the test year.**

**Response:**

With the downturn in the economy, seven key accounts were identified and surveyed in May 2008 to determine whether they anticipated any changes in their load as a result of internal or external factors. They were also asked if there were any plans to relocate their business outside Whitby Hydro's service area. Their responses and the subsequent consumption comparatives have been outlined below:

Customer 1 – Anticipated no changes to production levels from previous years (same number of shifts) but was trying to implement conservation and production measures to reduce consumption. From December 08 to December 09 Customer 1's consumption decreased by 29%.

Customer 2 – Indicated that they anticipated a decrease in load of approximately 2% as a result of lack of work. Since the survey Customer 2 declared bankruptcy and sold the business. From December 08 to December 09 Customer 2's consumption decreased by 4%.

Customer 3 – Anticipated a decrease in consumption based on 1/3 less hours, and 1 less shift. They also assumed that peak demand would remain the same. Since the survey Customer 3 declared bankruptcy. Whitby Hydro understands that production has ceased at the location and consumption is for building maintenance only. From December 08 to December 09 Customer 3's consumption decreased by 66%.

Customer 4 – Anticipated that consumption would remain consistent with previous years but mentioned that they were implementing energy efficiency lighting that may result in reduction of load. From December 08 to December 09 Customer 4's consumption had decrease by 11%.

Customer 5 – Anticipated no change over the previous year's consumption. Since the survey Customer 5 declared bankruptcy and has reorganized. From December 08 to December 09 Customer 5's consumption decreased by 30%.

Customer 6 – This customer has two services and anticipated a decrease in consumption. They were not sure of the reduction amount but indicated that the main system was being removed from the plant in December 08. Since the survey, service 1 closed down and service 2 remains in production. From December 08 to December 09, service 1's consumption decreased by 74% and service 2's consumption decreased by 10% resulting in an overall reduction of 48%.

Customer 7 – Whitby Hydro was unable to gather any information from Customer 7 (who has two services), but at the time of the survey Customer 7 had announced the closing of their head office and relocation outside of Whitby. Production has gradually been winding down and full closure is expected this year. From December 08 to December 09 Customer 7's consumption decreased by 13% overall.

Since the survey calls to the seven key accounts, Whitby Hydro continues to monitor their customer billing information. Significant changes in billing patterns are typically investigated by performing meter checks and where required, through further discussions with the customer to gain insight into understanding any changes in consumption and demand patterns.

24. [Page 182] Please confirm that the 2009 figures in this table are 2009 actuals. If they are, please complete lines 11 through 21 for the 2009 Bridge and 2009 Bridge vs. 2008 Actual columns. If they are not, please insert 2009 actuals, then complete the same lines.

**Response:**

2009 figures in Table 3-2 on page 182 were not previously updated for actuals. Please refer to the response to Energy Probe IR#18 for 2009 updates to this table.

25. [Page 189] Please confirm that all users of the Applicant's poles are required to pay pole rentals, including the Town of Whitby and the Region of Durham. If that cannot be confirmed, please describe how the arrangements in place for any related party using poles are different from the arrangements in place for arms length third parties.

**Response:**

All users of Whitby Hydro's poles contribute either directly or in kind to the cost of maintaining the distribution poles. The status of the joint-use agreements and pole rental fees for each user group is described below.

Town of Whitby – Currently the Town of Whitby does not pay pole rentals for streetlights and fibre optic cable installation on Whitby Hydro poles in exchange for the Town not charging Whitby Hydro for municipal consent fees and permits for road crossings. Both parties agree that considerable time would be required to determine the impact on both organizations of instituting and administering specific pole rental and municipal charges. The fibre is used solely for municipal purposes.

Region of Durham – (Signed agreement in place) The Region of Durham installed a Wide Area Video Detection System to monitor and control traffic signal operations. This system required the Region of Durham to install communication cable on small sections of Whitby Hydro pole lines. Due to the short distances and the infrequency of this type of system, the Region of Durham has been exempted from standard joint use pole rental fees with the utility. This exemption is considered reasonable since Whitby Hydro does not pay access fees for the use of Regional Roads and improved traffic control is expected to reduce the risk of accidents and utility pole damage at busy intersections. The Region of Durham notified Whitby Hydro that this system is also installed in Ajax, Clarington and Oshawa where the Region is exempted from pole rental fees also.

Oshawa Public Utilities – (Signed agreement in place) Oshawa Public Utilities is invoiced for joint-use pole rentals at the end of each calendar year based on the signed agreement and the rate set out by the Ontario Energy Board, being \$22.35 per pole per year.

Bell Canada – (Signed agreement in place) Bell Canada is invoiced for joint-use pole rentals at the end of each calendar year based on terms outlined in the signed agreement and the rates set out by the Ontario Energy Board.

Roger's Cable TV - (Signed agreement in place) Rogers is invoiced for joint-use pole rentals at the end of each calendar year based on terms outlined in the signed agreement and the rates set out by the Ontario Energy Board.

Telus – (Signed agreement in place) Telus is invoiced for joint-use pole rentals at the end of each calendar year based on terms outlined in the signed agreement and the rates set out by the Ontario Energy Board.

Hydro One – (Signed agreement in place) Hydro One is invoiced for joint-use pole rentals at the end of each calendar year based on terms outlined in the signed agreement and the rates set out by the Ontario Energy Board.

**26. [Page 204] Please provide all data, studies or reports in the Applicant's possession relating to the causes of the drop in average use in the GS>50 class.**

**Response:**

Whitby Hydro has provided data with respect to the seven key accounts referred to both in the application and in updates in response to SEC IR#23 and Energy Probe IR#17. In more general terms, Whitby Hydro acknowledges the general economic downturns, and ramp up in CDM activity in this class as other explanatory factors for the decline in the average use of the the GS>50 class. The regression model used in the load forecast for this class also supports this decline. There are no other studies or reports that Whitby Hydro has in its possession.

**27. [Page 227] Please provide a table showing which employees (by position, not name) are employed by which company or entity, the amounts of costs initially borne by each company or entity, and how those costs are then allocated to the company or entity that ultimately bears them.**

**Response:**

Whitby Hydro has provided the 2006-2010 balances of Account 5610 (Management Salaries and Expenses) on page 213. Further, Whitby Hydro identified the cost allocation methodology of these individuals on page 228 under the heading Shared Services/Corporation Cost Allocation.

**28. [Page 228] Please provide all reports, studies, analyses or other documents in the hands of the Applicant or any of its affiliated entities (including the Town of Whitby) setting out the rationale behind the current shared services arrangements and the alternatives considered and rejected.**

**Response:**

No such reports, studies, analyses or other documents exist.

**29. [Page 233] Please provide details of all conservation-related activities planned in the test year that are expected to be "funded directly by the shareholder".**



**Response:**

Similar to 2008 and 2009, Whitby Hydro has planned several conservation programs in 2010 that will be funded by the shareholder. The programs will continue to target the areas of low income groups, seniors, and family oriented community events. Details are as follows:

**1) Whitby Hydro Low Income Program:**

**2010 Budget: \$23.1K**

The Whitby Hydro Low Income Program started in 2007 and targets low income families through the Whitby Food Bank. The program was adopted because it targets a customer base which financially is challenged to implement conservation initiatives but would receive the greatest benefit from the cost savings. The program will include the following:

- **Energy Greenboxes** – This initiative is a partnership between Whitby Hydro, Enbridge Distribution Company and Friends of the Earth (charitable, not-for-profit grassroots environmental advocates) to provide low income families with Energy Greenboxes which include home winterization tools and two CFL light bulbs.
- **Bags for Life Program** - In partnership with Sobey's, Whitby Hydro will continue to provide the food bank with reusable cloth bags. The Bags for Life program complements the Energy Greenboxes by encouraging a balanced approach to conservation which looks at not only energy conservation but the total environmental impact of recycling.
- **School Back Pack Program** – This is a partnership program between Whitby Hydro, Staples and Loblaw Superstore. The School Back-Pack Program is a program which provides low income, school-aged children with back-packs filled with essential school supplies and educational conservation literature. The program was developed in co-operation with the local food bank, where there is a “waiting list” of children who do not have access to school supplies when the school year begins each Fall. The back packs will be distributed to the Food Bank, Women's Welfare Shelter and local schools.
- **2010 Phantom Power Program** – This initiative is new for 2010. The objective of the program is to help educate low-income families on the subject of “Phantom Power”. Phantom power is the electricity consumed by an appliance even when it is turned off (due to digital displays, clocks, remote controls, etc). Phantom loads represent up to 15% of the energy consumed in a home. This program will educate low income families on the opportunity to save by switching off these appliances and using power bars with on-off switches. It is anticipated that 100 power bars will be distributed along with

educational material on this subject through the local food bank.

## **2) Whitby Hydro Seniors Program:**

**2010 Budget: \$23.1K**

The Whitby Hydro Seniors Program started in 2006 as part of the third tranche initiative and targets Senior Citizens through the Whitby Seniors Activity Centre. The program was adopted because it targets a more vulnerable group, who rely on fixed incomes and are very sensitive to price increases. The demographic typically is less mobile and more challenged in accessing conservation products and programs which makes it even more important to bring the program to them. In 2010, the program will focus on phantom power.

The objective of the program is to help educate seniors and low-income families on the subject of "Phantom Power". Phantom power is the electricity consumed by an appliance even when it is turned off (due to digital displays, clocks, remote controls, etc). Phantom loads represent up to 15% of the energy consumed in a home. This program will educate seniors on the opportunity to save by switching off these appliances and using power bars with on-off switches. The plan is to distribute 200 power bars along with educational material on this subject through our local Seniors Activity Centre. Whitby Hydro will be hosting a series of educational sessions at the local Seniors Activity Centre and distributing power bars as customer giveaways.

## **3) Whitby Hydro Community Events:**

**2010 Budget: \$23.1K**

To help promote conservation throughout the Town of Whitby, Whitby Hydro will continue the Community Events program which involves participation in 25 - 32 community planned events throughout the town. Events include the Spring Home & Garden Show, Earth Day, Music in the Park, Safety Day, Town Carnival, Movie Nights, Harvest Festival, Heritage Day, World Planning Day etc. Whitby Hydro distributes compact fluorescent light (CFL) bulbs and brochures offering energy saving tips for consumers while providing the community with an opportunity to discuss conservation with staff.

**30. [Page 234] Please describe the unrelated activities carried out by WHES outside of the Whitby Hydro service area. Please identify which employees or groups of employees that provide services to the Applicant are also involved in those regulated activities. Please advise what company or entity within the related group, if any, carries out those unregulated activities within the Whitby Hydro service area.**

**Response:**

Whitby Hydro questions the relevance of the information requested. WHES is a non-regulated entity. Whitby Hydro's compliance with the Affiliate Relationship Code is not an issue in this proceeding.

31. [Page 234] Please provide the department reviews including the “costs identified”, the “shared corporate services”, the “market price testing”, and the “scenarios”. Please provide the full capital and operating budget of WHES for the test year, together with calculations of the fully allocated costs in that budget that are allocated to the Applicant, and a reconciliation of those calculations to the Application.

**Response:**

Please refer to the response provided to SEC interrogatory #3 for details of the departmental reviews. As WHES is not a regulated entity, its capital and operating budgets are outside of the scope of this proceeding.

32. [Page 236] Please provide a calculation showing the impact of using the half year rule for depreciation in the test year.

**Response:**

Please refer to Energy Probe #37.b).

33. [Page 238] Please identify and provide details with respect to the taxes or PILs, if any, included in the revenue requirement that are actually paid by a company or entity other than the Applicant.

**Response:**

There are no taxes or PILS, paid by a company or entity other than Whitby Hydro.

34. [Page 245-253] With respect to the Services Agreement:

- a. Page 245. Please provide the immediately preceding services agreement between WHES and the Applicant that governed the relationship up to December 31, 2009.

**Response:**

A copy of the immediately preceding Services Agreement has been attached.

- b. Page 246. Please confirm that the term “OM&A Costs” includes any PST on amounts incurred. Please advise the amount of that PST included in this total in each of 2008 and 2009, and the forecast for the first half of 2010. Please provide any studies, reports or analyses, dealing in whole or in part with the impact of the change to HST on the amounts to be paid by the Applicant to WHES.

**Response:**

The The 2010 “OM&A” costs do not include PST costs, but incorporate PST savings of \$65K which reflect the average annual savings over the term of the rate application (2010-2013).

The PST savings calculation was derived using the average actual 2008-2009 annual PST amount of \$74K and applying it to the four year rate period as follows:

	2010	2011	2012	2013	4-Yr Aver
PST Savings (\$K)	37	74	74	74	65

By taking this approach, Whitby Hydro eliminates the need to track PST savings in a separate variance account since the “normalized” savings over the four year rate period has already been captured in the test year.

**c. Page 247. Please confirm that the term of the Services Agreement was set on four years to cover the rebasing year plus three IRM years, with a new one in place for the next rebasing year. If that is not the case, please advise the rationale for the four year term.**

**Response:**

The Services Agreement covers a five year period from 2010 through 2014 in accordance with Section 2.3.1.1 of the Affiliate Relationship Code, which provides: “The term of an Affiliate Contract between a utility and an affiliate shall not exceed five years, unless otherwise approved by the Board”.

**d. Page 248. Please advise who owns any equipment, inventory and other assets acquired by WHES in the course of providing the services. Please provide the cost of those assets in the test period.**

**Response:**

Whitby Hydro owns the equipment and inventory used by WHES to service Whitby Hydro, and WHES owns the billing system used by WHES to service Whitby Hydro. None of the assets owned by Whitby Hydro are used by WHES in providing services to third parties.

**e. Page 248. Please provide the last twelve monthly detailed invoices from the WHES to the Applicant under section 5.05.**

**Response:**

Whitby Hydro does not issue monthly invoices to Whitby Hydro pursuant to Section 5.05. Under Section 5.05, Whitby Hydro pays WHES on a monthly basis, and at the end of the year WHES provides an accounting of all its actual costs from the year for the purpose of a true up/down. This practice was also in place for 2009.

- f. Page 248. Please provide details of all extraordinary costs reimbursed or reimbursable by the Applicant to WHES in the period 2007 through 2009, under s. 5.06.

**Response:**

There are no extraordinary costs in 2007 through 2009 under S. 5.06.

- g. Page 249. Please provide a calculation showing the impact of the ten day payment period in section 6.01 on the Applicant's working capital requirements.

**Response:**

Whitby Hydro is relying on the Board-approved 15% working capital methodology.

- h. Page 250. Please advise who owns the monthly bills of the Applicant, which are billed on its behalf by WHES. Please advise what other entities, if any, include charges on the bill, and the gross revenues of WHES for granting the right to charge non-electricity charges on the bill. Please provide details as to how, if at all, the Applicant shares in the benefits of these revenues or the ability to include non-electricity charges on the bill.

**Response:**

Customer billing belongs to Whitby Hydro. No other entities include charges on the bill.

- i. Page 251. Please provide who initially pays the cost of insurance, how much it is in the test year, and how that cost is ultimately borne as between the Applicant and WHES.

**Response:**

As set out on page 231, WHES incurs the cost of insurance, which is allocated to Whitby Hydro. In 2010, the amount of insurance is \$125,000, which represents a 73.1% allocation based on cost.

- j. Page 252. Please confirm that there are no amendments to this agreement, and no drafts of any amendment are currently under consideration.

**Response:**

Confirmed.

35. [Page 337] Please provide details on any investigations or other actions the Applicant has taken – between the date of the promissory notes to the Town and the end of 2009 - to determine the availability and cost of debt financing from banks, other financial institutions, government sources, or the public markets. Please provide copies of any offer sheets, proposals, or other documents that set out the terms under which private sector or government funding is or has been available.

**Response:**

For the reasons stated in response to Board staff IR #15, Whitby Hydro has not engaged in any formal investigations between the date of the promissory note to the Town and the end of 2009. Whitby Hydro has had preliminary discussions in 2010 with both Ontario Infrastructure and the Toronto Dominion Bank to determine the availability and cost of long-term debt financing. Whitby Hydro does not have any offer sheets, proposals or other documents on this matter.

36. [Page 338] Please advise whether the Applicant has requested consent of the Town to repayment in whole or in part of any of the promissory notes. Please provide any conditions, restrictions, or other parameters the Town has communicated to the Applicant setting out the terms under which the promissory notes can be repaid.

**Response:**

For the reasons stated in response to Board staff IR #15, Whitby Hydro has not requested consent of the Town to repayment in whole or in part of the promissory notes.

37. [Page 356] Please provide a copy of the residential appliance saturation study.

**Response:**

As part of its cost allocation information filing (CAIF) submitted February 28, 2007, Whitby Hydro conducted a residential appliance saturation survey. The results were tabulated by customer account and forwarded to Hydro One for their use in preparing a utility specific load profile for Whitby Hydro. This file contains customer specific information and therefore is confidential. Whitby Hydro did not conduct any analysis or prepare a report on the information provided to Hydro One. The following information was included in the output provided by Hydro One and reflects Hydro One's analysis of the data provided:

**Residential class information**

Electric space heating  
Electric water heating  
Air conditioning  
Baseload

**Equipment saturation**

5%  
9%  
69%  
100%

**38. [Page 360] Please estimate the dollar impact in the test year of the change to consolidated billing by USL customers.**

**Response:**

The estimated cost is expected to be \$1,000 - \$2,000.

**39. [Page 471-489] With respect to the Burman report:**

**a. Page 474. Please provide the contract for the work, and the proposal made by Burman in respect to the work.**

**Response:**

Whitby Hydro did not enter into a written contract with Burman Energy Consultants Group Inc (BECGI).

**b. Page 474. Please provide all instructions or directions given by the Applicant to the consultant in the course of doing the study, including any edits of draft reports.**

**Response:**

The role of BECGI is summarized in Exhibit 10, page 446 (Third Party Review). The scope of work requested and performed by BECGI is outlined in the BECGI report under section 2 (Required) and section 4 (Methodology). Whitby Hydro does not believe that any edits or drafts of the report are relevant.

**c. Page 474. Please provide any written communications from Board Staff to the consultant relating to this report.**

**Response:**

Whitby Hydro is not aware of any written communications from Board Staff to BECGI relating to this report.

Respectfully submitted on behalf of the School Energy Coalition this 29<sup>th</sup> day of March, 2010

Per: \_\_\_\_\_  
Jay Shepherd, Counsel for School Energy Coalition

## **ATTACHMENTS TO SEC'S INTERROGATORY RESPONSES:**

- **IRR # 2 – Shareholder Direction**
- **IRR # 3 – ARC Compliance Letter and Report**
- **IRR # 34 a) – Copy of the Service Agreement between Whitby Hydro Electric Corporation and Whitby Hydro Energy Services Corporation for 2009**



## SHAREHOLDER DIRECTION

WHEREAS Whitby Hydro Energy Corporation (the "Corporation") is a Corporation incorporated under the Business Corporations Act (Ontario);

AND WHEREAS the Corporation of the Town of Whitby (the "Shareholder") is the registered and beneficial owner of all of the issued and outstanding shares of the Corporation;

AND WHEREAS the Corporation and its Subsidiaries, (**Whitby Hydro Electric Corporation and Whitby Hydro Energy Services Corporation**), are the successors to the business formerly carried on by the Whitby Hydro Electric Commission under the name "Whitby Hydro" (the "Electricity Business");

AND WHEREAS the Electricity Business is subject to the provisions of the Electricity Act, 1998 and the Energy Competition Act, 1998, S.O. c.15, as such statutes may be amended or re-enacted from time to time;

AND WHEREAS the Shareholder wishes to establish certain principles of governance relating to the Corporation without restricting the powers of the Board to manage or supervise the business and affairs of the Corporation except as expressly provided for in this Shareholder Direction;

**NOW THEREFORE THIS SHAREHOLDER DIRECTION WITNESSES:**

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions:**

In this Shareholder Direction, in addition to the terms defined above in the recitals, the following terms will have the meanings set out below:

- (a) **"Board"** means the Board of Directors of the Whitby Hydro Energy Corporation;
- (b) **"Business Plan"** means a three (3) year business plan and budget for the Corporation and its Subsidiaries prepared and approved in accordance with Section 6.1 hereof;  
**(Amendment #14 approved by the Shareholder June 22, 2009)**
- (c) **"Electricity Business"** means the business to be carried on by the Corporation and the subsidiaries as successors to the business formerly carried on by Whitby Hydro Electric Commission.

## **SHAREHOLDER DIRECTION**

- (d) **"Financial Statements"** means, for any particular period, audited, consolidated, comparative financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in the financial position, a report or opinion of the auditor and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable law;
- (e) **"OBCA"** means the Business Corporations Act (Ontario), as such statute may be amended or re-enacted from time to time;
- (f) **"Person"** means any individual, corporation, firm, partnership, sole proprietorship, syndicate, joint venture, trustee, trust, any unincorporated organization or association;
- (g) **"Shareholder"** means the Council of the Corporation of the Town of Whitby
- (h) **"Regulator"** means the Ontario Energy Board, the Independent Electricity System Operator and all other governmental or regulatory authorities having jurisdiction over the Corporation.
- (i) **"Subsidiary"** means they are beneficially owned, directly or indirectly, by the Corporation, and includes Whitby Hydro Electric Corporation and Whitby Hydro Energy Services Corporation and any Corporation in like relation to a Subsidiary;  
and
- (j) **"Third Party"** means a Person who deals at arm's length (as interpreted by subsection 251(1) of the Income Tax Act (Canada) with the Corporation or the Subsidiaries.

### **1.2 Regulatory Matters**

In the event of any conflict between any approval, direction or other requirement of the Shareholder pursuant to this Shareholder Direction and any decision, order or policy of any Regulator, the decision, order or policy of the Regulator shall govern and the Corporation and its Subsidiaries will at all times comply with any decision, order or policy of the Regulator, whether or not an approval or direction has first been given in connection therewith by the Shareholder pursuant to this Shareholder Direction. For any avoidance of doubt, the Corporation shall not seek any order from any Regulator for any matter which would require the approval of the Shareholder under this Shareholder Direction without first obtaining the consent and prior approval of the Shareholder to its seeking such an order.

# **SHAREHOLDER DIRECTION**

## **1.3 Currency**

Unless otherwise indicated, all dollar amounts referred to in this Shareholder Direction, including the symbol "\$", refer to lawful money of Canada.

## **1.4 Headings**

The division of this Shareholder Direction into Articles and Sections is for convenience of reference only and shall not affect the interpretation of this Shareholder Direction.

## **ARTICLE 2 OBJECTIVES AND PRINCIPLES**

### **2.1 Purpose**

The purpose of this Shareholder Direction is to express the Shareholder's fundamental principles regarding the operation of the Electricity Business and to set out the accountability, responsibility and relationship between the Boards of the Corporation, and the Subsidiaries, the Shareholder and the Corporation.

### **2.2 Shareholder Objectives**

- 2.2.1 The Shareholder's objective in connection with its relationship with the Corporation, the Subsidiaries and the Electricity Business is that the Board supervise the management of the business and affairs of the Corporation in a manner that:
- (a) ensures that the value of the Corporation is maintained or increased;
  - (b) protects the investment of the Shareholder by managing the exposure of the Corporation to risks inherent to the Electricity Business through the development of a strategic planning process and risk management strategy;
  - (c) provides the Shareholder with its desired rate of return on its investment as permitted by the Ontario Energy Board;
  - (d) provides adequate reporting to the Shareholder;
  - (e) establishes and maintains appropriate financial and capital structures for the Corporation giving due consideration to the rate of return permitted by the Ontario Energy Board;

## **SHAREHOLDER DIRECTION**

- (f) undertakes activities which will enhance the economic development of the Town of Whitby;
- (g) provides energy services beneficial to energy consumers and ratepayers in the Town of Whitby;
- (h) provides energy services in an environmentally responsible manner; and
- (i) maintain and enhance reliability and customer service.

### **ARTICLE 3 BUSINESS OF THE CORPORATION**

#### **3.1 Business of the Corporation**

Subject to the ongoing ability of the Corporation to meet the financial objectives of the Shareholder set out in this Shareholder Direction, the Corporation may engage in those business management or operating activities permitted by the Corporation's regulators and the Ontario Energy Board Act, 1998, as the same may be amended, supplemented or enacted from time to time and any guidelines or other regulations passed thereunder to provide a high level of service with the lowest possible customer rates.

### **ARTICLE 4 OPERATION AND CONTROL**

#### **4.1 Board Responsibilities**

The Board shall consist of six (6) directors. Subject to any matters requiring approval of the Shareholder pursuant to this Shareholder Direction, the Board will supervise the management of the business and affairs of the Corporation. The Board will govern itself in accordance with the standards of care set out in the OBCA and the requirements of the Ontario Energy Board Act, 1998. The Board will enact a by-law relating to the transaction of the business and affairs of the corporation and submit the same for approval of the Shareholder.

**(Amendment No. 10 to the Shareholder Direction Article 4.1 -  
approved by Shareholder December 10, 2007)**

## **SHAREHOLDER DIRECTION**

### **4.2 Initial Board and Term**

The Board for the Corporation shall consist of the following members elected by the Shareholder for the following terms or until a successor is elected.

	Name	Term
1.	Dave Archer	Until November 30, 2002
2.	Ann Brooks	Until November 30, 2002
3.	Ross Batten	Until November 30, 2003
4.	Don MacMaster	Until November 30, 2003
5.	Marcel Brunelle	Subject to Article 4.3

**(Amendment No. 2 to the Shareholder Direction - Article 4.2(a) - Approved June 13th, 2006)**

**(Amendment No. 8 to the Shareholder Direction - Article 4.2(a) - Approved June 29th, 2007)**

### **4.2(a) Board and Term Effective January 18th, 2007**

The Board for the Corporation shall consist of the following members elected by the Shareholder for the following terms or until a successor is elected.

1.	Ross Batten	Until November 30, 2009
2.	Don MacMaster	Until November 30, 2009
3.	Barry Mount	Until November 30, 2008
4.	Patricia Perkins	Subject to Article 4.3
5.	Al Claringbold	Until November 30, 2007

**(Amendment No. 3 to the Shareholder Direction - Article 4.3 - Approved June 13th, 2006)**

**(Amendment No. 9 to the Shareholder Direction - Article 4.3 - Approved June 29th, 2007)**

## **SHAREHOLDER DIRECTION**

### **4.2(b) Board and Term Effective December 1st, 2007**

The Board for the Corporation shall consist of the following members elected by the Shareholder for the following terms or until a successor is elected.

- |    |                  |                         |
|----|------------------|-------------------------|
| 1. | Ross Batten      | Until November 30, 2009 |
| 2. | Don MacMaster    | Until November 30, 2009 |
| 3. | Barry Mount      | Until November 30, 2008 |
| 4. | Patricia Perkins | Subject to Article 4.3  |
| 5. | Judi Longfield   | Until November 30, 2010 |
| 6. | Kevin Tunney     | Until November 30, 2010 |

**(Amendment No. 11 to the Shareholder Direction - Article 4.2(b) - approved by the Shareholder December 10th, 2007)**

### **4.3 Term**

After the expiry of the term of each member as specified above (4.2(b)), the term of office for each Director elected by the Shareholder shall be (3) years or until his or her successor is appointed. The term of Mayor of the Town of Whitby as a member of the Board shall run concurrently with his or her term of office.

**(Amendment No. 12 to the Shareholder Direction - Article 4.3 - approved by the Shareholder December 10th, 2007)**

**(Amendment No. 4 to the Shareholder Direction - Article 4.4 - Approved June 13th, 2006)**

**(Amendment No. 13 to the Shareholder Direction - Article 4.4 - Approved December 10th, 2007)**

### **4.4 Board of Directors of Any Subsidiaries**

Subject to any matters requiring approval of the Shareholder pursuant to this Shareholder Direction, the business and affairs of the Corporation's Subsidiaries, will be managed or supervised by its respective Board of Directors. The subsidiary Boards of Directors, as soon as practicable, shall enact a by-law relating to the conduct of their respective businesses and affairs, and submit the by-laws to the Corporation for its approval. Subject to the initial election by the Shareholder, the Corporation as Shareholder of **(Whitby Hydro Electric Corporation)** and **(Whitby Hydro Energy Services Corporation)**, will elect the Directors of Whitby Hydro Electric Corporation and Whitby Hydro Energy Services Corporation. The Whitby Hydro Electric Corporation shall have two (2) Directors elected from among the six (6) Directors of the Corporation in addition to one (1) Independent Director appointed by the Shareholder to serve on the Whitby Hydro Electric Corporation Board. The Whitby Hydro Energy Services Corporation shall have **(four (4) Directors)** elected from among the six (6) Directors of the Corporation.

**(Amendment #15 approved by the Shareholder June 22, 2009)**

## **SHAREHOLDER DIRECTION**

To maintain the independence provision for Whitby Hydro Electric Corporation as required by the Ontario Energy Board, the Shareholder will elect a Director to this Board for (3) years or until his or her successor is appointed.

**(Amendment No. 5 to the Shareholder Direction - Article 4.5 - Approved June 13th, 2006)**

### **4.5 Qualifications of Directors**

In electing Directors to the Board and the Independent Director to the Whitby Hydro Electric Corporation, the Shareholder (and in the case of the Board of Directors of a Subsidiary, the Corporation) will give due regard to the qualifications of candidates and ensure that the Board cumulatively possesses qualifications that will contribute to the success of the Electricity Business. No person shall be qualified for election as a Director if such person is less than 18 years of age, is of unsound mind and has been so found by a court in Canada or elsewhere, is not an individual, or has the status of a bankrupt. No election of a person as a Director shall be effective unless the person consents in writing. The Directors shall be resident Canadians.

**(Amendment No. 6 to the Shareholder Direction - Article 4.6 - Approved June 13th, 2006)**

### **4.6 Vacancies**

If a member of the Board or the Independent Director to the Whitby Hydro Electric Corporation ceases to be a Director for any reason, the Shareholder will fill the vacancy created thereby as soon as reasonably possible. If a member of the Board of Directors of any Subsidiary ceases to be a Director for any reason, the Corporation will cause the vacancy to be filled by another Director of the Corporation as soon as reasonably possible.

### **4.7 Conflict of Interest Policy**

The Directors and Officers of the Corporation and the Subsidiaries will strictly abide by the requirements of the OBCA and the Corporation in respect of conflicts of interest including any requirements in respect of disclosure and abstention from voting.

## **SHAREHOLDER DIRECTION**

### **4.8 Confidentiality**

The Shareholder and the Directors and Officers of the Corporation and the Subsidiaries (each a "Receiving Party") will ensure that no confidential information of the Shareholder, the Corporation or any Subsidiary is disclosed or otherwise made available to any Person, except to the extent that;

- (a) disclosure to a Receiving Party's employees or agents is necessary for the performance of any Receiving Party's duties and obligations under this Shareholder Director;
- (b) disclosure is required in the course of judicial proceedings or pursuant to law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by the Receiving Party).

### **4.9 Remuneration**

The remuneration of the members of the Board for their respective services as Directors will be as determined by the Shareholder from time to time.

## **ARTICLE 5 SHAREHOLDER MATTERS**

### **5.1 Decisions of the Shareholder**

The following will apply to any approvals or decisions that the Shareholder must provide:

- (a) all approvals and decisions will be subject to a duly passed resolution of the Town of Whitby Council and shall be made in writing and signed by the authorized signatory of the Shareholder; and
- (b) The Corporation will provide such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.

**(Amendment No. 7 to the Shareholder Direction - Article 5.2 - Approved June 13th, 2006 )**



## **SHAREHOLDER DIRECTION**

### **5.2 Matters Requiring Shareholder Approval**

Neither the Corporation nor any Subsidiary will, without the approval of the Shareholder:

- (a) amend its articles or make, amend or repeal any by-law;
- (b) change the name of the Corporation;
- (c) apply to continue as a body corporate under the laws of another jurisdiction, amalgamate, merge, consolidate or approve or affect any plan of arrangement, in each case whether statutory or otherwise;
- (d) take or institute proceedings for any winding-up arrangement or dissolution;
- (e) create new classes of shares, consolidate, subdivide or otherwise change its outstanding securities;
- (f) sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (g) change the auditor;
- (h) make any change to the number of Directors;
- (i) change the Directors of the Corporation;
- (j) enter into any transaction or take any action that requires Shareholder approval pursuant to the OBCA;
- (k) issue, or enter into any agreement to issue, any share of any class, or any securities convertible into any shares of any class;
- (l) redeem, purchase for cancellation or otherwise retire any of its outstanding shares;
- (m) establish any requirement for capital contributions by the Shareholder;
- (n) make any decision to expand the business of the Corporation into the competitive retailing market for electricity;

## **SHAREHOLDER DIRECTION**

- (o) borrow money or provide any financial assistance to any Subsidiary (whether by way of loan, guarantee or otherwise) in an amount exceeding (\$5 Million Dollars) (\$5,000,000) or grant a security interest in or otherwise encumber its assets;
- (p) provide any financial assistance (whether by way of loan, guarantee or otherwise) to any Person not dealing at arm's length to it, or any of its Directors or Officers;
- (q) enter into an agreement, commitment, arrangement, undertaking or involvement which would allow recourse to the assets of the Corporation or any of its Subsidiaries, or which would create any encumbrance, lien, security interest or recourse in favour of any Third Party in such asset;
- (r) change the remuneration of members of the Board or the Board of Directors of any Subsidiary;
- (s) sell, transfer or assign any asset material to the operation of the Electricity Business;
- (t) enter into any partnership, joint venture, arrangement or alliance for the sharing of profits with any Person; or
- (u) make any decision that would materially adversely affect the tax or regulatory status of the Corporation or any Subsidiary, including the filing of any rate or other application with the Ontario Energy Board.

### **5.3**

#### **Unanimous Shareholder Declaration**

Section 5.2 shall constitute a Unanimous Shareholder agreement pursuant to the terms of the OBCA with respect to the Corporation and the Subsidiaries.

# SHAREHOLDER DIRECTION

## 5.4 Shareholder Meetings

Upon the request of the Directors of the Whitby Hydro Energy Corporation, meeting(s) of the Shareholder shall be called by the Clerk of the Shareholder (Corporation of the Town of Whitby). The Clerk shall forward a notice of the time and place of the meeting to: (a) each Shareholder entitled to vote at the meeting (b) to each Director; and (c) to the auditor of the Whitby Hydro Energy Corporation. The Clerk of the Shareholder will forward agenda items including documentation and will be responsible for recording of Minutes arising from the meeting(s) of the Shareholder.

**(Amendment #16 approved by the Shareholder June 22, 2009)**

## ARTICLE 6 REPORTING

### 6.1 Business Plan

Except for the year 2000, the Board will approve and submit to the Treasurer of the Shareholder a business plan for the next three (3) fiscal years (the "Business Plan"), prior to the end of each fiscal year. In the event that the Corporation notifies the Shareholder that the Business Plan contains sensitive commercial information, that portion of the Business Plan shall be received *in camera* by the Town of Whitby Council. The Business Plan will be prepared on a consistent basis with the Business Plan then in effect. The Corporation will carry on its business and operations in accordance with the Business Plan which will include, in respect of the period covered by such plan:

**(Amendment #17 approved by the Shareholder June 22nd, 2009)**

- (a) the strategic direction and any new business initiatives which the Corporation will undertake;
- (b) an operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the draft business plan;
- (c) *pro forma* Financial Statements for each fiscal year, including projected payments to the Shareholder;  
**(Amendment #18 approved by the Shareholder June 22, 2009)**
- (d) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget was based;

## **SHAREHOLDER DIRECTION**

- (e) energy conservation programs and environmental plans;
- (f) any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder; and
- (g) any material variances from the Business Plan then in effect.

### **6.2 Quarterly Reports**

Within sixty (60) days after the end of each fiscal quarter, the Board will prepare (on a consistent basis with the previous fiscal quarter) and submit to the Treasurer of the Shareholder a quarterly report. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- (a) quarterly unaudited Financial Statements;  
**(Amendment #19 approved by the Shareholder June 22, 2009)**
- (b) such explanations, notes and information as are required to explain and account for any material variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan;
- (c) information that is likely to materially affect the Shareholder's financial objectives or energy policies or customers' perceptions or opinions regarding the Corporation;
- (d) information regarding any matter, occurrence or other event which is a material breach or violation of any law; and
- (e) any such additional information as the Shareholder may specify from time to time.

### **6.3 Access to Records**

The Chief Administrative Officer, Treasurer and/or their designates shall have unrestricted access to the books and records of the Corporation and the Subsidiaries. Such representatives shall treat all information of the Corporation and/or the Subsidiaries in strict confidence.

**(Amendment No. 1 to the Shareholder Direction - Article 6.4 - Approved April 30th, 2002)**

## **SHAREHOLDER DIRECTION**

### **6.4 Audit**

The Corporation and its subsidiaries consolidated Financial Statements and the Financial Statement for the Whitby Hydro Electric Corporation will be audited annually. The auditor of the Corporation will be appointed by the Shareholder. The first auditor of the Corporation is Deloitte & Touche, LLP (the "Auditor").

### **6.5 Banking**

The Corporation's bank will be one of the Schedule "A" chartered Banks of Canada.

### **6.6 Accounting**

The Corporation will, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures will be in accordance with generally accepted accounting principles and applicable regulatory requirements.

### **6.7 Annual Financial Statements**

The Board will cause the Auditor to deliver, as soon as practicable and in any event within one hundred and twenty (120) days after the end of each fiscal year, the audited consolidated financial statements of the Corporation for consideration by the Shareholder.

**(Amendment #20 approved by the Shareholder June 22, 2009)**

### **6.8 Reporting on Major Developments**

In addition to the other reporting requirements set out in this Article 6, the Board of the Corporation shall report to the Shareholder on major business developments or materially adverse results as the Board, in its discretion, considers appropriate.

# **SHAREHOLDER DIRECTION**

## **ARTICLE 7**

### **FINANCIAL PERFORMANCE**

#### **7.1 Financial Performance**

The Board will be responsible for ensuring that the Corporation meets the following financial performance standards and requirements:


- (a) employ the most efficient cost structure available for like businesses to provide the highest level of service at the lowest possible customer rates;
- (b) mandate the creation and implementation of cost reduction programs to ensure that distribution costs are minimized;
- (c) maximize return on the Shareholder's capital;

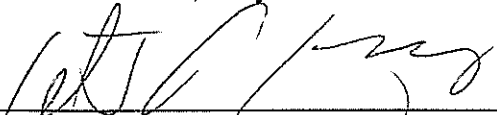
#### **8.0 Amendments**

The provisions of the Shareholder Direction are subject to review and revision by the Shareholder at its discretion from time to time. This Shareholder Direction may be amended solely at the discretion of the Shareholder. The Shareholder will provide prior written notice to the Board of any proposed amendments to this Shareholder Direction.

DATED at the Town of Whitby, this 22nd day of June, 2009

#### **THE CORPORATION OF THE TOWN OF WHITBY**

  
\_\_\_\_\_  
Patricia Perkins, Mayor

  
\_\_\_\_\_  
Paul Jones, Clerk

#### **WHITBY HYDRO ENERGY CORPORATION**

  
\_\_\_\_\_  
J. E. Lavelle, President

  
\_\_\_\_\_  
M. E. Watt, Corporate Secretary

**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'Énergie  
de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**Compliance Office**

December 1, 2006

**File No.: MI20050251**

Mr. James Lavelle  
President/C.E.O  
Whitby Hydro Electric Corporation  
100 Taunton Road East  
PO Box 59  
Whitby, ON L1N 5R8

Dear Mr. Lavelle:

**Re: Compliance with the Affiliate Relationships Code**

I am writing in reply to your letter dated November 7, 2006, in which you provided a revised action plan for compliance with the Affiliate Relationships Code for Electricity Distributors and Transmitters (the "Code").

As previously mentioned, I believe that the actions you have taken in regards to the sharing of employees and confidential information have resolved my concerns in those areas. The main focus of your revised plan is on compliance with the transfer pricing provisions of Code.

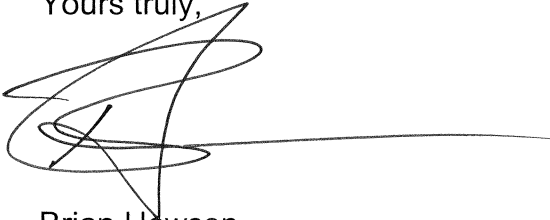
I have reviewed the Transfer Pricing Report that you presented. I agree with the assessments that have been made determining which services can be tested for fair market value and those where it is not feasible to test for fair market value. I also accept the evidence presented, that in the cases where a fair market value is available, Distco is paying no more than fair market value to Servco, which is compliant with the Code.

The remaining services are being charged on a "cost-plus" basis in manner which is compliant with the Code.

The views expressed in this letter are mine and are not binding on the Board. Although no statutory power of decision has been delegated to me, I may seek enforcement action by the Board under Part VII.1 of the *Ontario Energy Board Act, 1998*, in relation to non compliance.

I appreciate the efforts you have made in regards to these matters. If you would like to discuss the content of this letter or have any questions or concerns, please do not hesitate to contact me at (416) 440-7628, or Paul Gasparatto, Project Advisor, Compliance, at (416) 440-7724.

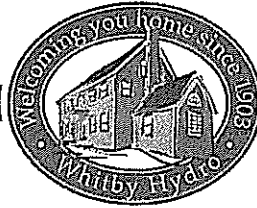
Yours truly,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Brian Hewson  
Chief Compliance Officer



**Whitby Hydro Electric Corporation**



R.A. Claringbold, Director  
D.A. MacMaster, Director  
R.D. Webster, Director

J.E. Lavelle, P.Eng., President/C.E.O.  
R. Abi-Rashed, CMA, Treasurer  
M.E. Watt, Corporate Secretary

November 7 2006

Mr. Brian Hewson  
Chief Compliance Officer  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street - 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Mr. Hewson,

**Re: Compliance with the Affiliate Relationship Code**

As a follow-up to our meeting on October 19<sup>th</sup>, 2006, and in conjunction with Whitby Hydro Electric Corporation's efforts to ensure compliancy with the Affiliate Relationship Code as per your February 1, 2006 letter, I would like to take an opportunity to summarize the status of each area of concern identified by the OEB. This will serve to reconfirm agreements made during prior discussions and correspondence. In addition, a report has been included to address the transfer pricing discussions and required actions from our October meeting.

**1) Distributor Management and Control**

**OEB Concern**

As the sole entity authorized to operate Distco's distribution system, Distco must have at least one employee who has responsibility and authority to make decisions regarding the operation of Distco's distribution system and to ensure that Distco's operations comply with applicable legal and regulatory requirements. That employee cannot be shared with an affiliate.

**Resolution**

*I have committed to moving at minimum one staff into the newly created Asset Management group. The position of Director of Asset Management and System Planning will be established effective no later than January 1, 2007. This individual will report directly to the President of Whitby Hydro Electric Corporation ("Distco") and will not be shared with any affiliate.*

**2) Equal Access to Services**

**OEB Concern**

Distco is not in compliance with the equal access provisions of the Code. In order to come into compliance, Distco must take steps to ensure that Servco does not use Distco's name, logo, or other distinguishing characteristics in a manner that would mislead consumers as to the distinction between Distco and Servco. Since, in my view, Servco is an ESP, Distco must also ensure that its communications do not endorse or support Servco's marketing activities.

### Resolution

*As per our letter on May 24<sup>th</sup>, 2006 and your response on July 13, 2006, the necessary reviews and changes have been made to the website, letterhead and customer bills to ensure that consumers can easily separate and distinguish between Distco and Whitby Hydro Energy Services ("Servco"). Management staff was also advised accordingly to ensure that Wiresco communications are designed to ensure that they do not endorse or support any Servco marketing activities.*

### **3) Physical Separation**

#### **OEB Concern**

**Distco is not in compliance with the physical separation provision of the Code. Since, in my view, Servco is an ESP, in order to come into compliance Distco must take steps to ensure that it is physically separated from Servco.**

#### **Resolution**

*As per our discussions on August 11<sup>th</sup>, 2006 and our letter from August 18<sup>th</sup>, 2006, I believe that there are no further actions required with regards to physical separation, given that Servco's involvement in unregulated activities will be restricted to opportunities outside of Distco's service area.*

### **4) Sharing of Employees and Confidential Information**

#### **OEB Concern**

**Distco is not in compliance with the employee sharing provisions of the Code. In order to come into compliance, Distco must take steps to ensure that Servco staff who have access to confidential information or carry out the day-to-day operation of the distribution network are not involved in the provision of Servco's unregulated services within Distco's licensed service area, and that such staff are physically separated from staff involved in the provision of those unregulated services.**

#### **Resolution**

*My letter on August 18<sup>th</sup>, 2006 and your response on September 27<sup>th</sup>, 2006, reconfirm that this issue has been resolved given the arrangement that Servco will limit its involvement in unregulated activities to opportunities outside of Distco's service area (effective January 1<sup>st</sup>, 2007). Any existing contracts for unregulated work within Distco's service area will be terminated upon expiry of the contract.*

### **5) Transfer Pricing**

#### **OEB Concern**

**Distco is not in compliance with the transfer pricing provisions of the Code. In order to come into compliance, Distco must conduct a market review to determine whether there is a market for the services that it obtains from Servco. If the review reveals that a market does exist, Distco must then determine the fair market value of those services and ensure that it pays no more than fair market value for the services that it obtains from Servco.**

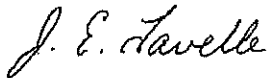
Action Plan

*As discussed at our meeting on October 19<sup>th</sup>, 2006, you will find attached a copy of our report regarding transfer pricing.*

I believe the context of this report as it pertains to the various issues regarding Whitby Hydro Electric Corporation's compliance with the Affiliate Relationship Code, clearly demonstrates Whitby Hydro's initiatives and desire to be compliant. On behalf of Ramona Abi-Rashed, Susan Reffle and myself, I would like to personally thank you and Paul Gasparatto for your efforts in working with us in a very co-operative and professional manner in order to resolve this significant issue in the best interest of both parties.

I look forward to your affirmative response as to the actions/recommendations within this report in the near future, and if you have any questions or concerns, please contact me directly.

Yours truly,



J. E. Lavelle, P. Eng.  
President/C.E.O  
Whitby Hydro Electric Corporation

cc: Paul Gasparatto  
Ramona Abi-Rashed  
Susan Reffle

## **TRANSFER PRICING REPORT**

As a follow-up to our meeting on October 19<sup>th</sup>, 2006, the cost categories discussed and their current status have been summarized below:

<b>Cost Category</b>	<b>Status</b>
Direct Costs	Resolved – No transfer pricing issues.
Servco Internal Costs – Exempt	Resolved – Agreed to Exempt list as outlined on October 19 <sup>th</sup> , 2006 (1).
Servco Internal Costs – Fair Market Value Testing Feasible	Action – Analysis and recommendations provided (2).
Servco Internal Costs – Fair Market Value Testing Not Feasible	Resolved – Agreed to all activities identified on October 19 <sup>th</sup> , 2006 with the exception of Control Room and Meter Operations (3)  Action Required – Control Room and Meter Operations analysis and recommendation provided (4).
Outsourced Work Activities/Materials Procured by Servco	Action Required - Analysis and recommendations provided (5).

### **(1) Servco Internal Costs - Exempt**

As agreed on October 19, 2006, the following costs are exempt from fair market value testing:

- Finance - Accounting, financial analysis, A/P, payroll etc.
- Human Resources - Staffing, benefit administration etc.
- IT - Hardware/Network/System support etc.
- Regulatory - Regulatory affairs, compliance, OEB rate applications/reporting, IESO filings etc.
- Reception/Administration - Reception, communications, mail delivery etc.

### **(2) Servco Internal Costs – Fair Market Value Testing Feasible**

As per our discussions on October 19<sup>th</sup>, 2006, the following costs were identified to be tested for fair market value pricing:

- Operations – Capital builds of the distribution system including line extensions, relocation, rebuilds, stations and system improvements, as well as operation and maintenance of the distribution system, and testing, inspection, connection, energization of new services.
- Engineering – Design of new services and substations.

### Agreement between Distco and the OEB

It was agreed upon that the process to test fair market value pricing would be done by obtaining hourly price rates from three outside companies that are able to perform work in the Operations and Engineering work environments in the Whitby service area. It was agreed that the prices obtained would be compared to hourly rates (including appropriate overheads and mark-ups) that Servco presently charges Distco.

### Actions Completed

- A variety of contractors and engineering firms were identified and contacted for the purpose of obtaining pricing. The list of companies is as follows:

<b>Operations:</b>	<u>Line</u>	<u>Underground</u>	<u>Substation</u>
	Mc.G. Poleline	Trans Power	General Electric
	AW High Voltage	Aecon	Rondar
	K-Line		

<b>Engineering:</b>	RTG Systems Corp.	TSH Electrical
	D.G. Biddle & Associates Ltd.	Nexgen Utilities

- Prices were obtained on a variety of positions to cover off the work identified for testing.
- Positions were reviewed for the purpose of grouping and matching to comparable positions in Servco.
- Rate comparisons were performed.

### Results

For the purpose of this comparison exercise, the Servco transfer price hourly rates include:

- Actual hourly wage rates.
- Actual benefit costs.
- Overhead costs.
- Servco mark-up of 15%.

Attachment #1 – A comparison of Operation regular hourly rates for:

- Line
- Underground
- Substation

Attachment #2 – A comparison of Operation overtime hourly rates for:

- Line
- Underground
- Substation

Attachment #3 – A comparison of Engineering hourly rates.

### Summary

The results obtained clearly demonstrate that the transfer price rates charged to Distco by Servco are significantly less than the average price of the quotes received in all cases and with some minor exceptions, are less than the lowest prices received. As a result, it is our conclusion that the current transfer pricing structure is justifiable. Please see the referenced attachments for further details of the analysis.

### **(3) Servco Internal Costs – Fair Market Value Testing Not Feasible**

As agreed on October 19, 2006, it is not considered to be feasible to perform fair market value testing on the following costs:

- Customer Service – Billing analysis, verification & data preparation, customer collections interface & payment arrangements, cash applications, customer inquiries, new account setup, retailer settlements.
- Operations – Stores, emergency response, customer isolations, vehicle accidents, safety, CDM.
- Engineering – record keeping
- Settlements – wholesale meter information, billing verification, net system load shape analysis.

### **(4) Servco Internal Costs – Fair Market Value Testing Not Feasible (Exemption) – Control Room & Meter Operations**

#### **Agreement Between Distco and the OEB**

It was agreed upon that the costs for administering the Control Room and Meter Operations departments within Distco would be analyzed. This analysis would require assessing the present transfer price by Servco to Distco for the Control Room and Meter Operations departments and comparing these costs to the costs associated with having these departments report within Distco.

#### **Actions Completed**

- The present costs for operating the Control Room and Meter Operations departments within Servco including overheads and mark-ups was determined (A).
- The costs of having these two departments report within Distco were assessed (B).

#### **Results**

- A) The transfer price cost of the Control Room and Meter Operations departments from Servco to Distco is \$614,100 (including overheads and mark-up).
- B) If these departments were to be re-assigned under Distco, the total cost associated with the department, including the need to provide additional management/supervision of the work units is estimated to be \$650,000.

See attachment #4 for further details of the analysis.

#### **Summary**

The above analysis of the costs associated with the Control Room and Meter Operations departments demonstrates that it is more economical to keep these departments assigned within Servco. As a result, the recommendation is to keep the status quo, with the understanding that it is not feasible to perform any additional fair market value testing.

## **(5) Outsourced Work Activities/Materials Procured by Servco**

The following list of outsourced costs was discussed on October 19<sup>th</sup>, 2006:

- o Operations – Locates, insulator washing, underground maintenance switchgear, line maintenance & capital building, pole vacuum excavations, tree trimming, monitoring & paging for SCADA, building maintenance, security and CDM.
- o Customer Service – Bill print/mailing, collections, meter reading.
- o Finance – Banking agreements.
- o IT – Software license/support.
- o Settlements – MV90 maintenance, interval meter reading.
- o Engineering – Design/consulting, subdivision construction, surveying & staking.

Included in this analysis were products/materials procured by Servco for items such as electrical equipment, computer and office equipment, supplies etc.

### **Agreement Between Distco and the OEB**

For work provided by Servco via outsourcing, we agreed that the current outsourcing process by Servco substantiates market value pricing to Servco. The next step required is to test the markup applied to the outsourced costs against a scenario where Distco would outsource the work directly. This alternative entails creating a theoretical procurement division to assess the additional staffing and related costs within Distco to manage the outsourcing of various activities and the purchasing of products and materials and comparing these costs to the mark-up presently applied from Servco to Distco.

### **Actions Completed**

- The outsourced activities/materials procured by Servco were identified and total annual costs (2003-2005 average) were determined (A).
- A 15% mark-up of these costs was calculated (A).
- A review of purchasing efforts within existing departments was analyzed to determine the efforts and expertise that would be required within Distco (B).
- Costs and appropriate overheads were applied to the Distco staffing requirements (B).

### **Results**

- A) The analysis of outsourced costs and materials (2003-2005 average) equates to approximately \$3.3M per year, generating a 15% mark-up of approximately \$493,000.
- B) The analysis of the staffing requirements for a theoretical Distco procurement department consisting of three staff was determined to be \$404,000 (including overheads).

See attachment #5 for further details of the analysis.

### **Summary/Recommendation**

It was apparent from the analysis that our present transfer pricing arrangement as it pertains to the outsourcing of various services and the procurement of products/materials is higher than our theoretical proposal of costs that Distco would incur by having its own procurement division. Thus, we are recommending on a go-forward basis (January 1<sup>st</sup>, 2007), that Servco use a mark-up of 15% as it pertains to the outsourced work activities and a 10% mark-up on the cost associated with the acquisition of products/materials. This transfer pricing proposal for comparative purposes represents a mark-up of \$409,000 which compares favourably to our analysis of the requirements of a procurement department within Distco.

## **SERVICES AGREEMENT**

**THIS AGREEMENT made this 1st day of January, 2009**

**BETWEEN:**

(Whitby Hydro Energy Services Corporation)

(hereinafter referred to as the Energy Services Corporation)  
OF THE FIRST PART

- and -

(Whitby Hydro Electric Corporation)

(hereinafter referred to as The Electric Corporation)  
OF THE SECOND PART

**WHEREAS** THE ENERGY SERVICES CORPORATION and THE ELECTRIC CORPORATION are duly incorporated Ontario business corporations pursuant to s. 142 of the *Electricity Act, 1998*;

**AND WHEREAS** both THE ENERGY SERVICES CORPORATION and THE ELECTRIC CORPORATION are, as separate but affiliated corporate entities, governed by the *Affiliate Relationship Code*;

**AND WHEREAS** the Parties have agreed that THE ENERGY SERVICES CORPORATION will build, operate, maintain and repair THE ELECTRIC CORPORATION's electrical distribution system on a fee-for-service basis.

**AND WHEREAS** the Parties acknowledge and agree that in providing goods and services THE ENERGY SERVICES CORPORATION acts as an independent contractor and not as an agent, partner, or servant;

**AND WHEREAS** the Parties shall consult as frequently as may be desirable to ensure that THE ELECTRIC CORPORATION and its customers receive adequate, economical and effective electrical distribution and related services;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements set forth, and for other good valuable consideration and the sum of two (\$2.00) dollars of lawful money of Canada now paid by each of the Parties to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the Parties covenant and agree, and with each other, as follows:



## **1. Definitions**

- 1.01** “**Capital Cost**” means the cost incurred for materials, equipment, overhead, and labour to provide Capital Works.
- 1.02** “**Capital Works**” means those expansions and upgrades to THE ELECTRIC CORPORATION’s electrical distribution system as may be agreed from time to time pursuant to Article 4.01 of this Agreement.
- 1.03** “**Customer Service Costs**” means the cost incurred by a Party to bill and collect and to provide related customer services. These costs shall be included in the fees and charges for “**O.M.&A. Costs**”.
- 1.04** “**Customer Services**” means all services related to customer services, which without limiting the generality of the foregoing shall include customer billing, collection of unpaid accounts, and customer relations, etc.
- 1.05** “**Direct Costs**” means the cost incurred directly by THE ELECTRIC CORPORATION for its own operations including but not limited to electrical power costs for Standard Supply Service, IMO costs, Hydro One Transmission costs and Competition Transition Charges.
- 1.06** “**Easements**” means any permissions, concessions, permits, licenses, interests, ways, privileges, easements and right-of-way to install, operate and maintain part or parts of the electrical distribution system over real property.
- 1.07** “**Extraordinary Costs**” means unusual and unanticipated costs.
- 1.08** “**O.M.&A. Costs**” means operations, maintenance and administration costs incurred by THE ENERGY SERVICES CORPORATION to distribute electric power within THE ELECTRIC CORPORATION’s geographic territory.
- 1.09** “**Transition Costs**” means one-time costs of reconfiguring or adding any system, policy, procedure, legal arrangement, employee relationship, etc. necessary for the Parties to operate under this Agreement and under electric utility industry restructuring as defined in *The Energy Competition Act, 1998* and its associated regulations.
- 1.10** “**Vehicle and Tools Cost**” means the cost of trucks and other motorized vehicles, and tools used in operations, maintenance, administration and capital works of THE ELECTRIC CORPORATION.
- 1.11** “**Conservation/Demand Management Costs**” means the cost incurred by the ENERGY SERVICES CORPORATION in administering on behalf of the ELECTRIC CORPORATION the approved Ontario Energy Board/Ontario Power Authority programs.

## **2. Term**

- 2.01 Unless terminated in accordance with Article 10.01, the term of this Agreement shall be from January 1, 2009 to and including December 31, 2009 and the term shall be extended automatically for further periods of one year each, unless either Party gives the other notice in writing not less than one hundred and eighty (180) days prior to the end of the term, or the end of renewal as the case may be that the Agreement is not to be extended.

## **3. Electrical Distribution Maintenance Services**

- 3.01 THE ENERGY SERVICES CORPORATION agrees to maintain in a good and workmanlike manner THE ELECTRIC CORPORATION's electrical distribution system in the areas serviced by THE ELECTRIC CORPORATION, as more particularly described in Schedule "A" to this Agreement (hereinafter referred to as the "THE ELECTRIC CORPORATION Service Area").

## **4. Capital Works**

- 4.01 THE ENERGY SERVICES CORPORATION shall expand or upgrade in a timely way and in a good and workmanlike manner THE ELECTRIC CORPORATION's electrical distribution system at THE ELECTRIC CORPORATION's request, which shall hereinafter be referred to as "Capital Works" provided that such Capital Works have been designed in accordance with good engineering principles applicable in the Province of Ontario.

## **5. Costs**

### **O.M.&A. Costs**

- 5.01 The Electric Corporation agrees to pay the Energy Services Corporation the fees and charges for the operation, maintenance and administration costs (O.M.&A. costs) to maintain the Electric Corporation's distribution system more particularly outlined in Schedule "B" which will be readjusted on an annual basis. Without limiting the generality of the foregoing, THE ENERGY SERVICES CORPORATION shall provide, before each year end, an accounting of all actual costs, including labour, equipment and material costs, engineering design and review costs plus a mark-up of 12% for 2009 of the total actual costs. THE ENERGY SERVICES CORPORATION will then refund or invoice THE ELECTRIC CORPORATION for the variance.

## **Vehicle/Tool Costs**

- 5.02 THE ELECTRIC CORPORATION shall pay THE ENERGY SERVICES CORPORATION the fees and charges more particularly outlined in Schedule "B", which will be readjusted on an annual basis, as THE ELECTRIC CORPORATION's contribution towards the acquisition of trucks, other motorized vehicles and tools used by THE ENERGY SERVICES CORPORATION. The Energy Services Corporation shall provide, before each year end, an accounting of all actual costs plus a mark-up of 12%, for 2009, of the total actual costs. The Energy Services Corporation will then refund or invoice the Electric Corporation for the variance.

## **Conservation/Demand Management Costs**

- 5.03 The ELECTRIC CORPORATION shall pay the ENERGY SERVICES CORPORATION the charges more particularly outlined in Schedule "B" which will be readjusted on an annual basis. The ENERGY SERVICES CORPORATION shall provide, before each yearend, an accounting of all costs plus a mark-up of 12%, for 2009, of the total actual costs. The ENERGY SERVICES CORPORATION will then refund or invoice the ELECTRIC CORPORATION for the variances.

## **Direct Costs**

- 5.04 THE ELECTRIC CORPORATION's direct costs shall all be paid by the THE ELECTRIC CORPORATION.

## **Capital Works Costs**

- 5.05 THE ELECTRIC CORPORATION agrees to pay THE ENERGY SERVICES CORPORATION the charges for capital works more particularly outlined in Schedule "B", which will be readjusted on an annual basis. Without limiting the generality of the foregoing, THE ENERGY SERVICES CORPORATION shall provide, before each year end, an accounting of all actual costs, including labour, equipment and material costs, engineering design and review costs, plus a mark-up of 12% (10% for major equipment) for 2009 of the total actual costs. THE ENERGY SERVICES CORPORATION will then refund or invoice THE ELECTRIC CORPORATION for the variance.

### **Extraordinary Costs**

- 5.06 THE ELECTRIC CORPORATION agrees to reimburse THE ENERGY SERVICES CORPORATION for any extraordinary costs over and above normal O.M.&A., Customer Service and Capital Works Costs to which THE ENERGY SERVICES CORPORATION may incur resulting from extraordinary unanticipated events such as fires, major storms, tornadoes, equipment failures, and the like provided such equipment failures are not caused by negligence on the part of THE ENERGY SERVICES CORPORATION to provide routine service and maintenance of the electrical distribution system.

#### **Transition Costs**

- 5.07 THE ENERGY SERVICES CORPORATION shall invoice THE ELECTRIC CORPORATION for transition costs associated with both electric utility industry restructuring and the transfer of THE ELECTRIC CORPORATION's operations to THE ENERGY SERVICES CORPORATION.

#### **Renewal**

- 5.08 Upon renewal of the term of this Agreement and any subsequent renewals, THE ENERGY SERVICES CORPORATION may adjust the O.M.&A., Vehicle and Equipment Costs, Capital Works Costs and Extraordinary Costs upon ninety (90) days prior notice in writing to THE ELECTRIC CORPORATION provided that, if THE ELECTRIC CORPORATION does not accept the adjusted costs and the Parties are unable to agree after negotiating in good faith, the adjusted costs may be submitted to arbitration pursuant to paragraph 12 of this agreement.

#### **6/ Invoicing**

- 6.01 THE ENERGY SERVICES CORPORATION shall submit an invoice on the first business day each month to THE ELECTRIC CORPORATION for payment of the charges more particularly outlined in Schedule "B". All invoices shall be paid by THE ELECTRIC CORPORATION within ten (10) days from the date of receipt.
- 6.02 THE ENERGY SERVICES CORPORATION will submit details of any extraordinary costs to THE ELECTRIC CORPORATION for review before invoicing. Invoices for extraordinary costs will be paid by THE ELECTRIC CORPORATION within ten (10) days of receipt.

#### **7. Easements**

- 7.01 THE ELECTRIC CORPORATION represents that it has secured all requisite Easements necessary for the delivery of electrical services for the distribution of electric power throughout THE ELECTRIC CORPORATION Service Area.
- 7.02 THE ELECTRIC CORPORATION shall indemnify and save THE ENERGY SERVICES CORPORATION harmless from any claims, demands, actions and applications brought against THE ENERGY SERVICES CORPORATION arising from the failure of THE ELECTRIC CORPORATION to have secured Easements or from any defect or deficiency in the Easements secured by THE ELECTRIC CORPORATION prior to the effective date of this Agreement.
- 7.03 If further Easements are required for the distribution of electric power throughout the THE ELECTRIC CORPORATION Service Area, THE ELECTRIC CORPORATION shall acquire such Easements at its expense provided that prior to acquiring such Easements, THE ELECTRIC CORPORATION shall consult with THE ENERGY SERVICES CORPORATION to determine THE ENERGY SERVICES CORPORATION's minimum technical requirements for such Easements.

- 7.04 After the effective date of this Agreement, THE ENERGY SERVICES CORPORATION shall act on behalf of THE ELECTRIC CORPORATION to secure all Easements required for the performance of the expansion or upgrade of electrical distribution services pursuant to this Agreement. Any costs related to the acquisition of Easements, including appraisal and legal costs, shall be paid by THE ELECTRIC CORPORATION.

## **8. Customer Billing**

- 8.01 THE ENERGY SERVICES CORPORATION shall bill THE ELECTRIC CORPORATION's customers for electricity supplied to them but such bills shall be issued in THE ELECTRIC CORPORATION's name.
- 8.02 THE ELECTRIC CORPORATION shall be responsible for all costs related to any billing errors and uncollectable electricity bills incurred on or before the commencement of this Agreement and shall indemnify and save THE ENERGY SERVICES CORPORATION harmless in respect thereof.
- 8.03 THE ENERGY SERVICES CORPORATION shall assume responsibility for any billing errors arising after the commencement of this Agreement only to the extent that the electricity costs arising from the billing errors are unrecoverable from THE ELECTRIC CORPORATION's customer and only if the billing error is attributable to THE ENERGY SERVICES CORPORATION's negligence or the negligence of its servants, agents or representatives.

## **9. Arbitration**

- 9.01 The Parties agree to consult with each other and to negotiate in good faith to resolve any differences or disputes which either Party may have relating to the interpretation, application or implementation of this agreement, or any dispute which may arise over any costs, fees or other costs incurred and failing agreement the Parties agree to resolve their disputes by arbitration as provided in paragraph 9.02.
- 9.02 Arbitration of a dispute shall be commenced by written notice by a Party requesting arbitration to the other, which notice shall identify the issue or issues it wishes to submit to arbitration. Within thirty (30) days of the date of the notice, the Parties shall agree upon a single arbitrator and failing agreement then each party shall appoint an arbitrator and the two appointees shall within 45 days of the date of the notice of arbitration appoint a third person who shall act as Chair of the arbitration panel, and failing agreement the Chair shall be appointed by a judge of the Superior Court of Ontario pursuant to the provisions of the Arbitration's Act, RSO 1991 c.A.17.
- 9.03 The commencement of the arbitration and all rules of procedure for the arbitration shall be by agreement of the Parties, or failing agreement, as determined by the arbitrator or Chair of the arbitrator panel. The provisions of the Arbitration's Act, RSO 1991 c.A.17, as amended or any successor legislation shall apply to the arbitration.

- 9.04 All decisions of the arbitrator or arbitrators, as the case may be, shall be made in writing and shall be delivered to all Parties within ten (10) days from the conclusion of the arbitration. All decisions shall be final and binding upon the Parties, their respective successors and assigns, and shall not be subject to appeal.
- 9.05 Each Party shall pay its own costs incurred in respect of the arbitration including the payment of its appointee to the arbitration panel, and in the case of a three person panel the parties agree to share the fees of the Chair and other related costs equally.

## **10. Termination**

- 10.01 In the event of non-performance by either Party of its obligations under this Agreement, the other Party may at its sole option elect to terminate this Agreement provided that the defaulting Party shall be given written notice of the default and shall be given sixty (60) days to cure the default, and then only upon failure to cure the default the Agreement may be terminated.

## **11. Insurance**

- 11.01 THE ELECTRIC CORPORATION and THE ENERGY SERVICES CORPORATION shall jointly provide and keep in force an insurance policy in the amount of not less than \$20 million in respect of the services performed by THE ENERGY SERVICES CORPORATION under the terms of this Agreement.
- 11.02 THE ELECTRIC CORPORATION agrees to endorse its insurance coverage with THE ENERGY SERVICES CORPORATION as an additional named insured to cover any liability of THE ENERGY SERVICES CORPORATION resulting or arising from any claims of injury, including injury resulting in death, loss of property, or damage due to the negligence of THE ENERGY SERVICES CORPORATION, or to those for whom THE ENERGY SERVICES CORPORATION is at law responsible.
- 11.03 THE ENERGY SERVICES CORPORATION agrees to endorse its insurance coverage with THE ELECTRIC CORPORATION as an additional named insured to cover any liability of THE ELECTRIC CORPORATION resulting or arising from any claims of injury, including injury resulting in death, loss of property, or damage due to the negligence of THE ELECTRIC CORPORATION, or to those for whom THE ELECTRIC CORPORATION is at law responsible.
- 11.04 All policies shall contain a clause requiring the insurer to give THE ENERGY SERVICES CORPORATION or THE ELECTRIC CORPORATION, as the case may be, two hundred (200) days written notice prior to canceling insurance coverage.
- 11.05 Both Parties will notify the Municipal Electric Association Reciprocal Insurance Exchange (MEARIE) regarding liability insurance implications.

**12. Warranty**

- 12.01 THE ENERGY SERVICES CORPORATION provides no warranty or guarantee for any defective or deficient equipment or materials supplied except for the manufacturer's or supplier's warranties or guarantees applicable to the defective or deficient equipment or materials.

**13. Notices:**

- 13.01 All notices required to be given to either of the Parties under this Agreement shall be in writing and shall be delivered by prepaid unregistered post or hand delivery to the following:

- a) to the Corporate Secretary, THE ENERGY SERVICES CORPORATION at P.O. Box 59, 100 Taunton Road E., Whitby, Ontario L1N 5R8
- b) to the Corporate Secretary, THE ELECTRIC CORPORATION at P.O. Box 59, 100 Taunton Road, Whitby, Ontario L1N 5R8

or to such other address or individual as may be designated by written notice to the other Party. Any notice given by personal delivery shall be deemed to have been given on the day of actual delivery hereof and if sent by prepaid post, on the third day after mailing.

**14. Amendments:**

- 14.01 Amendments to this Agreement shall be in writing and executed by the Parties duly authorized signing officers.

**15. Headings:**

- 15.01 The headings in this Agreement are for purposes of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision in the main text of this Agreement.

**16. Governing Law:**

- 16.01 This Agreement shall be construed in accordance with the laws of the Province of Ontario.

**17. Successors**

- 17.01 This Agreement shall ensure to the benefit of and be binding upon the Parties and their successors and assigns, respectively.
- 17.02 For the purposes of this Agreement, whenever the term THE ENERGY SERVICES CORPORATION or THE ELECTRIC CORPORATION is used, the term shall be deemed to include all successor business corporations incorporated to whom assets and liabilities are transferred for the purpose of the installation, operation and maintenance of the Parties' electrical distribution systems.

**18. Regulatory Changes:**

- 18.01 The Parties acknowledge that substantial changes to legislation and regulations and government policies are likely to occur during the term of this Agreement which are likely to affect the nature of the relationship between them, and as consequence the Parties hereby agree to consult and negotiate in good faith any amendments to this Agreement which may be necessitated by changes in the regulatory environment, and failing agreement to submit their differences to arbitration as provided in Article 9.

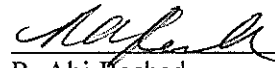
**19. Relationship:**

- 19.01 The Parties acknowledge and agree that THE ENERGY SERVICES CORPORATION shall act as an independent contractor providing its services under this Agreement and the Parties further acknowledge and agree that nothing in this Agreement shall be deemed or construed to be the formation of a partnership between THE ENERGY SERVICES CORPORATION and THE ELECTRIC CORPORATION .

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement on the date first above written:

**THE ENERGY SERVICES  
CORPORATION**

Per:



R. Abi-Rashed  
Treasurer

**THE ELECTRIC  
CORPORATION**

Per:



J. E. Lavelle, P. Eng.  
President



**Schedule "A"**

**THE ELECTRIC CORPORATION Service Area**

The Electric Corporation Service Area is that specified in Interim Electricity Distribution System Licences issued by the Ontario Energy Board for the former municipal utility serving the Town of Whitby.

**Schedule "B"**

**Monthly Charges**

THE ENERGY SERVICES CORPORATION shall invoice THE ELECTRIC CORPORATION the following amounts per month for 2009:

	2009
O.M.&A. charges	\$544.9 K
Vehicle/Tool charges:	\$ 42.2 K
Capital works charges:	\$384.3 K
Conservation/Demand Management Charges	\$ 30.3 K