

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether the costs and damages incurred by electricity distributors as a result of the April 21, 2010 Minutes of Settlement in the late payment penalty class action, as further described in the Notice of Proceeding, are recoverable from electricity distribution ratepayers, and if so, the form and timing of such recovery;

AND IN THE MATTER OF Rules 8 and 29.3 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

NOTICE OF MOTION

The School Energy Coalition (“SEC”) will make a motion to the Ontario Energy Board (“the Board”) at its Chambers at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC proposes that motion be dealt with either orally or by written submissions.

THE MOTION IS FOR:

1. An order requiring Toronto Hydro-Electric System Limited (“THESL”) to provide the materials requested in SEC Interrogatories 2 and 3.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on its own motion, pursuant to sections 19 and 78(2) of the *Ontario Energy Board Act, 1998*, to determine whether Affected Electricity Distributors should be allowed to recover from their ratepayers the costs and damages incurred as a result of the Late Payment Penalty Class Action (“LPP Class Action”) Minutes of Settlement in Court File No.94-CQ-50878, and if so, the form and timing of such recovery.

2. In the Notice of Proceedings, pursuant to section 21 of the *Ontario Energy Board Act, 1998*, the Affected Electricity Distributors, licensed Ontario electricity distributors that were named as defendant class members in the Minutes of Settlement, were required to file evidence collectively on the following issues:.

1. As a threshold question, whether Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action; and
2. If the answer to the first issue is yes, what would be an appropriate methodology to:
 - (a) apportion costs across customer rate classes, and
 - (b) recover such allocated costs in rates.

3. The Electricity Distributors Association (“EDA”), an intervenor in the proceedings, on behalf of the Affected Electricity Distributors filed with the Board on November 8, 2010 its evidence. On November 12, 2010 the Board received supplementary evidence from THESL, one of the Affected Electricity Distributors.

4. SEC is an intervenor in this proceeding.

5. Pursuant to Procedural Order #1 issued December 17, 2010, SEC delivered the following written interrogatories to THESL:

2. [Ref: EDA para 10]

Please provide a copy of the agreement by which THESL became liable for the existing obligations, including legal claims, of any predecessor entity that carried on the electricity distribution business. To the extent, if any, that there were disclosures of existing claims at the time of the transfer of the electricity distribution business, please provide a copy of those disclosures.

3. [Ref: EDA para 10]

Please provide, for any LDC that was acquired by, or amalgamated with THESL after 1998, a copy of the agreement by which THESL became liable for the existing obligations, including legal claims, of the predecessor entity that carried on the electricity distribution business. To the extent, if any, that there were disclosures of existing claims at the time of the acquisition or amalgamation, as the case may be, please provide a copy of those disclosures.

6. THESL responded to the above interrogatories with the following answers contained in Exhibit I2, Tab 1, Schedule 1:

2. THESL declines this interrogatory on the basis that this matter has already been determined by the Supreme Court and does not relate to any approved issue in this hearing.

3. THESL declines this interrogatory on the basis that this matter has already been determined by the Supreme Court and does not relate to any approved issue in this hearing.

7. With respect to the response to interrogatories 2 and 3, THESL declines to answer on the basis “that this matter has already been determined by the Supreme Court”. THESL has not provided any Supreme Court of Canada reference or citation to rely on. Regardless, SEC submits that this is incorrect. The Supreme Court of Canada has never decided the issue of whether THESL or any other Affected Electricity Distributors in this proceeding, should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action.

8. THESL also refuses to answer the interrogatories on the basis that it “does not relate to any approved issue in this hearing”. SEC disagrees with this statement. The materials requested in interrogatories 2 and 3 are relevant to first issue, the threshold question, whether “Affected Electricity Distributors should be allowed to recover from ratepayers the costs and damages incurred in the LPP Class Action”.

9. The documents requested in interrogatories 2 and 3 are relevant to answering first issue, as they provide the Board with the proper foundation to understanding how legal liabilities were transferred to THESL from predecessor entities either other Local Distributors Companies (“LDCs”) and/or municipally owned hydro-electric utility commissions (“MEUs”). This is important to understanding if ratepayers, instead of other legal entities, if any, should be responsible for the costs and damages incurred by the THESL in the LPP Class Action.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2010-0295, including THESL's responses to written interrogatories.

2. Such further and other documents as counsel may advise and the Board may permit.

January 14, 2011

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TO: Ontario Energy Board

Attention: Kirsten Walli,
Board Secretary
Suite 2701
2300 Yonge Street
Toronto, ON M4P 1E4
Tel: 416-481-1967
Fax: 416-440-7656

AND TO: Toronto Hydro-Electricity System Limited

Attention: Colin J. McLorg
14 Carlton St.
Toronto, ON
M5B 1K5
Tel: 416-542-3024
Fax: 416-216-3930

AND TO: All other parties (by posting on the OEB website)

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