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via RESS e-filing – original to follow by courier

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

Dear Ms. Walli:

RE: EB-2010-0295
Recovery of Late Payment Penalty Settlement Amounts
THESL Submissions re: SEC Motions for Production

Toronto Hydro-Electric System Limited (THESL) has received both of the Notices of Motion filed by the School Energy Coalition (SEC) pertaining to interrogatory responses filed by THESL and the Electricity Distributors Association (EDA), as well as the Board's Procedural Order No. 3, which directed THESL to file any submissions on SEC's motions by January 19. This sets out THESL's submissions pursuant to P.O. No. 3.

1. The information sought by SEC from THESL is irrelevant to this proceeding.

SEC posed the following 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.

In each case, THESL responded by stating:

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.

Interrogatory 3 does not apply to THESL in any event because THESL has not acquired or been amalgamated with any other utilities after 1998.

SEC states that the interrogatories were improperly declined by THESL since "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."

With respect, SEC has distorted THESL's response and attempts to portray THESL's response as one to the question posed above, rather than to the question actually posed in the SEC interrogatory. THESL responded to the actual interrogatory, not to the entirely different question later substituted by SEC in its Motions.

The fact of THESL's (and other affected distributor's) liability has already been established by the Settlement giving rise to the costs which are the proper subject of this proceeding, which Settlement has already been approved by the Ontario Superior Court of Justice. That fact is noted in the Board's Notice of Hearing for this proceeding, and that Notice provided no indication that that fact was in any way in doubt or subject to determination in this proceeding. It is not.

SEC's Motion attempts to confound and obscure this fact by raising the irrelevant question of whether the statutorily-mandated process of corporatization that THESL and other utilities underwent upon industry re-structuring somehow provided for the transfer of liability. Whether it did or did not makes no difference to the fact of the approved

Settlement under which THESL and the affected distributors are liable for the costs, or to any determination that the Board will make in this hearing.

SEC asserts without explanation or justification that the information sought will “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”)” and further that “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”. These arguments depend on the hidden premise that the historical corporate evolution of THESL either validates or invalidates the liability that THESL has incurred by way of the Court-approved Settlement. This premise is incorrect since nothing in the process by which THESL became incorporated could now have any effect on THESL’s liability under the Settlement. That evolution in any case could not have been altered by THESL or its predecessors. Therefore the requested information could not in any case assist the Board in determining the first defined issue in this proceeding.

2. The Board should dismiss the SEC Motion because it is without merit and the information it seeks production of cannot assist the Board in this proceeding.

Yours truly,

[Original signed by]

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:CJM/acc

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