

February 16, 2011

Ms. Kirsten Walli
Ontario Energy Board
27 – 2300 Yonge St
Toronto, ON M4P 1E4

Dear Ms. Walli:

**In the Matter of a Proceeding Initiated by the Ontario Energy Board pursuant to a
Notice of Proceeding dated October 29, 2010 -Reply Argument of Donald D. Rennick**

The following is a Reply Argument in the above-noted proceeding.

Please copy this e-mail submission to the interested parties.

I will be forwarding hard copies to you.

Yours very truly,

Donald Rennick

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.

REPLY ARGUMENT OF DONALD RENNICK

NATURE OF PROCEEDINGS AND OVERVIEW

1. On October 29, 2010 the Ontario Energy Board (the "Board") issued a Notice of Proceeding on its own motion to determine (i) whether Affected Electricity Distributors (as defined in the Notice of Proceeding) should be allowed to recover from their ratepayers the costs and damages incurred in the late payment penalty ("LPP") class action ("LPP Class Action"), and if so, (ii) the form and timing of such recovery. This proceeding was commenced pursuant to sections 19 and 78(2) of the *Ontario Energy Board Act, 1998*.
2. The Board directed all Affected Electricity Distributors to collectively file evidence on these issues. On November 8, 2010, the Electricity Distributors Association (the "EDA") filed evidence on behalf of all Affected Electricity Distributors seeking recovery of their proportionate share of their costs and damages incurred in the LPP Class Action (the "Costs"). Toronto Hydro Electric System Limited ("THESL") filed supplemental evidence on November 12, 2011.
3. Pursuant to Procedural Order No.3, the EDA and THESL filed Argument-In-Chief on January 26, 2011. Board Staff and intervenors filed submissions on the evidence and argument put forward by the EDA and THESL. On Feb 7, 2011, the EDA filed submissions in reply on behalf of all Affected Electricity Distributors, which address:
 - a) The submissions of Donald Rennick that allowing the Affected Electricity Distributors to recover the Costs from ratepayers would effectively be "nullifying" the Court's ruling approving the settlement.

ALLOWING THIS APPLICATION REGARDING RECOVERY OF LPP'S FROM CURRENT RATEPAYERS WILL EFFECTIVELY OVERTURN THE COURT'S RULING

The plaintiffs' acknowledgement in the minutes of settlement in the LPP Class Action that they will not be opposing an application by defendant class members to recover the cost of settlement through rates does not speak to the arguments filed in my submission of January 28, 2010. The plaintiffs are merely stating that they would not oppose an application. They are not stating that they agree with an application being filed and certainly not indicating that they agree with the defendants' position on the matter. In addition, the plaintiffs are not commenting on the court's ruling which was that the LPP's were charged illegally and should be returned to ratepayers. I rely on my original argument that allowing the recovery of costs in this application would effectively be doing an end run around the ruling handed down by the court.