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### **BY EMAIL and RESS**

April 1, 2011

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB-2011-0011 – Toronto Hydro-Electric Systems Limited**  
**2011-2014 Board-Approved CDM Programs Application**  
**Pollution Probe's Motion for Review of Issues List Decision**

Please find attached the written submissions of the School Energy Coalition (SEC) with respect to the Motion for Review of the Issues List Decision pursuant to Procedural Order #2.

Should you require additional information, please do not hesitate to contact me.

Yours truly,  
**JAY SHEPHERD P.C.**

*ORIGINALLY SIGNED BY*

Mark Rubenstein

cc: G. Winn, THESL  
W. McNally, SEC  
J. Shepherd, SEC  
Interested Parties

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

**AND IN THE MATTER OF** an Application by Toronto Hydro-System Limited Inc. for an Order or Orders granting approval of initiatives and amounts related to the Conservation and Demand Management Code;

**AND IN THE MATTER OF** a Notice of Motion by Pollution Probe Research Foundation for review of parts of the Board's Decision on Issues and Cost Eligibility issues on March 11, 2011;

**AND IN THE MATTER OF** Rules 42, 44, and 45 of the Board's Rules of Practice and Procedure.

### **Submissions of the School Energy Coalition**

1. Pursuant to the Notice of Hearing and Procedural Order #2 issued March 25<sup>th</sup>, the School Energy Coalition ("SEC") provides its submission with respect to Pollution Probe's Motion for Review of parts of the Board's *Decision on the Issues and Cost Eligibility* dated March 11, 2011 (the "Decision").

#### **General Comments**

2. SEC submits that the broad intent behind most of the draft issues that Pollution Probe seeks to include are already part of Final Issue 3.2: "[has] THESL adopted an appropriate mix of OPA programs and Board-Approved programs?"
3. The nature of this proceeding necessarily requires a comparison of the proposed Board-approved programs to OPA-Contracted Programs, to determine in part if THESL's Board-Approved Programs and respective budgets are reasonable and appropriate. As SEC submitted in proposing this issue in its submissions on the draft issues list:

This CDM Program Application process is not just about ensuring that the CDM Code has been complied with, and that the budgets are appropriate. It also is about making sure the programs themselves are appropriate to be undertaken by the LDC. Further, the Board must be satisfied that not only are the Board-Approved programs sound, reasonable and cost-effective, but that compared to additional OPA-Contracted

Programs, or other alternatives, they are the most efficient way for the Applicant to meet or exceed its CDM targets.

For example, the Board may, after reviewing the evidence, conclude that the Applicant should expand the resources and scope of one or more of the Board-Approved programs as a way to meet a greater portion of their CDM targets. This would not just be in the alternative to other proposed Board-Approved programs. The Board could also conclude that it would be more efficient to deliver a greater percentage through Board-approved rather than OPA programs (or vice versa). While the Board must accept the OPA-Contracted Programs as presented by the OPA, it also in our submission must be satisfied that the proposed mix of both proposed Board-Approved and OPA-Contracted Programs is appropriate.

4. It appears to us, after the Decision, to be undisputed that at least some consideration of the OPA programs is required, if for no other reason than to determine if the mix proposed by THESL is optimal and cost effective.

### **Specific Issues**

#### **i) Participation Rates for Toronto Hydro's OPA CDM Programs.**

5. SEC submits that the Board, through Final Issue 3.2, may investigate the participation rates THESL assumes for its OPA-Contracted Programs. In determining the appropriate mix of OPA programs, if the assumptions that THESL has used, including participation rates, are considered unreliable, the Board could for example make a finding that THESL should consider increasing reliance on its proposed Board-Approved Programs to meet its targets.
6. The question, as is often the case, is where to draw the line between what is in and what is out. SEC has long taken the view that the Board should be loathe to impose tight restrictions on the issues early in a proceeding, and should only do so where necessary to signal the appropriate overall scope of a proceeding. In this case, we see value in providing further clarity on the scope of discussion of OPA programs.
7. In our submission, it is on the one hand outside the scope of this proceeding for the Board to order THESL to increase its target participation rates in OPA-Contracted Programs. For this reason, SEC submits that the Board was correct in excluding Pollution Probe's draft issue 3.3.

8. On the other hand, it is entirely within the scope of this proceeding, in our view, for the Board to provide its guidance or opinion on THESL's assumed participation rates in OPA-Contracted Programs, and the implications of that opinion on the Board-approved programs.
9. By way of example, the Board, after hearing the evidence, could say "THESL, we think these OPA programs can and will produce better results than you are assuming, at a lower cost than your proposed Board-approved programs. You therefore have to decide whether you still wish to proceed with all of your proposed Board-approved programs and exceed your target, or whether you wish to cut back on those programs. Whichever you decide, we will consider your application accordingly."
10. The Board could also do the opposite. That is, the Board after seeing the evidence could express its opinion that the THESL Board-approved programs are more cost-effective than the OPA programs. THESL could then be invited to expand its reliance on Board-approved programs, and either exceed its targets, or reduce its targets for its OPA programs to meet its overall target. In the same way as we have noted above, the Board could not, in our view, order THESL to increase its OPA programs or its Board-approved programs. The Board can, and should, consider what the OPA programs are reasonably likely to achieve, and at what cost, so that the appropriateness of the mix of programs, and the relative cost-effectiveness of the Board-approved programs, can be assessed.

**ii) Whether Toronto Hydro should be encouraged to propose more Board-Approved CDM Programs.**

11. SEC submits that it should be within scope for parties to explore whether THESL should be encouraged to propose more Board-Approved programs. In the context of so doing, the Board may also choose to provide guidance to THESL on the types of additional programs that should be designed. For example, if the Board sees that a particular customer group or sub-group is not being served by any of the proposed programs (OPA or Board-approved), the Board can express its opinion that THESL should investigate additional programs for that group.
12. However, in our view the Board cannot order THESL to implement additional Board-approved programs. The Board may direct THESL to do *more of* the proposed Board-Approved Programs, but not *more* Board-Approved Programs. By way of example, if an intervenor such as Pollution Probe were to present evidence of a proposed program that it says is suitable for THESL's customers, the Board cannot and should not order THESL to undertake that program, no matter how good it may be. The Board, if it feels the program is a good one, can recommend that THESL consider it, but in our

view in this process the Board has to respond only to the programs the Applicant presents for approval.

13. SEC does agree with Pollution Probe that the Board has the general authority to encourage, and even direct, any distributor to exceed its targets. Within the scope of this proceeding, though, that should not be done through directing the implementation of specific new Board-Approved Programs.

**iii) Toronto Hydro's budget for OPA CDM programs is, by itself, outside of the scope of this hearing**

14. SEC submits that the Board was correct in determining that the reasonableness and appropriateness of the OPA portion of THESL's CDM budget is outside the scope of this proceeding.
15. In our view, Final Issue 3.2 does allow the Board to determine if the appropriate mix of programs between Board-Approved and OPA-Contracted Programs has been achieved. This allows the Board to determine, among other things, if THESL should meet a greater percentage of its target through Board-Approved Programs. That inquiry may require a review of the OPA portion of THESL's CDM budget to add context, and to be used as a comparator for the Board-Approved Program portion. It does not involve an independent review of the size or composition of THESL's OPA program budget.

Respectfully submitted on behalf of the School Energy Coalition this 1st day of April 2011.

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Mark Rubenstein