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April 1, 2011

**VIA Email and RESS**

Ms. Kirsten Walli, Board Secretary  
Ontario Energy Board  
2300 Yonge Street,  
Ste. 2701  
Toronto ON M4P 1E4

Dear Ms. Walli

**Re: Toronto Hydro-Electric System Limited CDM Programs for 2011-2014  
OEB File No. EB-2011-0011  
Pollution Probe Motion to Review Parts of Issues List Decision**

Further to Procedural Order No. 2, Toronto Hydro-Electric System Limited ("THESL") makes the following submissions with respect to Pollution Probe's motion to review part of the Board's Issues List Decision.

THESL submits that Pollution Probe's motion should be denied.

THESL supports the Board's findings and decision as contained in its March 11, 2011 Decision on Issues and Cost Eligibility.

As the applicant in this proceeding, THESL retains the discretion to request the relief sought and to file evidence in support of its requested relief that THESL adjudges will be sufficient to discharge the onus upon it as applicant. In its application before the Board, THESL seeks approval of funding for a number of well defined, specific conservation and demand management programs. These programs form the basis of the proceeding and the Board's approved Issues List constrains the scope of the review in the Board's consideration of whether to approve these CDM programs.

The new issues which Pollution Probe seeks to add to the Issues List through this motion, as well as the issue GEC seeks to add through its submission in support of the motion, would significantly change the scope and focus of the proceeding and should not be accepted by the Board.

With respect to Pollution Probe's issue to investigate the proposed participation rates for OPA CDM Programs, THESL submits this issue is entirely outside the scope of the current proceeding. The OPA CDM Program parameters have been established separate and apart from THESL's current application for Board approval of specific CDM Programs. It is not clear to THESL, even if the Board were to

permit the type of investigation sought by Pollution Probe (which in THESL's view it should not), what role the Board would take in second-guessing or re-determining the design or parameters of those OPA programs. THESL submits that it should not be expected to file evidence to support such an investigation.

With respect to Pollution Probe's other issue, whether THESL should be encouraged to propose more Board-Approved CDM programs, THESL has already undertaken an extensive review of a range of potential CDM programs. The application before the Board is the culmination of that work and effort by representing the most appropriate CDM programs the utility wishes to advance at this time. With respect, THESL sees no value whatsoever in consuming valuable hearing time by having parties speculate and debate about what other potential CDM programs could possibly exist or be pursued by THESL. The THESL application currently before the Board is not the appropriate forum for some generic review on CDM. The proceeding is focused and restricted to reviewing the specific CDM programs THESL is proposing. While THESL will inevitably bring forward additional CDM programs to facilitate the utility achieving its conservation target, the priority for THESL at this time is to obtain approval for, and thereafter launch, its programs to allow THESL to do its part to achieve Ontario's CDM policy objectives.

In its motion materials, Pollution Probe appears to suggest that the Board's decision was somehow inconsistent with its statutory objective under Section 1(1) of the *Ontario Energy Board Act, 1998* (the "Act") to promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances. Without prejudging Pollution Probe's argument, THESL notes that Pollution Probe refers to the Minister's Directive to the Board dated March 31, 2010 (the "CDM Directive"), the Minister's Directive to the OPA dated February 17, 2011 (the "IPSP Directive"), selected excerpts from Board's Decision in EB-2010-0331/0332 (the "HONI CDM Decision"), and the Board's CDM Code issued September 16, 2010 (the "CDM Code"). THESL has reviewed all of this material, and in light of this review submits that the Board's Decision is consistent with the policy framework of the Government of Ontario in respect of CDM in general, and the CDM Directive, the IPSP Directive, the HONI CDM Decision and the CDM Code in particular.

Pollution Probe appears to suggest in its motion that the Board through its decision on the issues list is somehow in violation of its obligation under Section 27.1 of the Act to implement the CDM Directive. THESL has carefully reviewed the CDM Directive, and based on this review submits that the Board's decision on the issues list is consistent with the CDM Directive.

THESL intends to participate at the oral hearing of the Motion on Tuesday morning and we would be pleased to expand upon our submissions in this matter at the Board's convenience.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original signed by Mark Rodger*

J. Mark Rodger

copy to:

Chris Tyrrell, Toronto Hydro-Electric System Limited

Basil Alexander, Pollution Probe

Intervenors of Record

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