

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

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

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**ARGUMENT-IN-CHIEF**  
**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

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May 9, 2011

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**EB-2011-0011**

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**DELIVERED MAY 9, 2011**

**A. INTRODUCTION**

1. On January 10, 2011 Toronto Hydro-Electric System Limited (“THESL”) submitted an application to the Ontario Energy Board (the “Board”) pursuant to the Board’s *Conservation and Demand Management Code for Electricity Distributors* issued September 16, 2010 (the “Code”) seeking an order granting approval of funding for nine individual conservation and demand management (“CDM”) programs (the “Application”). On April 1, 2011, THESL notified the Board of its intent to withdraw the In-Store Engagement and Education Program because it was already included within one of the remaining programs. THESL is now seeking approval for the following eight programs (collectively, the “Proposed Programs”):

1. Business Outreach and Education Program;
2. Commercial Energy Management and Load Control Program;
3. Commercial, Institutional and Small Industrial Monitoring & Targeting Program;
4. Community Outreach and Education Initiative;
5. Flat Rate Water Heater Conversion & Demand Response Program;
6. Greening Greater Toronto Commercial Building Energy Initiative;
7. Hydronic System Balancing Program; and
8. Multi-Unit Residential Demand Response Program.

2. THESL has applied for approval of the eight Proposed Programs as part of its efforts to comply with its legal obligation to meet a targeted summer peak demand savings of 286.27 MW by December 31, 2014 and a cumulative energy savings target of 1,303.99 GWh between January 1, 2011 and December 31, 2014 (the "CDM Targets"). The CDM Targets represent THESL's share of very aggressive Province-wide targets of 1,330 MW of provincial peak demand savings and 6,000 GWh of reduced electricity consumption.

**Decision and Order (EB-2010-0215/0216) dated November 12, 2010.**

**Minister's Directive to the Ontario Energy Board dated March 31, 2010.**

**Transcript, Volume 3, May 3, 2011 Page 123 at Line 12.**

## **B. RELIEF REQUESTED**

3. THESL seeks an order of the Board granting approval to fund \$50,652,853 for the eight Proposed Programs, on the following grounds (which are more fully detailed in the submissions below):
  - (a) The relevant OPA-Contracted Province Wide Programs (the "OPA Programs") have been established;
  - (b) The Proposed Programs have been developed in accordance with the OEB Code requirements;
  - (c) The Proposed Programs are not duplicative of any of the OPA Programs;
  - (d) The Proposed Programs are incremental and not related to the OPA Programs;
  - (e) The Proposed Programs are necessary for THESL to meet its mandated CDM Targets; and
  - (f) The Proposed Programs are cost effective and will result in peak demand savings and electricity savings of 24.4 MW and 127.2 GWh between 2011 and 2014.
4. THESL further seeks an order of the Board granting recovery of the costs THESL incurred to develop the Proposed Programs, including forecast regulatory costs, totalling \$343,449. THESL submits that these costs properly constitute "program expenditures"

that are directly related to, and would not have been incurred except for, the Proposed Programs, and should not be included in THESL's distribution revenue requirement pursuant to Section 5.4 of the CDM Code, which states that: "[a] distributor's program funding and program expenditures from all Board-Approved CDM Programs and all OPA-Contracted Province-Wide CDM Programs are to be kept separate from the distributor's distribution operations and shall not be included in the distributor's distribution revenue requirement." THESL submits that the Board panel considering the application for Board approval of funding for specific CDM programs is best positioned to properly assess the costs that were incurred to develop those programs.

5. THESL seeks to collect the Board-approved funding for the Proposed Programs, including program development and regulatory costs, through the Global Adjustment, and seeks an order of the Board establishing an appropriate Global Adjustment Mechanism settlement process for this funding. THESL submits that the imposition of CDM Targets is a Province-wide policy initiative that will create Province-wide benefits in terms of reduced need for additional generation and transmission infrastructure and will further establish a conservation culture in Ontario.

## **C. BACKGROUND**

6. Since 2005, THESL has built a very experienced and skilled team to develop and deliver CDM programs. Over the past 6 years, THESL has successfully designed and implemented many award winning and broadly emulated CDM programs, including the *peaksaver*<sup>®</sup> program, which boasts over 65,000 installations in Toronto and was adopted as a Province-wide program by the OPA. THESL has consistently demonstrated its leadership and innovation in many of the programs in the residential mass market and business market, and through its collaboration with the Ontario Power Authority, numerous local partners and agencies, the Coalition of Large Distributors (CLD), and natural gas companies. The Application before the Board represents THESL's latest efforts to continue to demonstrate its innovative leadership in CDM efforts while helping THESL achieve its legally mandated CDM Targets.

**Exhibit J, Tab 4, Schedule 1.**

7. THESL's long market experience in CDM also means that in some market segments, certain efficiency measures are reaching saturation, and the easy to identify “low-hanging fruit” has already been picked. For example, THESL has achieved incredible success with over 65,000 customers enrolled in its award winning *peaksaver*<sup>®</sup> program. Many early adopters are already on board. THESL now needs to fine tune its CDM programs, incentives and delivery methods to target those segments of the market that are not yet participating – such as the commercial and industrial customers less than 200kW, and customers in multi-unit residential buildings – by providing those customers with unique programs designed to address their energy efficiency needs and incentives to encourage incremental CDM investment. THESL is still required to meet its CDM Target despite the lack of the easy to identify “low-hanging fruit”, and as a result, THESL has developed a suite of unique new programs to address the unique characteristics of its customer base and the market gaps in the OPA Programs.

**Transcript, Volume 2, May 2, 2011 at Page 10, Line 21 to Page 11, Line 26.**

8. Given its knowledge of the Minister's March 31, 2010 directive, THESL anticipated the issuance of the CDM Targets, and proactively undertook a comprehensive CDM market analysis to determine where, how and by what means it was to achieve its Board-assigned CDM Targets. Based on this market analysis, and as an active member of the OPA's CDM working groups, THESL was able to determine that the OPA Programs alone would be insufficient for THESL to meet its CDM Targets. This is illustrated in THESL's CDM Strategy dated October 22, 2011 and in evidence in this proceeding. THESL has already registered and launched all available OPA Programs. Despite this commitment, the OPA Programs will only deliver approximately 219 MW and 1,140.8 GWh savings, reflecting a 69 MW shortfall on THESL's demand target and a 163.19

GWh shortfall on THESL's energy savings target.<sup>1</sup> The OPA Programs alone are simply not sufficient for THESL to achieve its CDM Targets.

**Exhibit K1.4: THESL CDM Strategy.**

**Exhibit J, Tab 6, Schedule 10.**

**Exhibit J, Tab 2, Schedule 6.**

**Transcript, Volume 2, May 2, 2011 Page 7, Line 25.**

9. Once THESL established that Board-approved programs would be required to meet its CDM Targets, THESL drafted outlines for roughly 15 different programs that were designed to address THESL's unique customer base and to address particular market gaps. These programs were then screened to eliminate those that could duplicate Province-wide programs, were not feasible technically, or were simply too small to be cost effective. From the programs that remained, THESL made a practical assessment about which programs it could develop quickly and submit for Board approval. The results of this effort are the eight Proposed Programs that form the substance of this Application. THESL submits that it has adopted an appropriate mix of OPA Programs and Board-Approved Programs. THESL currently intends to submit additional applications for Board-approved programs in the future, as it continues to develop other CDM initiatives and monitors its progress towards achieving its mandatory CDM Targets.

**Exhibit J, Tab 3, Schedule 2.**

**Exhibit J, Tab 2, Schedule 9.**

**Exhibit J, Tab 1, Schedule 8.**

#### **D. AN EVOLVING PROCESS AND THE "TEST CASE"**

10. The Board's regulatory process for reviewing applications for approval of new CDM programs is clearly still evolving. The Code was issued in September 2010, and THESL's Application is only the second seeking Board approval for a suite of new CDM programs, following shortly after an application by Hydro One Networks Inc. and Hydro

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<sup>1</sup> The *peaksaver* extension, which was approved by the OPA on March 7, 2011, will deliver an additional 1.7 MW savings to the OPA Program totals, leaving a revised shortfall of roughly 66 MW.

One Brampton Networks Inc. (collectively, “Hydro One”). There is no doubt that many issues, both procedural and substantive, have arisen in this proceeding because THESL’s Application, as the first to progress through the entire hearing phase, is in fact a “test case” for the distribution sector as a whole.

11. On February 18, 2011, the Board issued Procedural Order No. 1, which proposed and allowed for submissions on the draft issues list. On February 25, 2011 THESL filed an Addendum to its Application seeking approval for recovery of its program development and planning costs, together with its submissions on the draft issues list. The issues list was finalized and approved by the Board in its March 11, 2011 Decision on Issues. The first indication that this Application would be treated as a “test case” was when Pollution Probe filed a Motion for Review of parts of the Board’s Decision on Issues on March 22, 2011. While the motion was ultimately dismissed by the Board in an oral decision on April 5, 2011, it was not before some intervenors argued for a greatly expanded scope for this proceeding.
12. Procedural Order No. 1 also provided for the delivery of and responses to written interrogatories from Board staff and intervenors. Through this process THESL received over 260 multi-part interrogatories from Board Staff and intervenors. THESL responded on April 1, 2011 with more than 1,000 pages of additional evidence in support of the Application. On the same date, THESL notified the Board of its intent to withdraw the In-Store Engagement and Education program and associated budget from its Application.
13. On March 4, 2011, during the Hydro One oral hearing, the Board expressed its clear preference for the applicant to obtain a letter from the OPA to resolve any ambiguity related to the issue of non-duplication of the programs. Although there is no explicit requirement for an OPA letter contained in the Code, in light of the Board’s newly expressed preference THESL promptly initiated discussions with the OPA to obtain such a letter. These discussions continued through March and April of 2011 as OPA staff familiarized themselves with the THESL Application and formulated a “purposive” framework with which to assess whether the proposed programs were in fact non-

duplicative. THESL filed the resulting letter from the OPA with the Board on April 21, 2011.

Hydro One CDM (EB-2010-0331/EB-2010-0332) Transcript, Volume 1, March 4, 2010 at Page 140 to Page 143.  
Undertaking J3.4.  
Exhibit K2.1.  
Exhibit K1.1.

14. On March 7, 2011 the Board issued its oral Decision on preliminary issues in the Hydro One application. In its Decision, the Board expressed its view that it remained an open question as to whether the OPA programs have been established and that this question would be determined on the basis of the evidence as it unfolds before the Board. Although it is not an explicit requirement in the Code, on April 21, 2011, Board Staff requested that THESL produce and circulate copies of the OPA's Program Schedules to the Master CDM Program Agreement between THESL and the OPA. On April 26, 2011, THESL produced the schedules pertaining to the OPA's Residential Program, the Commercial & Institutional Program, and the Industrial Program (the "OPA Schedules") together with a request to hold particular portions of the OPA Schedules in confidence in accordance with the Board's *Practice Direction on Confidential Filings*. THESL submits that the Board should approve the confidentiality request for the reasons given in THESL's April 26, 2011 letter.

EB-2010-0331/EB-2010-0332 oral Decision, Transcript, Volume 2, March 7, 2011 Page 3-4.  
Exhibit K, Tab 4, Schedules 1-3.

15. Like THESL, Hydro One filed a Draft Evaluation Plan Template for each of its programs, and planned to wait until after program approval before incurring the considerable effort and expense of hiring third party consultants to prepare complete evaluation plans for programs that may ultimately not be approved. In its oral Decision on March 7, 2011, the Board rejected the Hydro One application as incomplete because of the absence of a complete evaluation plan for each program. In light of the Board's Decision, THESL promptly initiated discussions with third party consultants to assist with the development of Draft Evaluation Plans and program logic models. This considerable effort culminated



in the filing of Draft Evaluation Plans and program logic models on April 21, 2011. At the oral phase of the proceeding, no party raised any concerns or asked any questions about the Draft Evaluation Plans and program logic models. THESL submits that it has appropriately applied the OPA's EM&V Protocols in developing its proposed evaluation plans and program logic models.

EB-2010-0331/EB-2010-0332 Oral Decision, Transcript, Volume 2, March 7, 2011 Page 1-5.  
Exhibit K, Tab 2, Schedules 1-9.

16. Throughout this process, THESL has taken several significant steps to ensure that its Application is complete and helpful to the Board in light of these evolving requirements. THESL submits that its Application should not be in any way prejudiced because of its role as a "test case."

**E. THE TIMING OF THE APPLICATION**

17. THESL submits that the timing of its application for Board-Approved CDM Programs is appropriate. THESL is required as a condition of its licence to meet both its peak demand reduction and cumulative energy savings targets between January 1, 2011 and December 31, 2014. Despite THESL's best proactive planning, delays related to the launch of the OPA Programs have already put THESL behind schedule. THESL submits that it is not in the public interest to delay the approval of the Proposed Programs. It is already approaching mid-May of 2011. A decision in this proceeding would, at-best, be forthcoming sometime this summer. If approved, the Proposed Programs will still require an effort of between 61 days to just over a year to implement and launch. And once launched, THESL must operate within the business development and budget approval cycles of its targeted market sectors, which for commercial customers can range between 12-18 months. In short, the clock is ticking and time is marching on, and any further delays will make it increasingly difficult to meet the mandatory CDM Targets.

**F. THE APPLICATION COMPLIES WITH THE CDM CODE**

18. THESL submits that the Application as a whole, and each of the eight programs in particular, meet the requirements of the CDM Code. To assist the Board, THESL has organized its submissions below in consideration of the applicable Sections of the Code.

***THESL reviewed all existing OPA Programs.***

19. As an active member of the OPA working groups, THESL has detailed knowledge of all of the OPA Programs and as part of its program development effort, THESL reviewed in detail the OPA Programs in accordance with Section 2.3.1 of the Code.

**Exhibit K1.1.**

**Exhibit J, Tab 1, Schedule 3.**

***The OPA has established its first set of OPA Programs.***

20. The relevant OPA Programs have all been established in accordance with Section 3.1.1 of the Code. The OPA Schedules fully describe the relevant OPA Programs in such a way that the Board can make a confident determination that THESL's proposed programs are not duplicative as per the Minister's directive. THESL has already started implementing all available OPA Programs, and has invoiced the OPA under and received payments related to these OPA Programs.
21. While it was acknowledged that the OPA's low-income program schedule has not yet been released, THESL submits that the low-income program is not directly relevant to the issue of duplication in this proceeding because while none of the Proposed Programs exclude low-income participants none of the Proposed Programs are, in fact, low-income programs. Furthermore, THESL is aware of the details of the low-income program that has already been developed and the corresponding OPA schedule is due to be published in May 2011. THESL has committed by way of undertaking to filing those schedules with the Board as soon as they become available.

***The Proposed Programs are non-duplicative of existing OPA Programs.***

22. THESL submits that the eight Proposed Programs in the Application are non-duplicative of the existing OPA Programs, in accordance with Section 2.3.2 of the Code.
23. THESL has produced detailed evidence of the non-duplicative nature of its Proposed Programs. The Board can compare and contrast each of the Proposed Programs, detailed in the Application, to each of the OPA Programs, detailed in the OPA Schedules, directly. THESL has also provided a detailed concordance discussing the differences between the Proposed Programs and the OPA Programs and the incremental nature of the Proposed Programs. In addition, THESL has filed a letter from the OPA dated April 21, 2011, which was marked as Exhibit K1.1, confirming that five of THESL's eight programs are, in the OPA's opinion, not duplicative. THESL has agreed to all of the conditions contained in the OPA letter, and has in fact withdrawn the request for funding for the *peaksaver*<sup>®</sup> component of its Flat Rate Water Heater Conversion and Demand Response program from its Application as requested by the OPA.

**Exhibit J, Tab 1, Schedule 4, Appendix A.**

**Exhibit K1.1.**

24. The OPA did not express an opinion on whether or not THESL's Community Outreach and Education Program, the Business Outreach and Education Program, and the Greening Greater Toronto Commercial Building Energy Initiative (collectively, the "Outreach and Education Programs"), are non-duplicative. Instead, the OPA noted in its testimony that it had some trouble assessing THESL's stand-alone Outreach and Education Programs because there are no similar programs in the OPA Province-wide suite. THESL submits that this observation, in itself, constitutes clear evidence that THESL's proposed Outreach and Education Programs are in fact non-duplicative.

**Exhibit K1.1.**

**Exhibit K2.1.**

25. The OPA went on to note that the types of activities that are included in THESL's Outreach and Education Programs could, in theory, be funded as marketing activities pursuant to the Program Administrative Budget ("PAB"). In response, THESL explained that the Outreach and Education Programs were developed to educate the public on broad energy issues as described in the Code Section 4.3 and it had already fully allocated its PAB to support activities aimed at achieving specific demand and energy savings directly related to the OPA Programs as per Section 2.3 of the Master CDM Program Agreement.. There is no PAB remaining to allocate to these broader education and outreach initiatives without stripping funding from work directly attributable to OPA Program demand and energy savings. Instead, THESL is requesting approval for incremental funding for the Outreach and Education Programs that are incremental to the OPA Programs.
26. The OPA clarified in its testimony that PAB funding, available to fund marketing activities under Section 2.3 of the Master CDM Program Agreement, must be used only for purposes which are directly related to the OPA Programs. Accordingly, THESL uses its PAB to fund business development activities which are directly related to those OPA Programs. These PAB funded marketing and sales activities are separate and distinct from the much broader Outreach and Education Programs proposed by THESL. THESL notes that the Board explicitly contemplate programs with a broader educational focus under Sections 4.1.2 and 4.3 of the CDM Code. THESL has proposed its Outreach and Education Programs in accordance with those provisions of the Code.

**Undertaking J3.3 at Section 2.3.**

**Transcript, Volume 1, May 2, 2011 at Page 17 Line 23 to Page 18 at Line 5.**

27. THESL submits that the OPA's comment related to availability of PAB funding for activities like those proposed for the Outreach and Education Programs is more of a theoretical observation than a practical assessment. Specifically, it does not represent a conclusion that the Outreach and Education Programs are duplicative of existing OPA Programs. The OPA has not agreed to give THESL incremental PAB funding to support the Outreach and Education Programs, nor has the OPA, at any time, committed that the

Outreach and Education Programs will in fact qualify for PAB funding. It is clear that THESL's Outreach and Education Program activities would not in fact qualify for PAB funding in any event, since under Section 4.1(b)(i) of the Master CDM Program Agreement, which was marked as Exhibit K3.2, PAB will only be funded for "LDC Eligible Program Administrative Expenses". Put succinctly, these are expenses directly related to the OPA Programs. This reading is further confirmed by the OPA's response in Undertaking J3.6. As described in Exhibit K1.2 and K.1.3, none of THESL's proposed Outreach and Education Programs are directly related to the OPA Programs, and in fact there are numerous material distinctions.

**Transcript, Volume 2, May 2, 2011, Page 121 at Line 10 to Line 20.**

**Undertaking J3.6.**

**Exhibit K1.2.**

**Exhibit K1.3.**

28. THESL will not seek PAB funding from the OPA for Board-approved programs. The Board already requires through the CDM Code that the costs and revenues associated with OPA Programs be kept strictly separate from those of Board-Approved Programs, which in-turn must be kept strictly separate from distribution revenue requirement, and THESL will of course continue to act and maintain its records in accordance with these requirements.

***The Proposed Programs have an appropriate human resources plan.***

29. THESL submits that it has an appropriate human resources plan for its eight Proposed Programs. THESL has a long experience with developing and implementing innovative new CDM programs. Any incremental resources required to support the Proposed Programs will be contracted staff.

**Exhibit J, Tab 1, Schedule 7.**

**Transcript, Volume 2, May 2, 2011, Page 70 Line 17-21.**

Transcript, Volume 2, May 2, 2011, Page 104, Line 11 to Page 105 Line 13.

Transcript, Volume 3, May 3, 2011 Page 1 Line 28 to Page 3 Line 1.

***The Proposed Programs are cost effective.***

30. THESL submits that each of its five “direct savings” CDM programs is cost effective in accordance with Section 4.1.1 of the Code. THESL used the OPA’s Total Resource Cost (TRC) and Program Administrator Cost (PAC) tests to assess and demonstrate cost effectiveness. As part of the interrogatory process, THESL provided the parties with working copies of its TRC and PAC models to assess the adequacy of those models. THESL submits that it has appropriately applied the OPA’s cost effectiveness tests when developing its Proposed Programs. THESL notes that:
- (a) The Commercial Energy Management & Load Control Program has anticipated TRC and PAC benefit-to-cost ratios of 1.7 and 4.1 respectively;
  - (b) The Commercial, Institutional and Small Industrial Monitoring & Targeting Program has anticipated TRC and PAC benefit-to-cost ratios of 1.6 and 1.5 respectively;
  - (c) The Flat Rate Water Heater Conversion & Demand Response Program has anticipated TRC and PAC benefit-to-cost ratios of 1.9 and 1.7 respectively when including the effect of the *peaksaver*<sup>®</sup> conversion (which THESL submits is the appropriate methodology), and 1.8 and 1.7 respectively when excluding the effect of the *peaksaver*<sup>®</sup> conversion;
  - (d) The Hydronic System Balancing Program has anticipated TRC and PAC benefit-to-cost ratios of 2.2 and 4.7 respectively; and
  - (e) The Multi-Unit Residential Demand Response Program has anticipated TRC and PAC benefit-to-cost ratios of 1.6 and 1.0 respectively.

31. Although there is no requirement that educational CDM programs be cost effective under these testing protocols, THESL has provided detailed evidence that its Outreach and Education Programs will likely result in peak demand savings and electricity savings. The Community Outreach and Education Program is the only educational CDM Program that THESL has proposed that is focused on individual consumers, and the budgeted \$5.7 million builds on an estimated \$1.2 million of in-kind contributions from its community partners (Undertaking J2.4). The Business Outreach and Education Program and the Greening Greater Toronto Initiative are the only educational CDM Programs that THESL has proposed which are focused on business customers. These programs represent a targeted effort by THESL to reach a particular unique segment of the business community within the City of Toronto based on its extensive market experience over the past 6 years.

**G. CONCLUSIONS**

32. For all of the foregoing reasons, THESL requests that the OEB approve its eight proposed CDM programs and budgets as requested in the Application together with the other relief as requested herein.

All of which is respectfully submitted this 9th day of May, 2011.

Original signed by J. Mark Rodger

J. Mark Rodger

Original signed by John A.D. Vellone

John A.D. Vellone

Counsel to Toronto Hydro-Electric System Limited

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