



May 24, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, Suite 2700
2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited (THESL) 2011-2014 CDM Application
Final Submissions of AMPCO
Board File No. EB-2011-0011**

Attached please find AMPCO's submissions in the above proceeding.

Please contact me if you have any questions or require additional information.

Sincerely yours,

(ORIGINAL SIGNED)

Adam White
President
Association of Major Power Consumers in Ontario

Copy to: THESL

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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 granting approval of funding for Conservation and
Demand Management programs.

FINAL SUBMISSIONS OF AMPCO

May 24, 2011

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**Final Submissions of AMPCO
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I. Introduction

1. Toronto Hydro-Electric System Limited (“THESL”) filed an application on January 10, 2011, seeking an order granting approval of funding for nine individual Conservation and Demand Management (“CDM”) programs. THESL is currently seeking approval of eight individual CDM programs as the In-Store Engagement and Education Program was withdrawn by THESL on April 1, 2011 and included in the Community Outreach and Education Initiative.¹ THESL’s funding request for the eight programs is for \$50,652,853.²
2. The Application was filed pursuant to the Board’s CDM code that was issued on September 16, 2010 in response to a directive from the Minister of Energy and Infrastructure dated March 31, 2010 in regards to CDM targets to be met by licensed distributors.
3. The Minister directed the Board to specify electricity conservation and demand management targets for each distributor to ensure that the total of the CDM targets established is equal to 1330 MW of provincial peak demand savings persisting at the end of the four-year period (2011-2014) and 6000 GWh of reduced electricity consumption accumulated over the four-year period.³

¹ THESL Letter to the OEB dated April 1, 2011

² THESL Argument-In-Chief, Paragraph 3

³ Minister’s Directive to the OEB dated March 31, 2010, Page 1

4. The Board allocated 286.27 MW as THESL's 2014 net annual peak demand savings target and 1,303.99 GWh as THESL's 2011-2014 cumulative energy savings target.⁴ THESL's targets are significant and represent close to 22 % of the provincial peak demand savings target and the provincial electricity consumption savings target.
5. THESL proposes to meet 85% of its peak demand target and 95% of its consumption target through a combination of OPA Contracted Province-Wide CDM Programs and Board-Approved programs as follows, leaving a shortfall of approximately 15% in demand savings and 5% in consumption savings⁵:

THESL CDM Programs	Forecasted Demand Savings MW	% of Demand Target	Forecasted Consumption Savings GWh	% of Consumption Target	PAB Budget (\$) ⁶	Variable Costs (\$) ⁷
THESL Target	286.27		1303.99			
OPA Province-Wide Programs	219	77%	1,140.8	86%	\$50,194,721	
Proposed Board-Approved Programs	24.4	9%	127.3	10%	\$13,874,589	\$36,778,367
Total	243.4	85%	1268.1	97%		
Shortfall	42.87	15%	35.89	3%		
AMPCO notes that THESL's response to AMPCO IR#6 incorrectly shows THESL's consumption target as 1,330 GWh. AMPCO has revised THESL's target to 1303.99 and adjusted the shortfalls accordingly.						

6. To address the shortfall, THESL indicated during cross examination that they have several program ideas and concepts in development that have passed an internal screening process and THESL will actually bring them forward as applications later this fall.⁸

⁴ EB-2010-0216, Electricity Conservation and Demand Management Targets, November 11, 2010

⁵ Response to AMPCO Interrogatory #6, Exhibit J, Tab 2, Schedule 6

⁶ Response to Board Staff Interrogatory # 1 Part (a)

⁷ Response to Board Staff Interrogatory # 1 Part (a)

⁸ Transcript Volume 2, Page 9

7. AMPCO notes that the total cost of THESL's CDM programs will be well in excess of \$100 million over the four year period, 2011-2014, once the customer incentive and OPA administration costs are added to the OPA Province-Wide CDM budget and the additional costs of the second tranche of THESL's Board-Approved CDM programs are included.
8. In order for the Board to approve the funding for THESL's Board-Approved CDM Programs in this proceeding, the Board must in part be satisfied that there has been sufficient co-ordination between THESL and the OPA, and that THESL has met the following key objectives identified in the Minister's Directive and included in the Board's CDM Code:
 - (a) Prior to applying for Board approval of any CDM Programs, a distributor must review the existing OPA-Contracted Province-Wide CDM Programs.⁹
 - (b) Distributors must not apply for Board Approval of CDM Programs that duplicate existing OPA-Contracted Province-Wide CDM Programs.¹⁰
 - (c) A distributor shall not apply for Board-Approved CDM Programs until the OPA has established its first set of OPA-Contracted Province-Wide CDM Programs.¹¹
9. THESL is the first distributor to progress through to the hearing and final submission stage regarding a CDM application. THESL has put forward in this proceeding that they are "in fact a 'test case' for the distribution sector as a whole."¹² The role of the applicant, the OPA and the Board in determining if the above objectives have been met has been a focal point of review in this proceeding, particularly the issue of duplication, and the outcome of this proceeding will inform the process for future applications.

⁹ Conservation and Demand Management Code, September 16, 2010, Section 2.3.1

¹⁰ Conservation and Demand Management Code, September 16, 2010, Section 2.3.2

¹¹ Conservation and Demand Management Code, September 16, 2010, Section 3.1.1

¹² THESL Argument-In-Chief, Paragraph 6

Compliance with the CDM Code

10. Regarding part (a) and (c) above, AMPCO submits that THESL has satisfied the requirements in the CDM Code. There is adequate information on the record to confirm that THESL was an active member in the OPA EDA working group¹³ and worked with the OPA to design and launch the new suite of OPA-contracted province-wide programs for the past 14 months¹⁴, starting very late in 2009¹⁵, resulting in a thorough review of the OPA's existing programs.
11. THESL submits in Argument-In-Chief that, "the Application as a whole, and each of the eight programs in particular, meet the requirements of the CDM Code."¹⁶ Further, 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."¹⁷
12. During the hearing, THESL's witness indicated that they reviewed their proposed Board-Approved Programs to see if there was duplication but they didn't conduct the review with the OPA until March of 2011 because, "At this point, as part of the code, there is no requirement to do so as a formal matter of the process."¹⁸ The review with the OPA was prompted by the Hydro One proceedings and the Board's request for an OPA support letter in the Hydro One case.¹⁹
13. The OPA submitted a letter February 7, 2011 indicating its intention to participate as an intervenor in this proceeding. As a registered intervenor, the OPA would have received THESL's proposed Board-Approved programs to review. The OPA intervention letter states, "Since its inception, the OPA has played a key role in designing and delivering conservation and demand management ("CDM") programs. On April 23, 2011, the Minister of Energy and Infrastructure issued a directive to the OPA outlining the requirements for strategic coordination of CDM programs with distributors and the Board. The OPA's interest in this proceeding is with respect to its role in coordinating and

¹³ Transcript Volume 2, Page 7

¹⁴ Exhibit K1.1, OPA Letter dated April 21, 2011

¹⁵ Transcript Volume 3, Page 27

¹⁶ THESL Argument-In-Chief, May 9, 2011, Paragraph 18

¹⁷ THESL Argument-In-Chief, May 9, 2011, Paragraph 22

¹⁸ Transcript Volume 2, Page 31

¹⁹ Transcript Volume 2, Page 30

facilitating the successful implementation of the new CDM opportunities provided to LDCs through the Green Energy and Green Economy Act, 2009.”

14. When questioned about the letter, the OPA indicated that the above statement is simply a direct quote from the Minister’s directive to the OPA dated April 23, 2010 regarding strategic coordination.²⁰ Although the response from the OPA witness is unclear about the OPA’s commitment to coordination, AMPCO submits that the Minister’s directive on strategic coordination is clear and the OPA has acknowledged this direction and its strategic coordination role in its February 7, 2011 intervention letter.
15. As a result of a request from THESL on March 7, 2011²¹, prompted by events in the Hydro One proceeding, the OPA provided a position on duplication in a letter dated April 21, 2011, one week before the hearing.²² This was the first time in this proceeding that parties were made aware of the OPA’s concerns regarding duplication.
16. The letter indicates that the OPA reviewed the THESL CDM programs submitted to the Board for approval and the OPA is of the opinion that the following five programs (direct savings programs) are not duplicative, based on reasons and conditions agreed to by THESL:
- Commercial, Institutional and Small Industrial Monitoring and Targeting
 - Flat Rate Water Heater Conversion and Demand Response
 - Multi-Unit Residential Demand Response
 - Hydronic System Balancing
 - Commercial Energy Management and Load Control
17. The OPA and THESL are in agreement that THESL’s five direct savings CDM programs do not duplicate the OPA’s CDM Programs.²³

²⁰ Transcript Volume 3, Page 92, 95

²¹ Undertaking J3.4

²² Exhibit K1.1

²³ Exhibit K1.1

18. AMPCO agrees with THESL that these five programs have been developed in accordance with the OEB Code requirements.²⁴ Using the OPA's Cost Effectiveness Tests, THESL has shown these programs are cost-effective as per section 4.1.1 of the CDM Code and THESL has provided a program evaluation plan, based on the OPA's EM&V Protocols, for each program as per section 3.1.4 (a) of the CDM Code. AMPCO concludes that the Board should approve funding for these five programs in the amount of \$43,049,897.
19. With regard to the remaining three programs (marketing and outreach programs), THESL and the OPA seem to have differing opinions regarding duplication.
20. The OPA did not provide an opinion on duplication, but rather expressed an opinion that the marketing and outreach programs (Greening Greater Toronto Commercial and Building Energy Initiative, Business Outreach and Education & Community Outreach and Education), "are payable through the existing Program Administration Budget (PAB) provided under the Province-Wide Programs."²⁵ During cross examination the OPA witness clarified that it is the activities within the programs, not the programs themselves, that could be funded by the PAB allocated to THESL.²⁶
21. The reason why the OPA couldn't provide an opinion on duplication was that the OPA was unable to take THESL's stand-alone marketing and outreach programs and compare them to elements of the OPA's Province-Wide programs where marketing is part of each initiative.²⁷
22. THESL submits in Argument-In-Chief that since the OPA had difficulty assessing THESL's stand-alone Outreach and Education Programs because there are no similar OPA Province-wide programs, this observation, in itself, constitutes clear evidence that THESL's proposed Outreach and Education Programs are in fact non-duplicative.²⁸ AMPCO does not agree that this observation in itself constitutes clear evidence that the programs are non-duplicative. AMPCO submits that the issue is

²⁴ THESL Argument-In-Chief, Page 2, Section 3 (d)

²⁵ Exhibit K1.1

²⁶ Transcript Volume 3, Page 36

²⁷ Transcript Volume 3, Page 35

²⁸ THESL Argument-In-Chief May 9, 2011, Paragraph 24

more complex.

23. THESL is relying in part on Sections 4.1.2 and 4.3 of the Board's CDM Code as the basis for creating their marketing and outreach programs as the Code provides for programs where cost effectiveness cannot be demonstrated if the program is designed for educational purposes. The Code says that in applying for educational CDM programs, "A distributor must demonstrate how the educational programs will promote the understanding of energy issues and lead to behavioural changes that result in the overall reduction of electricity demand and/or consumption."²⁹
24. The Master CDM Agreement between the OPA and the LDC outlines the roles and responsibilities of the OPA and the LDCs regarding marketing. The Agreement says in part that the OPA will develop a marketing and communication plan and marketing materials for Registered Initiatives and the LDC will market each Registered Initiative to the relevant target sector. The LDC is to use the funds provided to it by the OPA only for purposes solely related to the OPA-Contracted Province-Wide CDM Programs and the LDC will use the Program Administration Budget only for the LDC Eligible Program Administration Expenses. Advertising and marketing expenses are eligible program administration expenses.
25. At the hearing, the OPA confirmed that, "There is funding for marketing and outreach related to the province-wide programs, and the flexibility has been left to the LDC to determine how they want to market and outreach the programs using the PAB funding. And the types of activities could be advertising. It could be outreach events like those described in programs 1 to 4."³⁰
26. The overlap issue relates to the education programs that the OPA could fund under PAB versus what the OEB could approve under sections 4.1.2 and 4.3 of the CDM Code.
27. THESL's position is that THESL's PAB funding has been fully allocated to promote the OPA programs and deliver energy savings associated with these programs.³¹ THESL agrees that some education-related program costs are payable through the existing PAB budget but believes THESL's marketing

²⁹ CDM Code, section 4.3.1

³⁰ Transcript Volume 3, Page 118

³¹ Transcript Volume 2, Page 13

and outreach programs are incremental to the OPA's Province-Wide programs and therefore should be approved by the Board in this proceeding.³² THESL believes the funds for the marketing and outreach programs are incremental to those funded by the PAB budget in the Tier 1 programs.³³ A fundamental principle of THESL's Board-Approved programs is that they are meant to target regional-specific saving opportunities.³⁴

28. THESL acknowledged that, if part of the \$50 million OPA PAB funding were to be used for THESL's marketing and outreach programs, the challenge would be stopping the marketing efforts in place and funding allocated to drive the OPA direct savings programs.³⁵ THESL agreed that there is going to be some overlap in the education and outreach programs regardless of any education and outreach program. And to the extent the OPA was willing to fund these programs, funding for something else under PAB would be reduced.³⁶ THESL believes that the OPA's letter suggests that some of the program components would ultimately be eligible expenses.³⁷ THESL has indicated that there will be cross-promotion between the programs and that if someone is talking about one of THESL's programs, it makes sense to talk about the regular OPA Province-Wide programs at the same time.³⁸

AMPCO Position

29. AMPCO respectfully submits that THESL provided limited evidence on duplication in its original application for the Board and parties to assess adequately whether or not THESL's programs duplicate the OPA's programs. THESL's witness agreed during cross-examination that any overlap between the OPA programs and THESL's programs would have been apparent at the end of December 2010.³⁹ However, THESL did not tell the Board that the OPA had concerns regarding these programs. THESL suggested that if they had had more time they would have been able to

³² THESL Letter to the Board dated April 27, 2011 Re: Letter from the OPA dated April 21, 2011

³³ Transcript Volume 2, Page 14

³⁴ Transcript Volume 2, Page 13

³⁵ Transcript Volume 2, Page 45

³⁶ Transcript Volume 2, Page 99

³⁷ Transcript Volume 2, Page 112

³⁸ Transcript Volume 2, Page 74

³⁹ Transcript Volume 2, Page 132

suggest to the Board what the outcome of the discussions with the OPA was.⁴⁰ The OPA witness was unable to verify this point.⁴¹

30. In this proceeding, the OPA developed a framework to assess duplication that was an evolution of their thinking from the Hydro One case. The framework is a purposive approach in which four factors are identified. One of the OPA's purposes for avoiding duplication is to ensure the prudent use of ratepayer funds by avoiding duplication of resources – e.g. will this program result in duplication of program administration efforts or cost?⁴² The OPA's witness agreed that, "Yes. The first time any of us started thinking about the duplication issue was in the Hydro One case."⁴³
31. AMPCO acknowledges that the THESL proceeding is the test case for the Board's review of a CDM application and that the process is evolving. However, AMPCO respectfully submits the issue of duplication was identified early in the process in the Minister's Directive dated March 31, 2010 and the Board's CDM Code dated September 16, 2010. Issue 3.1 on the Final Issues List addresses duplication. Given that THESL worked closely with the OPA over the past 14 months to design and launch the OPA's programs AMPCO believes that THESL as the applicant failed to adequately coordinate with the OPA on this issue and provide sufficient evidence early in the process to allow the Board time to assess the issue of duplication. Instead the Board has received information in bits and pieces. In addition, AMPCO submits that in its role as strategic coordinator on CDM, the OPA should have turned its mind to how to assess the issue of duplication sooner. Opportunities were lost on both sides to inform parties and to assist the Board, and provide clear evidence on the issue of duplication early on.
32. In principle, AMPCO is supportive of customer engagement and education but believes THESL's proposed Community Outreach and Education initiatives totalling \$7,602,956 are excessive.
33. AMPCO submits that the evidence before the Board suggests that there is an element of overlap in general between the Board-Approved marketing and outreach programs and the OPA programs as cross promotion between the programs will occur and it makes sense that it does. Specifically, with

⁴⁰ Transcript Volume 2, Pages 36-37

⁴¹ Transcript Volume 3, Pages 68-69

⁴² Exhibit K2.1, Page 2

⁴³ Transcript Volume 3, Page 60

regard to THESL's Community Outreach and Education initiative, AMPCO believes there may be a risk of duplication with the In-store campaign and the Bi-Annual Retailer Event initiative. However, based on the evidentiary record and the vague submissions of the OPA with respect to duplication, AMPCO is unable to determine whether or not the activities in THESL's marketing and outreach CDM programs duplicate the activities in the OPA's CDM programs.

34. The OPA witness confirmed that the PAB can be used for activities that promote the programs but the OPA hasn't itemized these activities. The parties involved in the development of the Master Agreement did not develop a prescribed list in order to give flexibility to the LDCs to craft an appropriate marketing strategy for themselves.⁴⁴ AMPCO agrees that a prescribed list is not required but that moving toward better coordination between LDCs and the OPA is required so that the issue of duplication is sufficiently addressed in the evidence at the time of filing.
35. Without a determination on duplication, AMPCO submits that the Board cannot approve THESL's stand alone marketing and outreach programs.
36. AMPCO further submits that the Board should amend the CDM Code to require as part of the filing material by an LDC that the OPA provide its opinion or evidence on the issue of duplication.

Appropriate Mix of OPA CDM Programs & Board Approved Programs

37. The Minister's Directive dated March 31, 2010 states that the "distributor must deliver a mix of CDM Programs to all customer types in the distributor's service area, whether through Board-Approved CDM Programs, OPA-Contracted Province-Wide CDM Programs or a combination of the two, as far as is appropriate and reasonable, having regard to the composition of the distributor's customer base."⁴⁵
38. THESL submitted a Conservation and Demand Management Strategy dated October 22, 2010 to the Board. The CDM Strategy includes market analysis that guided THESL's decisions in building its CDM

⁴⁴ Transcript Volume 3, Page 44

⁴⁵ Minister's Directive to the OEB dated March 31, 2010, Page 2

strategy.⁴⁶ The Table below summarizes the market research and analysis completed by THESL based on total consumption and demand load for the three groupings: residential, commercial/institutional including multi-unit residential, and industrial. The Table also shows the percentage breakdown of the budgets by sector for the OPA CDM Programs and Board-Approved Programs.

Table 1: Breakdown of Demand, Consumption & Budget by Sector

	THESL System Demand (MW) ⁴⁷	THESL System Consumption (GWh) ⁴⁸	OPA Province- Wide Budget ⁴⁹	THESL Board- Approved Budget ⁵⁰
Residential	20%	32%	28%	53%
Commercial/Institutional	77%	54%	64%	45%
Industrial	13%	14%	8%	2%
	100%	100%	100%	100%

39. AMPCO notes that the only funding dedicated to the industrial sector from THESL's direct savings programs is approximately 15% of one of the direct savings program or approximately \$825,000 of the \$5.5 million budget for the Commercial, Institutional & Small Commercial Monitoring & Targeting program.⁵¹ THESL is targeting 11 customers.⁵²

40. THESL has 47 large users and about 1100 customers between one and five MW.⁵³ THESL indicated during cross-examination by AMPCO counsel that the industrial sector is covered off fairly well from the OPA programs and will deliver significant demand savings relative to their system peak.

⁴⁶ THESL CDM Strategy, Page 5

⁴⁷ THESL CDM Strategy, Page 6

⁴⁸ THESL CDM Strategy, Page 6

⁴⁹ AMPCO Interrogatory Exhibit J, Tab 2, Schedule 7, Corrected April 21, 2011

⁵⁰ AMPCO Interrogatory Exhibit J, Tab 2, Schedule 7, Corrected April 21, 2011

⁵¹ AMPCO Interrogatory Exhibit J, Tab 2, Schedule 7, Corrected April 21, 2011

⁵² AMPCO Interrogatory Exhibit J, Tab 2, Schedule 23

⁵³ Transcript Volume 2, Page 59

41. AMPCO agrees that the OPA's CDM programs address the industrial sector. However, AMPCO submits that moving forward, given the composition of THESL's customer base, THESL should allocate a larger percentage of any future THESL CDM program funding to the industrial sector to better align with the contribution of the industrial sector to THESL's overall peak demand and electricity consumption.

Costs

42. The Board confirmed that AMPCO is eligible to apply for an award of costs under the Board's Direction on Cost Awards.
43. AMPCO submits that it participated responsibly in this proceeding and sought to limit its involvement to matters that are relevant to AMPCO.
44. AMPCO respectfully requests that it be awarded 100% of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY submitted this 24th of May 2011.