

**ONTARIO ENERGY BOARD**

**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;

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**FINAL ARGUMENT  
ON BEHALF OF THE  
SCHOOL ENERGY COALITION**

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Representing the School Energy Coalition

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**Introduction**

1. On January 10, 2011 Toronto Hydro-Electric System Limited (“THESL”) submitted an application to the Ontario Energy Board (“Board”) pursuant to the *Board’s Conservation and Demand Management Code for Electricity Distributors* (“CDM Code”) seeking an order granting approval of funding for certain conservation and demand management (“CDM”) programs (the “Application”). The process included interrogatories and an oral hearing. This is the Final Argument of the School Energy Coalition (“SEC”) on THESL’s Application.
2. School Boards have long been early adopters of conservation and demand management programs and initiatives. Schools are fairly unique in that they are high and predictable users of energy who can make decisions on a long time horizon. School boards, in response to that, have embraced conservation as both a cost-saving and a pedagogical measure, often with significant success.
3. Even so, Schools spend a lot of money on electricity, and as rates go up, whether through distribution rates or the Global Adjustment Mechanism, that additional money has to be found somewhere. Schools have generally seen that the bill-reduction benefits of conservation initiatives far outweigh the higher unit costs, but are keenly aware of the

importance of promoting efficient use of ratepayer dollars to achieve those conservation goals.

4. THESL initially proposed nine potential Board-Approved programs at a cost \$56,327,988. On April 1, 2011 THESL withdrew one of its programs, In-Store Engagement and Education, reducing the total amount requested from ratepayers through the Global Adjustment Mechanism by \$4,223,000 to \$52,104,488. On April 21, THESL made certain changes to its Flat Water Heater Program, reducing the overall budget of its proposed Board-Approved Programs by \$1,227,853 to \$50,652,853.

### **Summary**

5. While being supportive of conservation and demand management, SEC submits that the Board should consider declining to approve the Business Outreach and Education Initiative, Community Outreach and Education Initiative and the Greening Greater Toronto Commercial Building Energy Initiative and the Flat Rate Water Heater Program. SEC also believes that the Board should not approve THESL's 2010 and 2011 Program Development, Planning and Application costs as currently proposed.
6. Additionally, SEC has concerns with THESL's proposed Commercial Energy Management and Load Control and Multi-Use Residential Demand Response Programs.

### **Compliance with the CDM Code (Issue 1)**

7. SEC believes that besides possible non-compliance with section 3.2 of the CDM Code, that of duplication with OPA-Contracted programs as raised by the Ontario Power Authority ("OPA") in its April 21<sup>st</sup> letter, THESL has complied with the CDM Code.

#### **Exhibit K1.1**

8. Considering the delay in launching of the OPA Low-Income Program, SEC accepts that THESL's timing of its Application for Board-Approved CDM Programs is as appropriate as it could be under the circumstances. There is enough information contained in the OPA-Contracted program outlines, as well as the program specific schedules to the OPA-LDC

Master Agreement, for the Board to reach the finding that all the programs been established. Between the oral hearing phase and the submission of Intervenor arguments, the Low-Income Program Schedule has been released. There is enough information about the program for SEC to be comfortable that it is not duplicative of THESL's proposed programs. Since all the schedules have now been released it appears to us that all the programs will have been established for the purposes of compliance with the CDM code.

9. SEC believes that the Business Outreach and Education Initiative, Community Outreach and Education Initiative and the Greening Greater Toronto Commercial Building Energy Initiative ("Education Programs"), are possibly duplicative of the OPA-Contracted Programs. See *Education Programs* for specific comments on duplication.

#### **Human Resources Plan (Issue 2)**

10. SEC has no submissions on the human resources plan for THESL's proposed Board-Approved CDM Programs.
11. We do wish to make one comment. While THESL's human resources plan for its Board-Approved Programs may be appropriate in the circumstances, its overall human resources plan may not be appropriate. SEC notes that while the proposed-Board Approved Programs are being staffed entirely by contracted positions, this is not the case for THESL's OPA-Contracted programs, where more than half of the 44.5 FTE positions will be full-time, non-contract positions. SEC wonders whether, for a program of limited duration, the same principles that would apply to its staffing of Board-Approved Programs could have been followed. Thus, all but a few positions should be contract. Since THESL's expenditures for its OPA-Contracted Programs are subject to a less rigorous approval process than the Board-Approved Programs, the creation of full-time positions for those programs that will still exist past 2014 may not be appropriate, as the ratepayers may at that time be at risk for the cost of those personnel.

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

### **Appropriate Mix of OPA and Board-Approved Programs (Issue 3.2)**

12. SEC is concerned that the Board may not have enough information to make a finding on this issue, because there may not be enough information provided about OPA-Contracted Programs for SEC to make a determination if the mix of Programs between OPA and Board-Approved is appropriate.
13. As explained in the Issues List Decision, the Board approved the inclusion of this issue for the purposes of comparing OPA-Contracted Programs and the proposed Board-Approved Programs. Quoting from the Hydro One Networks Inc./Hydro One Brampton Proceeding, the Board said that while it does not have jurisdiction over OPA Programs, information relating to them is important for the purposes of applying its “usual analytical framework with respect to costs.”

**EB-2010/EB-2010-0332, Tr.1:140-143**

14. While SEC does not fault THESL for the lack of information on OPA-Contracted Programs, it does seem that the Board cannot determine whether the appropriate mix of programs has been reached unless it has that information. Since the OPA calculated the TRC and PAC for its programs on a province-wide basis, and not on a distributor’s service area or regional basis, the Board is not in a position to determine if it would be more cost effective for THESL to attempt to reach its CDM targets through increased participation in OPA-Contracted programs instead of through these proposed Board-Approved Programs.
15. SEC would also like to make a comment on the appropriateness of OPA involvement going-forward. In this proceeding, the OPA appeared as a witness at the request of the Board panel to THESL, to explain the meaning of its letter to THESL dated April 21<sup>st</sup> with respect to the issue of duplication. In proceedings going forward, SEC wonders whether it would be beneficial for the Board, in determining the ‘appropriate mix’ issue, to require LDC’s seeking approval of Board-Approved Programs to provide a witness panel from the OPA. This panel would allow the Board and interveners the opportunity to examine program specifics of its OPA-Contracted Programs. The purpose of such an examination would not be for the purposes of passing judgment or approving them, but for parties to have greater detail

and understanding for the purposes of determining the ‘appropriate mix’ LDCs should achieve.

#### **Overall Budget (Issue 4)**

16. SEC is concerned that the total budget for THESL’s Board-Approved Programs may not be reasonable. SEC believes that the Board should consider declining to provide funding for the Flat Rate Water Heater Program, the Business Outreach and Education Initiative, the Community Outreach and Education Initiative, and the Greening Greater Toronto Initiative. Additionally, the Board should, in our view, disallow recovery of THESL’s 2010 and 2011 CDM Program Development, Planning and Application costs.
17. SEC also has concerns about the budget of the Commercial Energy Management and Load Control and Multi-Use Residential Demand Response Programs.

#### **2010 and 2011 CDM Program Development, Planning and Application costs (Issue 5)**

18. SEC believes that THESL may not be able to recover its ‘Program Development, Planning and Application’ costs through this application, because of the combined effect of section 78.5(1) the *Ontario Energy Board Act* (“OEB Act”) and section 5.4 of the CDM Code
19. Section 78.5(1) of the OEB Act, allows for the IESO to make payment to a distributor for “amounts approved by the Board for conservation and demand management programs approved by the Board pursuant to a directive issued under section 27.2”. SEC believes that application costs are not funding for “conservation and demand management programs”.

***Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B;***

20. Section 5.4 of the CDM Code states:

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

***Conservation and Demand Management Code for Electricity Distributors (“CDM Code”)***

21. SEC suggests that application costs may not be included in the term ‘program funding and program expenditures’. Section 5.4 of the CDM Code, read in conjunction with Section 78.5(1) of the OEB Act, does not allow for non-program funding and program expenditures to be paid for by the Global Adjustment Mechanism. Intervener and legal costs associated with these programs appear instead to be regulatory costs, and would therefore have nothing to do with the planning or implementation of any of THESL’s CDM programs within the meaning of the OEB Act or Code. If the Board agrees with this reasoning, then the Board should not approve the \$145,000 related to the application process.
22. With respect to THESL’s ‘Program Development and Planning’ costs, SEC is concerned that if they are recoverable as ‘program funding and program expenditures’, then they should properly be accounted for within each of the proposed Board-Approved Programs’ TRC and PAC test calculations. THESL has not done so. THESL had the opportunity to include them in the budgets of its individual programs for which it is seeking approval, but if it had done so then the TRC and PAC test results would necessarily have been different.
23. The alternative is that they are not program funding and program expenditures, and thus excluded from the TRC and PAC tests, but then also excluded from recovery under the Global Adjustment. We are unable to determine how they can be both recoverable and yet not included in the cost effectiveness tests of the programs.

#### **Education Programs (Issues 6, 9 and 11)**

24. SEC has a number of concerns with respect to the Education programs - the Business Outreach and Education Initiative, the Community Outreach and Educational Initiative, and the Greening Greater Toronto Initiative.
25. SEC believes that the Board may be in a position that it is simply unable to make a positive determination that THESL’s proposed Education Board-Approved Programs are non-duplicative. The OPA’s letter and subsequent appearance before the Panel at this hearing has at the very least provided evidence that OPA-Contracted Program Administration Budget (“PAB”) that has been allocated to THESL may be able to cover many of the discrete

elements of each of the Education programs. The Board must determine whether, if many of the discrete parts could be duplicative, is the entire program duplicative for the purposes of non-compliance with the CDM Code?

**Exhibit K1.1**

26. SEC submits that THESL has done as much as it can, to show the Board that its programs are non-duplicative. The problem that the Board may face in trying to come to a conclusion on this issue is that it would seem the OPA would be in a position to determine how much of THESL's Education Programs expenditures could be recoverable by the PAB only after they have been incurred. While understandable from the OPA's perspective, this is not helpful in the Board's determination of the duplication issue.
27. SEC agrees that if THESL undertakes any outreach and education programs, the individual events and initiatives should be used to cross-promote each of the other Board-Approved and OPA-Contracted Programs. By providing information about the non-educational and outreach Board approved programs, THESL will increase its audience and have a much larger pool of individuals and business that could become participants of CDM programs that would work to meet its 2014 energy and peak demand savings targets.
28. The problem is that if this is substantially all of the purpose of these programs, as appears to be the case, these two programs would not be standalone education and outreach programs, but rather marketing and promotional support for THESL's other proposed Board-Approved programs and OPA-Contracted CDM programs.
29. If this conclusion is correct, then SEC is concerned that THESL has not properly allocated the costs of their marketing and promotional activities to the appropriate programs for the purposes of testing cost-effectiveness. It was unclear from oral hearing if appropriate cost allocation was made to the relevant Board-Approved program and OPA-Contracted Program marketing budget. As an example, if during an industry trade-show that THESL is attending under its Business Outreach and Education Program, it should be cross-promoting its Commercial Energy Management and Load Control, Commercial Institutional and Small



Industrial Monitoring & Targeting, and Hydronic System Balancing Program, in addition to the suite of Commercial and Industrial OPA-Contracted Programs. The proper budgeting for this arrangement would see THESL apportion the costs of this event between the each of the programs that are being promoted and, if there is any residual pure educational component, to the Business Outreach and Education Program.

30. SEC has a similar concern with respect to the Community Outreach and Education Initiative. While THESL was agreed that it will use this program to promote the Residential OPA-Contracted, Multi-Use Residential Demand Response and Flat Rate Water Heater Programs, it is unclear if that portion of the program's activities have been financially allocated to the PAB and/or proposed specific Board-Approved Programs.
31. The importance of this is two-fold. First, with respect to OPA-Contracted Programs it would help to ensure that there is no duplication for the purposes of compliance with the CDM Code. Second, for the purposes of TRC and PAC tests, it would ensure that the proper costs are being taken into account. If THESL is able to promote and market its non-education programs using the budgets of its education programs, then the TRC and PAC tests performed may be incorrect, and the results could be materially lower than indicated in the Application.
32. SEC urges the Board to be cautious with approving funding for Board-Approved Education programs, particularly in situations where these programs are being used a marketing tool for other Board-Approved Programs or OPA-Contracted programs.
33. One alternative is to delay this approval. Since there is no energy or peak demand savings associated with these Education Programs, a delay in their roll-out will not prejudice THESL in its ability to meet its CDM targets. Mr. Tyrrell indicated to the Board during the oral hearing that THESL plans to return to the Board in the fall with a second tranche of Board-Approved Programs. If the Board has any doubts it could require THESL to provide more information about the cost-allocation of the cross-promotion activities for the Education

Programs at that time, then approve them in that proceeding if it is satisfied with that information.

**Tr.2:9**

34. If the Board determines to approve any of the Education Programs, SEC has concerns with respect to the EM&V process. While the CDM Code does not require a CDM program to have passed the OPA's Cost-Effectiveness Test, if such a program cannot demonstrate cost effectiveness and it designed for educational purposes, it still must be accountable. One of the ways that the Code achieves accountability is the requirement of independent EM&V. SEC submits that the current EM&V evaluations for the Education Programs could be strengthened if they included monitoring and targets for participant's responses. Currently the EM&V plan deals mainly with program participation and event quality/quantity. It may be appropriate as well to follow-up with participants to find out what the actual behaviour changes have taken place or are being considered by the participant's business.

**CDM Code 4.1.2**

**Flat Rate Water Heater Conversion & Demand Response (Issue 10)**

35. SEC submits that the Flat Rate Water Heater Program should not be approved. THESL main rationale for providing incentives for participants is that their existing, non CDM program has reached a saturation point and there are fewer consumers switching from flat rate water heater billing to variable billing. These incentives are needed so that the remaining customers on this billing program will switch.
36. While SEC agrees with the aim of the program, it is not clear on the record that the most cost-effective means to accomplish the conversion is through providing incentives. THESL has the ability, either unilaterally or with the Board's approval (although not in this proceeding), to cease offering this billing method entirely. THESL has been telling its customers for a while that it plans to do so and had admitted that it plans to seek Board approval for the cessation of the flat rate water heater billing at a future date. If the communications by THESL are becoming "increasingly stringent" and "stop just short of announcing outright disconnection", they should just take the logical next step and end the

program as soon as possible. THESL admits that it does intend to propose the termination of this program by May 2015. SEC submits that it should do so at its earliest appropriate opportunity. By doing so it can save ratepayers money by not having to provide incentives, and still realize energy and peak demand savings.

**Undertaking No. J3.1**

**Undertaking No. J3.2**

**Tr.3:4-11**

37. SEC also wonders whether the more cost-effective CDM measure with respect to water heaters wouldn't be a program that converted the flat rate water heater customers to natural gas volumetric water heating. The CDM Ministerial Directive does include fuel-switching under the category of CDM. It appears that THESL did not undertake even an exploratory conversation with Enbridge to work with them to provide for a program that would incentive customers to switch from electricity to natural gas.

**Tr.3:4-14**

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

### **Commercial Energy Management and Load Control and Multi-Unit Residential Building Demand Response (Issues 7 and 14)**

38. These two programs comprise the bulk of the spending in the Application. SEC has concerns that the amount of money being spent on incentives to promote demand response seems to be high relative to the cost of supply options. Thus although the TRC and PAC tests appear to have come out with acceptable results, the delivery of 14.4 Gwhr of energy and 18.4 MW of transitory peak demand (that is, not persisting into the future unless further incentives are paid), for an aggregate cost of \$31.6 million, does not appear on the face of it to be cheaper than most supply options that may be available. At best the cost is \$1.6 million per MW of one year peak demand reduction, which compares to the total capital cost of a simple cycle gas system of less than \$950,000 per MW.

39. SEC has endeavoured to verify the TRC and PAC spreadsheets provided by THESL, in order to reconcile this apparent anomaly, but because some of the key segments of the calculations in the spreadsheets are hidden and password protected, we have not been able to do so. It may be that the \$24.2 million of DR equipment that appears to be treated as incentives for

cost effectiveness purposes (as it should be if it is provided free) is costed as if everyone who receives it will remain on the program after 2014. However, we have not been able to verify that.

40. We now find ourselves in the position where we have concerns about substantial aspects of the cost effectiveness of these two programs, and thus we are not confident that they should be approved. However, at this point in the proceeding, it is legitimate to say that it is too late to raise this question. SEC therefore notes that it is concerned with the overall cost per unit of peak demand in these two programs, and whether there are not other ways that THESL could spend those significant dollars that would produce more enduring savings at a lower unit cost, but we are not in a position to oppose approval of these programs based on the record before the Board.

#### **Evaluation and Audit Committee**

41. The proposed Board-Approved Programs in this Application are large in scope, and untested in their application. While we do not fault THESL for trying to build innovative CDM programs (quite the opposite), programs of this sort do require a rigorous scrutiny. The third-party EM&V process is a step in the right direction, but it does not result in true audit independence. THESL still has wide latitude within the OPA's EM&V protocols to determine the scope of the audit, what is measured and evaluated, and which contractor is ultimately hired to undertake the work. THESL will also have the ability to comment on draft reports before they are made public, and may well be able to influence the final product. The entire evaluation process is therefore not strong on independence.
42. SEC submits that much like has been done for the gas utilities' DSM programs, the Board should require THESL to create an Evaluation and Audit Committee ("EAC"). The EAC would be a committee of stakeholders who would actively participate in the EM&V process at every step, just as is currently done at Enbridge and Union Gas.

**Costs**

43. The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted on this the 24<sup>th</sup> day of May, 2011.

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Mark Rubenstein  
Representing the School Energy Coalition