

Our File: 265012

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June 14, 2011

VIA RESS and COURIER

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Additional Evidence of Toronto Hydro-Electric Systems Limited, Toronto Hydro Energy Services Inc., and 1798594 Ontario Inc. (collectively, the "Applicants")

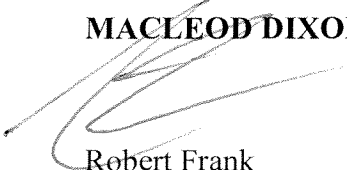
EB-2009-0180, EB-2009-0181, EB-2009-0182, and EB-2009-0183

We are counsel to The Electrical Contractors Association of Ontario (ECAO) and The Greater Toronto Electrical Contractors Association (GTECA) in respect of the above noted matter.

Please find attached the submissions of ECAO and GTECA in respect of the Applicants' Additional Evidence.

Yours truly,

MACLEOD DIXON LLP



Robert Frank

RIF/ss

Enclosure

c: Intervenors of Record (*via email*)

EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

**SUBMISSIONS OF THE ELECTRICAL CONTRACTORS
ASSOCIATION OF ONTARIO (ECAO) and THE GREATER TORONTO
ELECTRICAL CONTRACTORS ASSOCIATION (GTECA)
IN RESPECT OF THE APPLICANTS' ADDITIONAL EVIDENCE**

Introduction

1. In the February 11, 2010 Decision and Order in these proceedings (the “Decision”), the Board held as follows:
 - (a) if distribution circuits are underground in a *mixed use urban setting*, then the poles as well as the underground conductor and the above ground conductor (and associated equipment), excluding the conductor along the streetlight bracket, can appropriately be considered distribution system assets. The urban landscape, with its signage, traffic lights, phone booths, etc., is such that the functionality or intended use of the poles and conductors is for multiple connections to multiple users; and
 - (b) if the distribution circuits are underground in a *residential setting*, then the underground conductors are appropriately considered distribution assets but the poles and conductor on the poles and brackets cannot be considered distribution assets. In this situation, the poles and conductors are used almost exclusively for streetlighting as the existence of other users is extremely limited. In this situation it cannot be said that the functionality or intended use of the poles or conductors on the poles includes other customers.

2. Therefore, in determining whether certain assets of the City of Toronto streetlighting system, namely conductors and poles, are appropriately considered distribution assets or whether they are dedicated to the purpose of streetlighting, it is necessary to determine the “intended use” of the assets, i.e. whether they are in a residential setting or a mixed use setting.
3. In the Additional Evidence Regarding the Transfer of Streetlighting filed by THESL on January 31, 2011 (the “Additional Evidence”), the applicants rely on and apply the City of Toronto 2008 Road Classification System (the “Road Classification System Report”)¹ in support of their position on the categorization of streetlighting assets as distribution or non-distribution assets. In doing so, the applicants categorize assets based on the road types on which they are located on the premise that certain types of roads are presumptively of “mixed use”.
4. In particular, the applicants conclude that certain road types, and therefore the assets on those roads, are of a “mixed use” character wherever the road type could support bus shelters (lit or unlit), traffic signals and pedestrian crossings. The result is that the applicants have purported to deem all roads, other than “Local” roads, to be of a “mixed use” character, and therefore categorize all of the poles and conductors on those roads as distribution assets.²
5. ECAO/GTECA submit that the Additional Evidence does not support the conclusions reached by the applicants that the use of the Road Classification System Report leads to the proper categorization of the “intended use” of assets. Rather, it is based on an incorrect premise that no roads other than Local roads can or do have a residential character, in whole or in part.

¹ Additional Evidence, p. 13; www.toronto.ca/transportation/road_class/pdf/rc_document.pdf

² Applicants’ argument-in-chief, p. 5, para. 12 (b) and (c)

6. As a result, the applicants' use of the Road Classification System Report to determine which assets are of "mixed use" is inappropriate and results in the categorization of more assets as distribution assets than is properly justified.

Problems with the Road Classification System Report

7. The applicants submit that all assets on Collector and Arterial roads should be categorized as distribution assets, stating as follows:

"The Applicants categorized as distribution assets: all eligible streetlight assets in mixed use areas (such as poles, but excluding luminaires and brackets) on Collector and Arterial Roads defined in the Toronto Road Classification System on the basis that these assets objectively meet the Board's "intended use" test because Collector and Arterial Roads have existing and future bus shelters, traffic signals and pedestrian crossings which presently do or will require connection to the distribution system (Additional Evidence at pgs. 12-13)."³

8. However, the Road Classification System Report was not developed to distinguish between residential and "mixed use" settings as conceived of in the Decision; rather its purpose is to provide "the orderly grouping of roads into systems according to the service they provide to the public".⁴ More specifically, the definitions of "Collector" and "Arterial" roads described in the Road Classification System Report were developed for a wholly different purpose than that for which they have been adopted by the applicants in the current proceedings.
9. Therefore, contrary to the submissions of the applicants, the Road Classification System Report does not provide a comprehensive and correct implementation of the functionality

³ Applicants' Argument in Chief, p. 5, para. 12(c)

⁴ Road Classification System Report, pp. 5 and 9

or intended use of assets aspect of the Decision,⁵ and the use of that report to determine which assets are of “mixed use” is problematic.

10. For example, there is nothing in the Road Classification System Report description of “Collector” roads which suggests that they should be deemed to be of “mixed use”. Rather, Collector roads are simply described as streets which “serve to collect and distribute traffic between local streets and arterial roads.”⁶
11. Further, the applicants have not shown that because a road is a Collector road, the functionality or intended use of the poles and conductors on that road is for multiple connections to multiple users. Put another way, there is no evidence that the poles and conductors are not used almost exclusively for streetlighting, and that the existence of other users (such as bus shelters, traffic signals and pedestrian crossings) is or will be anything more than extremely limited. For example, in terms of traffic lights, the Road Classification System Report describes Collector roads as roads that have signalized intersections *where they meet Arterial roads*.⁷
12. The same problem of classification based on the Road Classification System Report applies in respect of Arterial roads. As noted in the Report, “...many early roads have evolved to carry more and more traffic and are often classified as major arterials because that is how they have functioned for many years. *Nevertheless, there are many examples of these roads being substantially or completely residential over significant portions of their length*, generating concerns from residents about the classification.”⁸ [emphasis added]

⁵ Additional Evidence, p. 13

⁶ Road Classification System Report, p. 5, Table 1 (p.11) and Figure 2 (p. 15)

⁷ Road Classification System Report, p.13 and Figure 2, p.15

⁸ Road Classification System Report, p. 12

13. As a result, ECAO/GTECA respectfully submit that the applicants have failed to provide evidence that appropriately delineates between poles and conductors in residential settings as opposed to mixed use urban settings.⁹

Handwells and Pole Foundations

14. It is unclear why the applicants have attributed 100% of the handwells and pole foundations to distribution. ECAO/GTECA submit that where power distribution is underground, the street lighting pole is solely dedicated to streetlighting. Therefore, for those poles that are not categorized as distribution assets, the related handwells and pole foundations should be excluded from distribution assets.

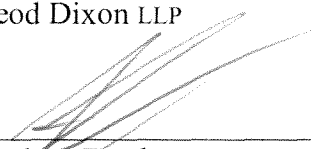
Conclusion and Proper Disposition

15. ECAO/GTECA respectfully submit that the use of the Road Classification System Report is not appropriate in the circumstances as neither the definition of Collector road or Arterial road delineates between residential settings and “mixed use” urban settings as required by the Decision.
16. As a result, there is no proper basis to determine which poles and conductors on such roads should be categorized as distribution assets.
17. ECAO/GTECA respectfully submit that the Board should not accept the Additional Evidence in respect of classification of poles and conductors and should require the applicants to revise the classification of poles and conductors in accordance with the Decision.

⁹ See answers to ECAO interrogatories 2.1, 2.3, 2.5, 2.7 and 3.1 which indicate that no analysis was done with respect to which Collector or Arterial roads have poles and/or conductors with multiple connections and that the Road Classification System Report does not specify which specific assets are servicing scattered loads.

18. ECAO/GTECA also submit the for those poles that are not categorized as distribution assets, the related handwells and pole foundations should be excluded from distribution assets.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Macleod Dixon LLP



per: Robert Frank
Counsel to ECAO/GTECA

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