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VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary: Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Toronto Hydro-Electric System Limited – 2011 Electricity Distribution Rate Application (EB-2011-0144)

VECC has the following comments with respect to the motion by THESL to amend the procedure around the determination of the Preliminary Threshold Issue to include an opportunity for THESL to provide a witness panel to provide viva voce evidence.

In VECC's view witness panels, in the context of proceedings before the OEB, are not required in order to allow the applicant to adduce their evidence in chief in support of their application. Applicants generally spend several months in preparation of their rate applications, putting together their written evidence for review by the Board and intervenors, and as such have ample opportunity to frame, with precision, the evidence they want to put forward. In this case, in particular, the applicant has put together extensive written evidence specifically to support their position on the Preliminary Threshold Issue, in Exhibit A1 Tab 1 Schedule 2.

In most cases the applicants have a further opportunity to put in additional written evidence in the form of interrogatory responses, allowing them to add written evidence that speaks specifically to any issues raised by the intervenors and Board Staff. THESL has been provided a series of interrogatory questions specific to the Preliminary Threshold Issue, the answers to which were made available to intervenors today. We have not had an opportunity to review those answers today, but would suggest that THESL has had an opportunity to provide further evidence and information with respect to the Preliminary Threshold Issue through their responses, both in directly answering

the questions posed, or in adding any information to the responses relevant to the questions that were asked.

Accordingly, VECC respectfully submits, THESL, in requesting permission to provide a witness panel to provide oral testimony, has misconstrued the role of oral testimony in regulatory proceedings before the OEB. In VECC's submission the clear expectation is that applicants provide their evidence in chief in writing, through the application and interrogatory responses. The opportunity to elicit oral evidence from the applicant witnesses, either through a technical conference or in an oral hearing, is, in some proceedings, afforded to intervenors, Board Staff, and Board Members at the leisure of the Board, if the Board determines that such evidence is necessary.

The ability to provide oral evidence in chief, by contrast, is not normally afforded to applicants, except to the extent that the applicant witnesses are simply restating their written evidence, briefly, in advance of being cross examined by intervenors, Board Staff, and Board Members. VECC submits that, unless the Board believes it is necessary for the intervenors, Board Staff and/or Board Members to cross examine THESL on its evidence on the Preliminary Threshold Issue, there is no reason to allow for a witness panel in this case. If the Board does allow a witness panel, it should, VECC submits, be restricted to making available a panel for the purposes of cross examination, not to provide new evidence in chief.

VECC is particularly concerned about the assertion by THESL that there are "new circumstances" and "additional information" that they will address orally. VECC respectfully submits that to the extent THESL wants to address such circumstances and additional information, they should (or should have) do so in writing as part of the interrogatory process, not orally.

Yours truly,

Michael Buonaguro
Counsel for VECC