



GARDINER ROBERTS

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File No.: 97294

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E-FILED

Ms. Kirsten Walli
Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street (27TH Floor)
P.O. Box 2319
Toronto, ON
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Dear Ms. Walli,

Re: EB-2011-0144; Toronto Hydro Electric Systems Limited (THESL)

These are the Submissions of the City of Toronto (City) under Procedural Order No. 3 with respect to an interrogatory response by THESL which the City submits is deficient and should be answered.

The City respectfully requests that the Board exercise its discretion under Rule 7 to extend the time sufficiently to receive the submissions of the City.

In Procedural Order No. 1, the Board defined the preliminary issue which is as follows:

[I]n the context of its EB-2010-0142 Decision and the Board's letters of April 20, 2010 and March 1, 2011, and in advance of further procedural steps, is the application filed by THESL acceptable or should it be dismissed. The City sees this issue really boiling down to whether THESL should be required to file a rate application based on the Board's IRM methodology rather than an application based on a cost of service methodology?

In Procedural Order No. 3 the Board gave leave to THESL to adduce oral evidence from a witness panel on this preliminary issue

It is the City's position that THESL's SEL distribution rates are excessively high and that this is demonstrated through a comparison of Street Lighting distribution rates authorized for other LDCs which the City proposes to file shortly.

When THESL's witnesses on the preliminary issue are sworn in, the City intends to examine them on how THESL's 2012 SEL distribution rates determined using the Board's IRM rate setting methodology compare with the SEL distribution rates of authorized for comparator utilities. In order to be able to address this comparison, the City needs to know what THESL's 2012 SEL distribution rates determined using the Board's IRM rate setting methodology would be.



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The City requested this information in Ex. R1, Tab 5, Sch. 1 (City Interrogatory 1 a)), where it asked THESL to provide the 2012-14 SEL distribution rates under the Board's IRM rate setting methodology. THESL refused to provide this information on the grounds that it was not relevant to the preliminary issue.

The City submits that this information is indeed relevant to the preliminary issue. In its response to Ex. R1, Tab 5, Sch. 1, page 2, (City Interrogatory 1 h)) THESL told the City that the costs *and* efficiency issues supporting the SEL distribution rates *would not be explored in the context of an IRM-PC Proceeding but could be explored in a COS context*. Because IRM is not a competent mechanism for probing the determination of rates from a quantifiable, line item based presentation for the test period, the City submits that a cost of service rate making approach is required.

Additionally, if THESL's SEL distribution rates determined using the Board's IRM rate setting methodology are materially higher than those of comparator utilities and if the causes of this material difference cannot be explored in an IRM rate setting proceeding, then for this reason too, the City will argue in respect of the preliminary issue that the Board should allow a full cost of service hearing.

The City submits that there can be no practical difficulty for THESL to produce the 2012-2014 SEL distribution rates using the Board's IRM rate setting methodology. The City therefore submits the Board should order THESL to produce 2012-2014 distribution rates based on that methodology prior to THESL's witness panel appearing.

Yours truly,

GARDINER ROBERTS LLP



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cc. Lorraine Searles-Kelly
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