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December 28, 2011

***via RESS e-filing – signed original to follow by courier***

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited's ("THESL")  
Application by THESL for Temporary Exemption from Certain Sections of the  
Distribution System Code ("DSC") and Retail Settlement Code ("RSC")  
OEB File No. EB-2011-0269**

Further to Board Staff's submissions dated December 15, 2011, please find enclosed Toronto Hydro-Electric System Limited's responding submissions in respect of the above-noted proceeding.

Please note that THESL has also filed a second letter in this proceeding of today's date.

Yours truly,

*[original signed by]*

**Amanda Klein**  
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Legal Services Division  
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**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application pursuant to section 74 of the Ontario Energy Board Act, 1998 by Toronto Hydro-Electric System Limited for temporary exemption from certain provisions of the Distribution System Code and the Retail Settlement Code.

**RESPONDING WRITTEN SUBMISSIONS OF  
TORONTO HYDRO-ELECTRIC SYSTEM LIMITED**

**A.     Background**

*(a) Relief Sought and Rationale*

1.     As described in further detail below, Toronto Hydro-Electric System Limited (“THESL”) seeks in this proceeding temporary exemption from certain provisions of the Distribution System Code (the “DSC”) and Retail Settlement Code (the “RSC”, and collectively, the “Relevant Code Provisions”),<sup>1</sup> while it implements its new customer information system (the “CIS”).

2.     Due to certain technical aspects of its new CIS functionality, THESL is not able to automate the transactions required for it to be fully and reliably compliant with the Relevant Code Provisions until December 17, 2012 (the “CIS Implementation Phase”).<sup>2</sup>

3.     During the CIS Implementation Phase, THESL must rely on manual workarounds to achieve compliance with the Relevant Code Provisions on a “best efforts” basis. While manual

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<sup>1</sup> A full listing of the Relevant Provisions is provided in Board Staff submissions dated December 15, 2011, as well as THESL’s response to Board Staff Interrogatory 1 (Appendix “A”), and is reproduced below in section 2 for ease of reference.

<sup>2</sup> THESL Application (defined below).

workarounds have been largely successful for THESL in achieving compliance with the Relevant Code Provisions, in some cases, compliance is imperfect or at risk of becoming so because of the laborious nature of those workarounds, as well as the large size and annual turnover of THESL's customer base - approximately 700,000 customers with approximately 20% turnover per year.<sup>3</sup>

4. For the reasons set out below, THESL submits that the evidence demonstrates that THESL's circumstances warrant it being granted a temporary exemption from the Relevant Code Provisions.

*(b) Chronology of this Proceeding*

5. On the basis that THESL's new CIS has limited functionality that puts THESL at risk of becoming non-compliant with the Relevant Code Provisions, THESL made its request for temporary exemption from the Relevant Code Provisions by letter dated July 18, 2011. THESL amended its request by way of letter dated September 30, 2011 (the "Application").

6. The Ontario Energy Board (the "Board") issued a Notice of Application and Hearing in this matter dated November 4, 2011 (the "Notice"). The Notice provided for a written hearing process by which parties could seek to intervene in this proceeding, ask interrogatories of THESL and make submissions to the Board.

7. As provided for in the Notice, THESL received interrogatories from Board Staff on November 23, 2011 and responded to those interrogatories on December 5, 2011. No parties sought to intervene in this matter, and THESL received no other interrogatories.

8. Pursuant to the Notice, Board Staff filed written submissions dated December 15, 2011. In those submissions, Board Staff unequivocally supported THESL's Application in full. In particular, Board Staff stated the following:

"Board staff submits that THESL's circumstances warrant a temporary exemption from the Relevant Sections. Board staff agrees with THESL that given the size of its customer base, customer transactions and interactions need to be automated. In Board staff's view,

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<sup>3</sup> THESL Response to Board Staff Interrogatory 2.3.

the evidence demonstrates that THESL has taken reasonable steps to automate the transactions required by the Relevant Sections to achieve full compliance.”<sup>4</sup>

9. THESL makes these submissions in accordance with the Notice.

**B. The Relevant Code Provisions, THESL’s Efforts to Comply and Status**

*(a) THESL’s Efforts to Achieve Compliance*

10. As set out in detail in THESL’s Application and responses to Board Staff interrogatories, the size of THESL’s customer base – over 700,000 with about a 20% turnover per year – is so large that THESL must automate virtually every customer interaction or transaction in order to maintain a satisfactory and consistent level of customer service, as well as compliance with THESL’s regulatory obligations such as the Relevant Code Provisions.<sup>5</sup>

11. On July 6, 2011, THESL implemented a new CIS - the Customer Care and Billing CIS. The implementation process for THESL’s new CIS has been long and demanding on THESL’s finite information technology and customer care resources. Necessarily, these resources have first been directed to implementing the basic functionality of its new CIS.<sup>6</sup>

12. While THESL is committed to achieving and maintaining compliance with all applicable code requirements, during the CIS Implementation Phase of THESL’s new CIS, the functionality of the system is such that THESL is not able to automate certain transactions, including those transactions that would enable it to be fully and reliably compliant with the Relevant Code Provisions.<sup>7</sup>

13. During the CIS Implementation Phase, THESL must instead rely on manual workarounds to achieve compliance with the Relevant Code Provisions on a “best efforts” basis. Through these manual workarounds, THESL has achieved and maintained compliance with most of the Relevant Code Provisions. For those Relevant Code Provisions where THESL has not achieved

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<sup>4</sup> Board Staff submissions, at p. 4.

<sup>5</sup> THESL Application, p. 1-2 (July 18, 2011).

<sup>6</sup> THESL Application, p. 2 (July 18, 2011).

<sup>7</sup> THESL Application, p. 2 (July 18, 2011).

full compliance,<sup>8</sup> THESL has been continually working to increase its level of compliance to as close to 100% as possible.<sup>9</sup>

14. THESL has audited its own compliance with the Relevant Code Provisions during the CIS Implementation Phase by generating internal reports and conducting quality reviews with respect to its manual workarounds, as well as introducing stricter vendor management and THESL management oversight. Quality reviews or checks are a regular monthly process whereby samples of work are reviewed to ensure accuracy, quality and compliance with processes. THESL has also relied on queries of its CIS database to help to identify accounts or situations requiring manual intervention. In some cases, manual workarounds have been improved upon during the course of the year based on findings from these efforts.<sup>10</sup>

15. At the same time that THESL has been relying on manual workarounds to achieve best efforts compliance with Relevant Code Provisions, THESL has also been working, and will continue to work, to define all of the customer service requirements that will form a basis for development of CIS modifications that will automate all the relevant transactions and secure THESL's full compliance with the Relevant Code Provisions.<sup>11</sup>

16. In particular, once the implementation process of THESL's new CIS is complete – which is expected to occur by December 17, 2012 – the transactions in question will be automated, and THESL expects to be fully and reliably compliant with the Relevant Code Provisions.<sup>12</sup>

*(b) Success and Status of THESL's Compliance Efforts – Sections THESL is Currently Fully Compliant With*

17. As described above, THESL has undertaken, and continues to undertake, significant efforts to meet customer expectations and its compliance obligations with the Relevant Code Provisions.

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<sup>8</sup> The only two Relevant Code Provisions that THESL is currently not compliant with are DSC 2.6.5 and RSC 7.7.1. The status of THESL's compliance efforts with those provisions is detailed below.

<sup>9</sup> THESL Application, p. 2; THESL response to Board Staff Interrogatory 1.

<sup>10</sup> For further particulars, please see THESL response to Board Staff Interrogatory 2.2.

<sup>11</sup> THESL Application, p. 2 (July 18, 2011).

<sup>12</sup> THESL Application, p. 1 (September 30, 2011)

18. As THESL set out in Appendix “A” of its response to Board Staff Interrogatory 1, THESL has developed and instituted manual workarounds to achieve compliance with the Relevant Code Provisions on a best efforts basis during the CIS Implementation Phase of its new CIS. Indeed, as a result of these efforts, THESL has achieved and maintained compliance with all but two of the Relevant Code Provisions.

19. As described above, while THESL’s manual workarounds have been largely successful for THESL in achieving compliance with the Relevant Code Provisions, even for those provisions where THESL is currently fully compliant, maintaining perfect compliance during the CIS Implementation Phase is at risk because of the manual and labour-intensive nature of those workarounds, as well as the large size and annual turnover of THESL’s customer base.<sup>13</sup>

20. THESL describes directly below the particulars of the Relevant Code Provisions that THESL is currently fully compliant with, as well as its specific compliance efforts and status regarding those provisions.

(i) Section 2.4.26A of the DSC – Disconnection Notices<sup>14</sup>

21. This section of the DSC provides that:

“A distributor shall not issue a disconnection notice to a residential customer for non-payment unless the distributor has first applied any security deposit held on account for the customer against any amounts owing at that time and the security deposit was insufficient to cover the total amount owing”

22. In respect of this provision, THESL has requested exemption from applying 100% of the security deposits prior to issuing a disconnect notice.<sup>15</sup> However, since the date of the Application, THESL has been operating at approximately 100% compliance with this section as a result of manual workarounds.

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<sup>13</sup> THESL Response to Board Staff Interrogatory 2.3.

<sup>14</sup> The factual information contained in this subsection can all be located in THESL’s Response to Board Staff Interrogatory, Appendix “A”. For further background regarding THESL’s compliance efforts with this provision, see also THESL response to Board Staff Interrogatory 4.

<sup>15</sup> Application, Appendix “A”.

23. With respect to THESL's specific manual workaround efforts, THESL began manually querying its CIS database daily to retrieve all accounts that were scheduled to receive disconnect notices and that had security deposits. Where these deposits are partially or fully paid, THESL applies the deposit balance to the account balance at least two days before a disconnect notice is produced. If the application of the deposit monies brings the balance of the arrears to less than the disconnect threshold, then THESL cancels severance activities, including issuance and action on the disconnect notice.

24. In order to achieve reliable compliance with this section of the DSC by December 17, 2012, THESL is working with its CIS vendor to automate the relevant transaction enabling processes with a modification. In particular, THESL's CIS will be modified to automate the application of paid deposits before the system generates disconnect notices.

(ii) Section 4.2.2.4 of the DSC – Contacting Customers Regarding Disconnection Notices<sup>16</sup>

25. This section of the DSC provides that:

“A distributor shall make reasonable efforts to contact, in person or by telephone, a residential customer to whom the distributor has issued a disconnection notice for non-payment at least 48 hours prior to the scheduled date of disconnection.”

26. THESL requested an exemption from calling 100% of its residential customers 48 hours prior to the disconnection of service. However, since the date of the Application, THESL has been operating at approximately 100% compliance with this section as a result of manual workarounds.

27. With respect to THESL's specific manual workaround efforts, after moving to its new CIS, THESL instituted a manual process whereby it has its field collection vendor generate a list of disconnections scheduled to be completed 48 hours in the future. THESL then manually adds

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<sup>16</sup> Unless otherwise noted, the factual information contained in this subsection can all be located in THESL's Response to Board Staff Interrogatory, Appendix "A". For further background regarding THESL's compliance efforts with this provision, see also THESL response to Board Staff Interrogatory 3.

further information to this list and downloads it into the telephone auto-dialer system so that customers can be contacted. The scripted call advises the customer of all information pursuant to section 4.2.2.4 of the Distribution System Code.

28. In order to achieve reliable compliance with this section of the DSC by December 17, 2012, THESL is working with its CIS vendor to automate the relevant transaction enabling processes. In particular, the future process will ensure that auto-dialer files will be automatically triggered, created and sent out at least 48 hours prior to any disconnection.

(iii) Section 7.10.2 of the DSC – Customer Reconnection<sup>17</sup>

29. This section of the DSC provides that:

“This service quality requirement must be met at least 85 percent of the time on a yearly basis.”

DSC 7.10.1: Where a distributor has disconnected the property of a customer for nonpayment, the distributor shall reconnect the property within 2 business days, as defined in section 2.6.7, of the date on which the customer: a) makes payment in full of the amount overdue for payment as specified in the disconnection notice; or b) enters into an arrears payment agreement with the distributor referred to in section 2.7.1A”

30. THESL requested an exemption from the reporting requirement regarding reconnection standards. THESL currently performs reconnections within two business days more than 85% of the time. THESL currently tracks performance measure manually and THESL is in the process of automating the capture of this data. THESL mistakenly included the reporting requirement regarding reconnection standards in its list of exemptions and now hereby withdraws this request.<sup>18</sup>

31. In anticipation that the Board will prescribe reporting requirements in respect of this provision, THESL intends to modify its CIS system such that a new report will automatically be

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<sup>17</sup> The factual information contained in this subsection can all be located in THESL’s Response to Board Staff Interrogatory 1, Appendix “A”.

<sup>18</sup> THESL response to Board Staff interrogatory 6.



created to assist in monitoring the reconnection service quality level, currently tracked manually. Depending on the timing of the update to the prescribed reporting requirements, THESL expects that its process could be automated as early as December 17, 2012.

*(c) Success and Status of THESL's Compliance Efforts – Sections THESL is Currently Not Fully Compliant With*

32. For the Relevant Code Provisions with which THESL is currently not 100% compliant - section 2.6.5 of the DSC and section 7.7.1 of the RSC – THESL has developed and instituted manual workarounds which have enabled THESL to achieve compliance in the majority of interactions with its customers.

33. THESL describes directly below the particulars of the Relevant Code Provisions that THESL is currently not fully compliant with, as well as its specific compliance efforts and status regarding the above-noted provisions.

(i) Section 2.6.5 of the DSC – Late Payment Charges<sup>19</sup>

34. This provision of the DSC provides that:

“A distributor shall apply the following rules for purposes of determining the date on which payment of a bill has been received from a customer: (a) if paid by mail, three days prior to the date on which the distributor receives the payment; (b) if paid at a financial institution or electronically, on the date on which the payment is acknowledged or recorded by the customer's financial institution; or (c) if paid by credit card issued by a financial institution, on the date and at the time that the charge is accepted by the financial institution.”

35. THESL requested an exemption from the rules prescribing the deemed date of receipt for each of the stipulated payment types.<sup>20</sup> Since the date of the Application, THESL has been operating at approximately 53% compliance with this provision as a result of manual

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<sup>19</sup> Please also refer to THESL's letter to the Board dated December 28, 2011 advising the Board that certain compliance estimates contained within its evidence regarding this provision of the DSC may be incorrect, and seeking the Board's indulgence to file a correction to the record and supplementary submissions in this proceeding should a correction to the record become necessary.

<sup>20</sup> Application, Appendix “A”.

workarounds. THESL expects to increase its compliance level to approximately 80% from December 31, 2011 as a result of improved manual workarounds.<sup>21</sup>

36. With respect to THESL's specific efforts to be maximally-compliant during the CIS Implementation Phase, at the time of moving to its new CIS, THESL carried over from its old CIS the addition of four-day grace period after the due date of customer bills (which is 20 days after the bill is issued), so any payment type received on or prior to the 24th day after the bill issuance date would not incur late payment charges. THESL's historical records indicate that 53% of customers who pay late, pay within four days of the due date.<sup>22</sup>

37. Upon recent review of this compliance effort, THESL determined that 80% of THESL customers who pay late, pay within seven days of the due date. THESL is accordingly in the process of extending the grace period from four to seven days, a change which THESL expects will bring it up to approximately 80% compliance with this section of the DSC.<sup>23</sup>

38. THESL also plans to institute a further interim step during the CIS Implementation Phase in order to achieve better compliance through manual workarounds. In particular, until the fully-automated solution is implemented in December 2012, THESL plans to modify its late payment calculation formula to account for the deemed date of receipt rules as prescribed by this section of the DSC. THESL expects this modification to be implemented by approximately February 15, 2012, and such modification will bring THESL to 100% compliance with this section of the DSC.<sup>24</sup>

39. In order to achieve full and reliable compliance with this section of the DSC by December 17, 2012, THESL is working with its CIS vendor to automate the relevant transaction-enabling

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<sup>21</sup> THESL response to Board Staff Interrogatory 1, Appendix "A".

<sup>22</sup> THESL response to Board Staff Interrogatory 5.2. 43% of THESL's customers incurred late payment charges at least once in 2010. In the first half of 2011, 33% of THESL's customers incurred late payment charges at least once. It is expected that the same trend will be apparent in the latter part of 2011.

<sup>23</sup> THESL response to Board Staff Interrogatory 5.2.3.

<sup>24</sup> THESL response to Board Staff Interrogatory 5.2.3.

processes with a modification that puts into effect the rules prescribing the deemed date of receipt for each of the stipulated payment types.<sup>25</sup>

40. Importantly, on or before the date that THESL reaches 100% compliance on a steady-state basis (i.e. December 17, 2012), for those customers who may have been charged late payment charges, in excess of the prescribed rules, THESL will reimburse those customers through a credit back to their account. THESL has already begun investigating the processes necessary to enable such reimbursement.<sup>26</sup>

(i) Section 7.7.1 of the RSC – Correction for Over Billing

41. This provision of the RSC provides that:

“Where a distributor has over billed a customer or retailer by an amount that is equal or exceeds the customer’s or retailer’s average monthly billing amount, determined in accordance with section 7.7.5, the distributor shall, within 10 days of determination of the error, notify the customer or retailer of the over billing and advise that the customer or retailer may elect to have the full amount credited to their account or repaid in full by cheque, within 11 days of requesting payment by cheque. Where the customer or retailer has not requested payment by cheque within 10 days of notification of the error by the distributor, the distributor may credit the full amount to the account.”

42. THESL requested an exemption from contacting 100% of customers within the prescribed timelines.<sup>27</sup> Since the date of the Application, THESL has been operating at approximately 90% of compliance as a result of manual workarounds.<sup>28</sup>

43. With respect to THESL’s specific manual workaround efforts, at the time of moving to its new CIS, THESL instituted a measure such that where it identifies a customer account that has been over-billed an amount equal to or greater than one month’s average bill, a THESL billing clerk contacts the customer within 10 days of determining a customer has been over-billed in error. Billing clerks may contact the customer either by way of letter (THESL has created a letter

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<sup>25</sup> THESL response to Board Staff Interrogatory 5.2.3.

<sup>26</sup> THESL response to Board Staff Interrogatory 5.2.3.

<sup>27</sup> Application, Appendix “A”.

<sup>28</sup> THESL response to Board Staff Interrogatory 1, Appendix “A”.

template for this purpose), or telephone if the letter option will not enable THESL to meet the ten day deadline prescribed by this section of the RSC.<sup>29</sup>

44. In both the case of the letter and phone call methods described above, THESL customers are notified of the option of having the credit refund paid to the customer by cheque. Where the customer does not select the option of being refunded by cheque, the credit amount is applied to the account balance. Where the customer does request to be refunded by cheque, the procedure is for a THESL billing clerk to create a “follow-up task” in the CIS so that THESL remittance staff can provide the customer refund by cheque within the prescribed timelines of eleven days.<sup>30</sup>

45. Due to the current functionality of THESL’s new CIS, there are circumstances where THESL’s system does not recognize a manual cancellation of a previous bill and automatically generates newly calculated bills on the customer’s next cycle billing date. In such a case, while the customer receives any credit owing to them, notification of such a credit, and therefore the customer being given the option to receive a cheque, does not occur. In order to identify and rectify these situations, THESL requires that the system be configured to automatically recognize the event and thus trigger the requisite notifications. Since this automated process typically occurs when required adjustments are minor, THESL estimates that credits greater than one month’s average bill resulting from this automated process occur infrequently, and estimates that no more than 20 customers may have been affected.<sup>31</sup>

46. THESL is currently providing all customers amounts owed to them, and is working to identify all customers who are eligible for a credit or cheque pursuant to this provision are notified pursuant to the RSC.<sup>32</sup>

47. In order to achieve full and reliable compliance with this section of the RSC by December 17, 2012, THESL is working with its CIS vendor to automate the relevant transaction-enabling processes. In particular, THESL’s new CIS will be modified to identify credit adjustments made

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<sup>29</sup> THESL response to Board Staff Interrogatory 1, Appendix “A”; THESL response to Board Staff Interrogatory 7.1.

<sup>30</sup> THESL response to Board Staff Interrogatory 1, Appendix “A”; THESL response to Board Staff Interrogatory 7.1.

<sup>31</sup> THESL response to Board Staff Interrogatory 7.1.

<sup>32</sup> THESL response to Board Staff Interrogatory 7.1.

to an account and calculate the average monthly bill for that account. Further, where the credit adjustment is equal to or greater than the average monthly bill amount, the customer will automatically be notified of the option to receive a refund cheque. Additional notifications will also be built into the CIS that will automatically calculate monthly bill averages for use by THESL billing clerks.<sup>33</sup>

**C. THESL's Circumstances and Efforts Warrant the Temporary Exemption Requested**

48. As described in detail above, in its Application and response to interrogatories, THESL submits that it has made reasonable and best efforts to achieve compliance with the Relevant Code Provisions during this interim period of the CIS Implementation Phase. THESL submits that these efforts demonstrate the company's commitment to achieving and maintaining both compliance with the Relevant Code Provisions, as well as a satisfactory and consistent level of customer service.

49. In particular, THESL brought this matter to the Board's attention proactively earlier this year, and in the meantime has devoted significant resources to developing feasible, even if at times labour-intensive, manual workarounds in order to comply with its obligations pursuant to the Relevant Code Provisions. Importantly, no parties will suffer prejudice as a result of THESL's temporary exemption.

50. Indeed, Board Staff came to a similar conclusion. As stated in Board Staff submissions:

"Board staff submits that the evidence demonstrates that THESL has been making best effort to comply with the Relevant Sections and a reasonable level of compliance has been achieved through utilizing a manual process. THESL's responses to Board staff IRs also show that THESL will deal with errors and/or customers issues arising from non-compliance with the Relevant Sections appropriately. Board staff therefore submits that based on the evidence, granting the relief sought by THESL will not result in irreversible harm to customers." (emphasis added)

51. With respect to the particulars of how no customers will suffer prejudice as a result of granting THESL the relief it seeks, for those Relevant Code Provisions which THESL is

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<sup>33</sup> THESL response to Board Staff Interrogatory 1, Appendix "A"; THESL response to Board Staff Interrogatory 7.1.

currently operating at less than full compliance with – section 2.6.5 of the DSC and section 7.7.1 of the RSC – THESL will not receive any financial or other gain as a result of non-compliance, and will institute appropriate mechanisms to ensure that all customers receive amounts properly owed to them.

52. In particular, regarding section 2.6.5 of the DSC, THESL is in the process of reviewing its records and reimbursing, with interest, any customers it has inadvertently collected late payment charges from in excess of what section 2.6.5 of the DSC allows. Accordingly, no THESL customer will suffer a financial loss as a result of THESL's non-compliance with this provision during the CIS Implementation Phase.

53. Regarding section 7.7.1 of the RSC, for any customers that THESL identifies outside of the prescribed timelines or not until such time as THESL's new CIS is fully automated, those customers will nevertheless receive their credit adjustment, and so suffer no financial loss as a result of THESL's non-compliance with this provision during the CIS Implementation Phase.

54. Similarly, should THESL fall out of compliance with any of the other Relevant Code Provisions during the CIS Implementation Phase, it will institute appropriate mechanisms to ensure that all customers receive amounts properly owed to them.

55. Should the Board have any concerns with respect to THESL's representations regarding compliance during the requested exemption period, including details of the specific processes that it intends to implement in order to ensure that all customers receive their respective financial entitlement and THESL does not receive any undue financial benefit, then THESL is pleased to provide the Board with a reconciliation report in due course. Such reconciliation report would set out for the Board the ways in which THESL has made best efforts to ensure that customers have received their respective financial entitlement, as well as the specific amounts of any credits back to customers.

56. Should the Board order a reconciliation reporting mechanism of THESL in the circumstances, THESL requests that it be allowed to report back to the Board at a later time regarding the date by which THESL will be in a position to provide such a report – such date to

be in advance of the requested exemption termination date of December 17, 2012. As discussed in detail above, in the Application and THESL's responses to interrogatories, the sheer magnitude of the CIS project as well as the size and complexity of THESL's customer base has meant that the CIS Implementation Phase has been long and demanding on THESL's finite information technology and customer care resources. Necessarily, these resources have first been directed to implementing the basic functionality of its new CIS.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

December 28, 2011

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**Toronto Hydro-Electric System Limited**

Amanda Klein  
Senior Regulatory Counsel