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January 19, 2012

Delivered by Email

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: CANDAS Application - OEB File No.: EB-2011-0120

We write on behalf of Toronto Hydro-Electric System Limited ("THESL") in furtherance of our letter dated January 11, 2012 to update the Board on THESL's ongoing efforts to compile responses to the outstanding interrogatories arising from the Board's December 9, 2011 order in respect of the above noted matter (the "Order").

THESL has undertaken its best efforts to compile additional interrogatory responses in accordance with the Board's Order. Many of the interrogatories have already been answered, and as mentioned in the January 11, 2012 letter THESL expects to file a further interrogatory response by January 20, 2012. To-date, THESL estimates that approximately 20 internal staff have devoted hundreds of person hours to compile the additional interrogatory responses ordered by the Board.

Because of the very broad wording used in the remaining interrogatories, to ensure THESL provides full and complete responses THESL has undertaken a keyword search of its IT systems in respect of CANDAS IR 1(h),¹ CCC IR 1,² and the Board's Order to (emphasis added) "provide **copies of all reports including incident reports, analyses and communication**, in support of the contention that wireless attachments impair operations efficiency and present incremental safety hazards to electricity distribution; and provide **copies of all reports, analyses, and**

¹ CANDAS IR 1(h) provides (emphasis added): "Were **any presentations (oral or in writing)** made to the THESL Board of Directors in relation to any of the subjects discussed in the THESL Letter, prior to the letter being filed with the Ontario Energy Board ("Board")? If yes, provide particulars of **any oral presentations and copies of any written presentations, including, without limitation, power points, notes, memoranda, executive summaries and any similar writing.**"

² CCC IR 1 provides (emphasis added): "Please provide copies of **all reports, analyses, written communications, including email**, with respect to the policy referred to in the letter of August 13, 2010. Please include copies of all reports to THESL's management and board of directors with respect to that policy."

communications, reporting on the issues described in paragraphs 42 to 46, of Ms Byrne's Affidavit."³

THESL is writing to alert the Board that this search has uncovered approximately 40,000 records to-date, and may uncover an additional 10,000 records by the time the searches are complete. In light of the sheer volume of documents, THESL is seeking the Board's guidance as to how it would like to proceed.

THESL does not have sufficient in-house legal staff to dedicate to reviewing and assessing this volume of documents for both relevance and privilege (the Board's Order asks THESL to produce a list of the documents for which a claim of privilege is being made and the grounds upon which the claim is being made).⁴ Even with the assistance of external counsel, utilizing articling student resources, our experience is that completing a review of up-to 50,000 documents to assess relevance and privilege claims (assuming 1 to 2 minutes per document per reviewer) would take between 3 to 6 months and would cost between \$200,000 to \$250,000.

THESL would suggest that in light of this development, the broad scope of the information sought by these interrogatories is of insufficient probative value to justify such an onerous effort and the resulting delay and expense, particularly in light of the effort and expense that THESL has already expended on this proceeding (including the interrogatory process), to date.

Instead, THESL proposes to limit its responses to these interrogatories to information gathered directly from inquiries conducted by relevant THESL staff who have completed a review of their files in contemplation of material of relevance to the Order. However, before proceeding with a more limited scope of response, THESL requests the Board's direction in this regard.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original signed by J. Mark Rodger

J. Mark Rodger

copy to: Colin McLorg and Amanda Klein, THESL
Helen Newland and Michael Schafler, CANDAS

JMR/jv

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³ Board's Order, p. 15.

⁴ Board's Order, p. 5.