



EB-2011-0269

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 to amend its Electricity
Distribution Licence ED-2002-0497

By delegation, before: Jennifer Lea

DECISION AND ORDER

BACKGROUND

Toronto Hydro-Electric System Limited ("THESL") filed an application with the Ontario Energy Board on July 18, 2011, which THESL subsequently amended by correspondence to the Board on September 30, 2011. In the application, THESL sought an exemption from having to comply with sections 2.4.26A, 2.6.5, 4.2.2.4 and 7.10.2 of the Distribution System Code and section 7.7.1 of the Retail Settlement Code until December 17, 2012. The Board assigned file number EB-2011-0269 to the application.

On November 4, 2011, the Board issued a Notice of Application and Hearing in relation to THESL's application in which it made provision for interrogatories and submissions from interested parties. Board staff filed interrogatories and THESL filed responses to those interrogatories.

Board staff filed its submissions on December 15, 2011 and THESL filed its responding submissions on December 28, 2011.

THE APPLICATION

As indicated above, in its application, THESL sought an exemption from having to comply with sections 2.4.26A, 2.6.5, 4.2.2.4 and 7.10.2 of the Distribution System Code and section 7.7.1 of the Retail Settlement Code until December 17, 2012. The subject sections of the Distribution System Code and the Retail Settlement Code are reproduced at Appendix A to this Decision and Order.

In response to Board staff interrogatory No. 6.1, THESL withdrew its request for a temporary exemption from section 7.10.2 of the Distribution System Code. With respect to section 7.7.1 of the Retail Settlement Code, in response to Board staff interrogatory No. 7, THESL clarified that it is seeking an exemption only from the 10-day notification timeline, not the entire requirement to notify retailers and customers of an over-billing error as described in the section.

THESL stated that the exemption is needed for notification to those customers whose over-billing error is generated automatically by the system and which THESL is unable to identify manually, until such time as the Customer Information System ("CIS"), is configured to recognize the problem. THESL confirmed that "all payments or bill adjustments as applicable are processed by THESL within the required timelines".

FINDINGS

I find the application, as modified, should be granted. I find that THESL's request for exemption from sections 2.4.26A, 2.6.5 and 4.2.2.4 of the Distribution System Code and the timeline in section 7.7.1 of the Retail Settlement Code is reasonable. The following evidence was important in reaching this finding.

THESL indicated in its application that, given the size of its customer base (approximately 700,000 customers), it must automate all customer transactions and interactions through its CIS, including those transactions required by the subject provisions of the codes. THESL is in the process of implementing a new CIS which it submits that, once fully operational by December 17, 2012, will ensure THESL is fully compliant with the codes. In the interim period, prior to its new CIS being fully operational, THESL indicated that it will make best efforts to comply with the provisions of the codes through manual workarounds.

The evidence supports THESL's submission that THESL has made best efforts to

achieve compliance with the relevant sections of the codes during this interim period of CIS implementation, and has achieved substantial compliance. THESL indicated that where errors occur, it will reimburse customers, or take other actions to satisfy customers whose service is affected during the period of CIS implementation. THESL submitted that these efforts demonstrate the company's commitment to achieving and maintaining both compliance with the relevant sections of the codes and a satisfactory and consistent level of customer service.

In its submission, Board staff stated that based on the evidence, granting the relief sought by THESL will not result in irreversible harm to customers. Board staff submitted that given the size of THESL's customer base, customer transactions will need to be automated, and that THESL has achieved a reasonable level of compliance through manual workarounds where compliance cannot yet be achieved through automation. Staff submitted that THESL's circumstances warrant a temporary exemption from the relevant sections of the codes.

During the CIS implementation period, THESL is auditing its own compliance with the codes. In its reply submission, THESL offered to provide the Board with a reconciliation report that would set out the ways in which THESL has made best efforts to ensure that consumers have received their respective financial entitlement, as well as specific amounts of any credits back to customers. I find that such a reconciliation report, confirming that reimbursement is complete for affected customers, should be filed with the Board before the end of the exemption period. THESL will be required to file the report with the Board by December 3, 2012.

IT IS ORDERED THAT:

1. Schedule 3 (List of Code Exemptions) of THESL's Electricity Distribution Licence ED-2002-0497 is amended to include exemptions from sections 2.4.26A, 2.6.5, and 4.2.2.4 of the Distribution System Code. These exemptions will expire on December 17, 2012.
2. Schedule 3 of THESL's Electricity Distribution Licence ED-2002-0497 is amended to include an exemption from section 7.7.1 of the Retail Settlement Code only with respect to the 10 day timeline to notify retailers and customers (whose accounts meet the criteria established in section 7.7.1) of a billing error. This exemption will

expire on December 17, 2012.

3. THESL shall file with the Board a reconciliation report confirming that, for any identified lapse in compliance with the sections for which an exemption has been granted, reimbursement is complete for affected customers. This report must be filed no later than December 3, 2012.

DATED at Toronto, February 22, 2012

ONTARIO ENERGY BOARD

Original signed by

Jennifer Lea
Counsel, Special Projects

Appendix “A” to

Decision and Order

**Application by Toronto Hydro Electric System Limited for Temporary
Exemption from Certain Sections of the Distribution System Code and the
Retail Settlement Code**

**Sections of the Distribution System Code from which THESL seeks a temporary
exemption:**

- 2.4.26A 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.
- 2.6.5 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.
- 4.2.2.4 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. At that time, the distributor shall:
- (a) advise the customer of the scheduled date for disconnection;
 - (b) advise the customer that a disconnection may take place whether or not the customer is at the premises;
 - (c) where applicable, advise the customer that the disconnection may occur without attendance at the customer's premises;
 - (d) advise that the customer has the option to pay amounts owing by credit card issued by a financial institution, in addition to other forms of payment that the distributor will accept at that time and which can be verified within the time period remaining before disconnection; and advise during what hours such payments may

be made;

- (e) advise the customer that, if the distributor attends at the customer's property to execute the disconnection, the customer will only be able to pay by credit card issued by a financial institution, unless the distributor, in its discretion, will accept other forms of payment at that time;
- (f) advise the customer that a Board-prescribed standard arrears management program and equal monthly payment plan option may be available to all residential customers; the distributor must be prepared to enter into an arrears payment agreement at that time if the customer is eligible under section 2.7;
- (f1) advise that the following additional assistance may be available to an eligible low-income customer, along with contact information for the distributor where the customer can obtain further information about the additional assistance:
 - i) a Board-prescribed arrears management program, and other expanded customer service provisions, specifically for eligible low-income customers; and
 - ii) a Board-approved Emergency Financial Assistance program administered through a Social Service Agency or Government Agency; and
- (g) advise the customer of any additional option(s) that the distributor, in its discretion, wishes to offer to the customer to avoid disconnection.

7.10.2 This service quality requirement must be met at least 85 percent of the time on a yearly basis.¹

Section of the Retail Settlement Code from which THESL seeks a temporary exemption:

7.7.1 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,

¹ The service quality requirements referred to in section 7.10.2 are set out in section 7.10.1 as follows:

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.

- 7 -

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.