

August 14, 2013

**Robert B. Warren**  
T: 416-947-5075  
rwarren@weirfoulds.com

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

Dear Ms Walli:

**Re: Application for an Order Pursuant to Section 29 of the  
Ontario Energy Board Act, 1998 (the "OEB Act")/Board File No. EB-2013-0234**

We are counsel to Toronto Hydro-Electric System Limited ("THESL") in this matter. We have been instructed to respond to the Board's letter to our client dated July 25, 2013.

In its letter of July 25, 2013, the Board asks that THESL "provide supplemental evidence that describes how THESL proposes to track and account for revenues and costs including estimates of costs should the Board determine that it will forbear from regulating the rate for wireless attachments to THESL distribution poles."

THESL cannot provide the supplemental evidence the Board requests, for the following reasons:

1. THESL cannot provide any reasonable estimates of what revenues it might earn, from wireless attachments to its poles, in an unregulated environment. We believe that the Board, in its letter of July 25, 2013, acknowledges that difficulty;
2. Providing information about costs would prejudice THESL's position in an unregulated market. Indeed, providing information about costs would undermine the very purpose of a forbearance finding, and thus be contrary to the purpose of section 29 of the OEB Act. If, by providing information about costs, THESL's commercial position is prejudiced, potential benefits to ratepayers may be reduced or eliminated.

We have had discussions with Board staff about how our client might respond to the Board's request. We have been advised by staff that the Board's concern is with the content of the Notice of the application. We are advised that the Board's concern is that THESL's ratepayers be given notice of the potential impact on them of the granting of the application so that they may, in turn, decide whether to intervene in the application.

To address the Board's concern about the content of the notice, we propose that the notice contain the following statements:

1. That the granting of the application will have no effect on THESL's distribution services, and thus will not negatively affect the quality of service received by THESL's customers. The evidence to that effect is found in paragraph 15 of THESL's pre-filed evidence, at page 5 of the Application Record;
2. That the granting of the application will be a benefit to ratepayers in that, by allowing THESL to charge a competitive rate, it will eliminate the subsidy now provided by ratepayers to wireless attachers. The evidence to that effect is found in paragraphs 15 and 16 of THESL's pre-filed evidence, at page 6 of the Application Record;
3. That any excess of revenues over costs will be used to the benefit of ratepayers, in a mechanism to be dealt with in a THESL rate application. The undertaking to that effect is found in our letter of July 19, 2013, to the Board.

As the Board acknowledged in its letter of July 25, the amount of the benefits flowing to ratepayers cannot be predicted with any precision. It would be unfair both to the ratepayers and to THESL to attempt to do so. Leaving aside the potential for revenues in excess of THESL's costs, it is logically undeniable that there will be a benefit as a result of the elimination of the subsidy currently paid by ratepayers. In addition, under the 3GIRM regime, THESL cannot now deal with the treatment of the excess of revenues over costs. That must take place in a rate application. As you know, and as THESL acknowledges, the OEB retains the authority to deal with those revenues in a THESL rate application.

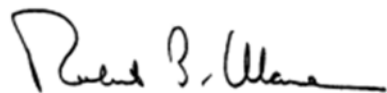
As set out above, the three points that we suggest be included in the notice are covered either in THESL's pre-filed evidence, or in the undertaking provided, on behalf of our client, in our letter to you of July 19, 2013. There is a further undertaking in that letter that THESL will create a tracking account to record revenues and costs for wireless attachments to its poles. For the reasons set out above, information about those costs cannot be disclosed publicly, without fundamentally prejudicing THESL's competitive position in an unregulated market.

An application under Section 29 of the OEB Act creates unique challenges for public notice. There are important differences between a section 29 application and a rate application. Unlike a rate application, any rate impacts cannot be forecast with any precision. Unlike a rate application, the outcome contemplates the creation of a circumstance, namely an unregulated market, where the provision some kinds of information is inappropriate. Acknowledging those

challenges, we believe that setting out the three points listed above, in the notice of the application, will provide THESL's ratepayers with reasonable notice of the impact on them of the granting of the application.

We would appreciate your advising us if including the three points set out above would address the Board's concerns, so that notice of the application can be issued and THESL's application processed. In addition, and as we advised staff in our discussions with them, we would be happy to discuss with you the terms of the notice, if that would be of assistance.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert B. Warren". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert B. Warren

RBW/dh

cc: Kristi Sebalj, Ontario Energy Board  
Michael Bell, Ontario Energy Board  
Rob Barrass, Toronto Hydro-Electric System Limited

5631171.1