

September 11, 2013

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File 15441.00001

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

Dear Ms Walli:

**Re: Toronto Hydro-Electric System Limited/  
Ontario Energy Board ("Board") File No. EB-2013-0234**

We are counsel to Toronto Hydro-Electric System Limited ("THESL") in this matter. We have been instructed by our client to object to the application for intervenor status of the School Energy Coalition ("SEC"), as set out in its Notice of Intervention ("Notice") dated September 5, 2013. This objection is delivered pursuant to Rule 23.07 of the Board's Rules of *Practice and Procedure* ("Rules").

By way of overview, THESL's application is filed under section 29 of the *Ontario Energy Board Act*. In its application, THESL asks the Board to make a determination to refrain from regulating the terms, conditions and rates for access to its poles for the attachment of wireless telecommunications devices. In exercising its jurisdiction under that section, the Board is required to make the determination to refrain if it finds as a question of **fact** that the attachment of wireless telecommunications devices to THESL's poles is or will be subject to competition sufficient to protect the public interest (emphasis added).

From the description in the Notice of the "general interest" of the SEC, there is no information to indicate why publicly-funded schools would be interested in the question of whether, as a matter of fact, there is competition for the attachment of wireless telecommunications devices sufficient to protect the public interest. In addition, there is no indication as to how these schools could, or would, be able to contribute relevant information on the essential factual determination the Board is required to make.

In the Notice, counsel for SEC sets out four issues in the category "Issues to be Addressed". They are:

- (a) The application of s.29 of the *Ontario Energy Board Act, 1998*.

It is not clear to us what that statement means. Is it, for example, the position of the SEC that section 29 doesn't apply in the circumstances described in THESL's pre-filed evidence? That pre-filed evidence contains an expert report of Dr. Jeffrey Church. We presume that counsel would have read that expert report before obtaining instructions to intervene in the application. Having said that, the Notice contains nothing to indicate that the SEC takes issue with what Dr. Church says. Is there something in Dr. Church's report, as it relates to section 29, that the SEC intends to challenge?

(b) The impact on ratepayers of forbearance of wireless attachments.

Again, it is not clear to us what that statement means.

The evidence of THESL is that forbearing from regulation will have no impact on the distribution of electricity. Does SEC propose to challenge that evidence and, if so, on what basis?

The only other possible impact on ratepayers would be with respect to rates. THESL's evidence indicates that the regulated rate does not cover its cost of wireless attachments, and that an unregulated price would eliminate the current ratepayer subsidy. That would constitute a ratepayer benefit. That benefit is the only rate impact dealt with in this application. Does SEC intend to lead evidence to challenge that proposition or, indeed, to take the position that the current subsidy should continue?

With respect to any revenue received in excess of costs, our client's position is that it can and should be dealt with in a rate application. To ensure that that is the case, our client has undertaken to the Board to do two things. First, to seek the Board's approval, in a rate application, for the treatment of any revenues earned as a result of forbearance. Second, to track the revenues and costs derived from wireless attachments in an account until the matter is dealt with in a rate application. Given those undertakings, the question of any rate impact of ratepayers of forbearance will not be dealt with in this application.

The question, then, is what is the ratepayer impact that SEC proposes to address?

(c) Impact and allocation of the revenue received by THESL for wireless attachments as a result of forbearance.

For the reasons set out in section (b) above, the issue of the impact and allocation of revenue will not be dealt with in this application.

- (d) Generally to represent the interests of school boards and their students in this process.

It is not clear to us what those “interests” are that are not otherwise addressed in the Notice, and why those “interests” need to be represented in THESL’s application.

Neither our client, nor the Board, should be left in the position of having to guess at what the SEC’s interest is that would warrant its intervention in the application, let alone justifying an award of costs for its participation.

The Notice lists the stages of the application process in which SEC intends to participate. If the members of SEC have no real and demonstrable interest in the application, participating in these activities is unnecessary. SEC should not be allowed to intervene in the application, and participate in its various processes, in the hope that it will discover some interest that it will then use to try to justify its participation and an award of costs.

Rule 23.02 of the Board’s *Rules* requires a party seeking intervenor status to satisfy the Board that it has a substantial interest in the matter (emphasis added). The Notice does not demonstrate that the members of SEC have an interest, let alone a substantial interest, in our client’s section 29 application.

We ask that the Board dismiss SEC’s application for intervenor status, including its request that it be considered eligible for a cost award.

Yours truly,

**WeirFoulds LLP**



Robert B. Warren

RBW/dh

cc: Jay Shepherd Professional Corporation  
Attention: Mark Rubenstein  
cc: Ontario Education Services Corporation  
Attention: Wayne McNally, SEC Coordinator  
cc: Toronto Hydro-Electric System Limited  
Attention: Amanda Klein and Rob Barrass

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