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BY EMAIL AND RESS

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Our File: EB20130234

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0234 – THESL s.29 – SEC Confidentiality Submission

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 5, these are SEC's submissions with respect to Toronto Hydro-Electric System Limited's ("THESL") request for confidentiality treatment over certain interrogatory responses. SEC objects to THESL's request for confidentiality treatment for the responses to interrogatories Consumers Council of Canada (CCC) No. 16, Energy Probe No. 18, and SEC No. 7.

The Board has recognized that confidentiality is an exception. Its general policy is that information should be available for inspection by the public, and its proceedings should be "open, transparent and accessible".¹ To be treated as confidential pursuant to the *Practice Direction on Confidential Filings* (the "*Practice Direction*"), "the onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case."² Further, any harms alleged by THESL cannot be speculative, and must outweigh the public interest in providing the documents on the public record.

CCC No. 16 and Energy Probe No. 18

In THESL's pre-filed evidence it stated that the current pole attachment rate of \$22.35/year is insufficient to cover their actual direct and indirect costs. Interrogatory CCC No. 16, as well as similar ones asked by other parties³, sought information on THESL's actual costs for pole attachments. With the exception of part (f), interrogatory Energy Probe No. 18 sought similar

¹ *Practice Direction on Confidential Filings* at p. 2

² *Practice Direction on Confidential Filings* at p. 2

³ See interrogatories CCC No. 3, SEC No. 6a, VECC No. 15

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types of information. THESL has sought confidentiality treatment over the responses to these interrogatories on the basis that disclosing the information about those costs would prejudice its ability to compete in a competitive market.

THESL has put the proverbial cart before the horse. The application has not been granted. The rate for the attachment of wireless telecommunications devices to its poles is currently regulated. Insofar as the actual costs exceed the regulated rate of \$22.35, distribution ratepayers are paying that amount. The costs of a utility's *regulated* activities should not be accorded confidentiality treatment. This is especially important in this proceeding where a specific issue on the Issues List is the impact on ratepayers.⁴ Further, THESL's own evidence is that forbearance will eliminate the current ratepayer subsidy.⁵ Ratepayers should be able to know the amount of the subsidy THESL claims they are paying, and how it is being calculated.

Even if the Board does approve THESL's application and forbears from regulating the rates, terms, and conditions of the attachment of wireless devices to its poles, the actual costs incurred will be an important component to determining the treatment and disposition of those revenues.⁶ THESL itself has stated that it will seek to share some amount of the revenues over costs with ratepayers.⁷ Clearly then THESL's costs are an important component to this application. The public should be able to see what those costs are and how they are calculated. The Board should not grant confidentiality treatment over this information.

SEC No. 7

SEC No. 7 asked in part, for the annual revenue THESL has received from wireless attachments on its poles from 2008 to 2013. THESL is seeking confidentiality treatment over the response on the basis that, "[t]he revenue in those years includes revenue derived under a contract with a confidentiality agreement". Board has on numerous occasions stated that a confidentiality agreement between a regulated utility and a third-party is not a valid basis, in and of itself, for the information to be given confidential treatment.⁸

More importantly, the information provided in response to this interrogatory does not reveal any confidential information. It is simply the aggregate total revenue that THESL has received from wireless attachments for each year between 2008 and 2013. It does not provide information on whose equipment has been attached, the number of poles to which each of those companies has attached their equipment, the location of each attachment, the type of wireless equipment attachment, or even the individual attachment rate (although since it is currently a regulated rate of \$22.35/year, that amount is known). SEC submits the public should be able to see the aggregate revenue that THESL has received from attachment of wireless telecommunications devices on its poles, distribution assets which are being paid for by distribution ratepayers.

All of which is respectfully submitted.

⁴ Issue 9: "If the Board were to forbear from regulating the terms, conditions and rates for the attachment of wireless equipment to THESL's distribution poles, what are the potential impacts on THESL's ratepayers in terms of rates and of service?"

⁵ THESL Pre-Filed Evidence at para . 6, Response to Energy Probe No. 18(d)

⁶ Issue 10: " If the Board does refrain, in whole or in part, from regulating the terms, conditions and rates of wireless attachments, what is the appropriate treatment of and/or disposition of the costs and revenues?"

⁷ THESL Letter to the Board, dated August 14, 2013

⁸ See *Decision on Confidentiality* (EB-2011-0123), dated August 19, 2011 at p. 3. *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14, 2012, at p.3

Yours very truly,
Jay Shepherd P.C.

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicant and Intervenors (by email)