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April 17, 2014

via RESS e-filing – signed original to follow by courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited (“THESL”)
Application for an Order pursuant to Section 29 of the *Ontario Energy Board Act, 1998*
 (“Wireless Forbearance Application”) – Technical Conference Undertakings
OEB No. EB-2013-0234**

Enclosed are THESL’s responses to the undertakings given on April 9, 2014 at the Technical Conference in this matter.

Kindly refer any questions or comments on this matter to my attention.

Yours truly,

[original signed by]

Rob Barrass

Manager, Regulatory Affairs

encl.

:RB\acc

cc: Intervenor of Record for EB-2013-0234
Robert B. Warren and Nikiforos Iatrou, WeirFoulds LLP

**TECHNICAL CONFERENCE UNDERTAKING RESPONSE
INTERVENOR 2 –CONSUMERS COUNCIL OF CANADA**

1 **UNDERTAKING NO. JT1.1:**

2 **Reference(s):** **none provided**

3

4 To verify whether THESL's expert reports include any information regarding the status
5 of the Royal Society of Canada's examination of Safety Code 6.

6

7 **RESPONSE:**

8 THESL has reviewed its expert reports filed in this proceeding and verifies that they do
9 not contain any information regarding the current status of the Royal Society of Canada's
10 examination of Safety Code 6.

**TECHNICAL CONFERENCE UNDERTAKING RESPONSE
INTERVENOR 3 – VULNERABLE ENERGY CONSUMERS
COALITION**

UNDERTAKING NO. JT1.2:

Reference(s): **none provided**

To explain if there is a difference between a Board-ordered rate pursuant to a section 78 application, and a forbearance application that would allow whatever the market rate happened to be at any given point in time.

RESPONSE:

Sections 78 and 29 of the *Ontario Energy Board Act, 1998* (the “Act”) are fundamentally different in their natures, and reflect fundamentally different legislative objectives.

Section 78 assumes a monopoly service, requiring the OEB to set rates for the service.

The section assumes, in other words, the need for continuing price regulation.

By contrast, section 29 does not assume a monopoly service, or the need for the OEB to set rates for that service. While partial forbearance is possible, section 29 does not assume the need for continuing price regulation.

In theory the OEB could, in an order under section 78, order that THESL charge a market rate for wireless attachments. However, doing so would amount to making an order in circumstances where no order is required. In THESL’s submission, the underlying assumption in making an order under section 78 must be that some form of price regulation is required, even though by its nature the order that THESL be allowed to charge a market rate would reflect an implicit determination that regulation is not required.

**TECHNICAL CONFERENCE UNDERTAKING RESPONSE
INTERVENOR 3 – VULNERABLE ENERGY CONSUMERS
COALITION**

1 Again by contrast, section 29 requires analysis of whether there is a competitive market
2 and, if so, whether competition is sufficient to protect the public interest. If, as in this
3 case, the evidence overwhelmingly demonstrates that there is competition in the
4 provision of wireless attachments, and that that competition is sufficient to protect the
5 public interest, then the necessary conclusion is that regulation is no longer required.
6 That is an analysis which the Legislature intended be undertaken under section 29, and
7 not under section 78.
8

**TECHNICAL CONFERENCE UNDERTAKING RESPONSE
INTERVENOR 4 – SCHOOL ENERGY COALITION**

1 **UNDERTAKING NO. JT1.3:**

2 **Reference(s):** **none provided**

3

4 To confirm whether the TTC or any other affiliate or City-related company attaches
5 wirelessly, and if so, the rate charged.

6

7 **RESPONSE:**

8 THESL does not have an agreement with the TTC that would allow it to place wireless
9 attachments on THESL poles, nor is THESL aware of any such TTC wireless
10 attachments currently on its poles. THESL does not have any agreements in place that
11 would allow any affiliate or city-related company to place wireless attachments on
12 THESL poles, nor is it aware of any wireless attachments on its poles belonging to any
13 affiliate or any city-related company.

14

15 THESL notes that the regulated rate of \$22.35 per pole per year applies only to Canadian
16 carriers as defined by the *Telecommunications Act* and cable companies.