

SETTLEMENT PROPOSAL

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
Application Pursuant to Section 29 of the
Ontario Energy Board Act, 1998
EB-2013-0234

May 15, 2014

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I PREAMBLE AND OVERVIEW

This Settlement Proposal is filed with the Ontario Energy Board (the Board or OEB) in connection with the application of Toronto Hydro-Electric System Limited (THESL) for a determination and order pursuant to section 29 of the *Ontario Energy Board Act, 1998*, (the “Application and the “Act”, respectively).

The Settlement Conference was held on May 12 and 13, 2014 and this Settlement Proposal arises from the Settlement Conference. The neutral facilitator was Chris Haussmann.

THESL and the following intervenors (the “Intervenors”), as well as OEB staff (“Board Staff”), participated in the Settlement Conference:

CONSUMERS COUNCIL OF CANADA (CCC)
ELECTRICITY DISTRIBUTORS ASSOCIATION (EDA)
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)
SCHOOL ENERGY COALITION (SEC)
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

The role of Board Staff in the Settlement Conference is set out in page 5 of the Board’s *Settlement Conference Guidelines* (the Guidelines).¹ Specifically, Board Staff presented options for the consideration of the Parties and advised on Board policy as required. Board Staff is not a party to this Settlement Proposal, as noted in the Guidelines Board Staff who did participate in the Settlement Conference are bound by the same confidentiality standards that apply to the Parties to the proceeding.

Any reference to “Parties” in this Settlement Proposal is intended to refer to THESL, CCC, Energy Probe, SEC and VECC. The EDA does not take a position on any issue in this Settlement Proposal.

THESL and the Intervenors have agreed upon a complete settlement. For the reasons described below, the Settlement Proposal is not, and does not need to be, based on the approved Issues List as described below.

The evidence in support of the Application consists of:

- THESL prefiled evidence;
- Report of Dr. Jeffrey Church;
- Report of Dr. Charles Jackson, Jackson Telecom;
- Report of Dr. Marc Van Audenrode, Analysis Group;

¹ Ontario Energy Board *Settlement Conference Guidelines*, page 3.

- Report of Nordicity Group;
 - Report of Dr. George Hariton;
 - Interrogatory Responses;
 - Technical Conference Transcript and Undertakings arising from the Technical Conference.
- (collectively, the “Evidence”)

The Parties agree that the Evidence provided is sufficient to support the Settlement Proposal, and that the quality and detail of the Evidence will allow the OEB to make findings that accept the proposed settlement.

This document is called a “Settlement Proposal” because it is a proposal by the Parties to the Board to settle the issues in this proceeding. It is termed a proposal as between the Parties and the Board. However, as only to the Board’s approval of this Settlement Proposal, this document is intended to be a legal agreement between the Parties, and subject, creating mutual obligations, and binding and enforceable in accordance with its terms. As set forth later in this Preamble, this agreement is subject to a condition subsequent, that if it is not accepted by the Board in its entirety, then unless amended by the Parties it is null and void and of no further effect. In entering into this agreement, the Parties understand and agree that, pursuant to the Act, the Board has exclusive jurisdiction with respect to the interpretation or enforcement of the terms hereof.

Unless otherwise expressly stated in this Settlement Proposal, the agreement by the Parties to the settlement shall be interpreted as being for the purposes of settlement only, and not a statement of principle applicable in any other situation. The Parties determined their positions in this Settlement Proposal with the intention of optimizing the overall settlement in the public interest within the context of the specific circumstances applicable to the Application. Where, if at all, the Parties have agreed that a particular principle should be applicable generally, this Settlement Proposal so states expressly. It is also acknowledged and agreed that this Settlement Proposal is without prejudice to any of the Parties re-examining these issues in any subsequent proceeding and taking positions inconsistent with the resolution of these issues in this Settlement Proposal.

Finally, unless stated otherwise, the Settlement in this Application is without prejudice to the positions Parties might take in other proceedings.

According to the Guidelines, the Parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. The Parties consider that no settled issue requires an adjustment mechanism.

None of the Parties can withdraw from the Settlement Proposal except in accordance with Rule 30 of the *Ontario Energy Board Rules of Practice and Procedure*.

The Settlement Conference and this Settlement Proposal are subject to the confidentiality provisions of the Guidelines. The Parties agree that all positions, negotiations and discussions of any kind whatsoever, that took place during the Settlement Conference and all documents exchanged during the conference that were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible except to the extent that any document or information is: a) filed with the Board or otherwise made public by or with the consent of the party who provided it; or b) relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Settlement Proposal.

The Parties explicitly request that the Board consider and accept this Settlement Proposal as a package. None of the matters in respect of which a settlement has been reached is severable. Numerous compromises were made by the Parties with respect to various matters to arrive at this comprehensive Settlement Proposal. If the Board does not accept the Settlement Proposal in its entirety, then there is no Agreement unless Parties agree in writing that the balance of the Settlement Proposal may continue as a valid settlement, subject to any revisions that may be agreed upon by the Parties. In the event the Board directs the Parties to make reasonable efforts to revise the Settlement Proposal, the Parties agree to use reasonable efforts to discuss any potential revisions but no Party will be obligated to accept any proposed revision.

The Parties agree that all of the Parties must agree with any revised Settlement Proposal prior to its resubmission to the Board for its review and consideration as a basis for making a decision. THESL has applied for a determination and order pursuant to section 29 of the Act. The Parties have agreed that the essence of the relief agreed to by the Parties in this Settlement Proposal is encompassed within the relief that would be granted had THESL made an application under section 74(1) of the Act. The Parties further agree that the evidence which THESL has filed in support of the Application under section 29 is essentially the same as, if not identical to, the evidence it would file in an application under section 74(1). Given that the relief that THESL would obtain in an application under section 74(1) is narrower than, but encompassed within, the relief that THESL could be granted in its application under section 29, the Parties agree that public notice of the Application under section 29 is sufficient to give notice to all those who might be affected by the relief which would be granted under section 74(1). Finally, the Parties acknowledge that the granting of the relief, hereinafter described, will not prejudice any interest.

II TERMS OF SETTLEMENT

The Parties have agreed to settle the Application on the following basis:

1. The Parties agree that the provision, deemed to be included in THESL's Electricity Distribution Licence (ED-2002-0497) as a result of the Decision and Order dated March 7, 2005, in RP-2003-0249 (the "CCTA Decision"), and confirmed by the Board's Preliminary Decision and Order in EB-2011-0120 dated September 13, 2012 requiring THESL to charge a

fixed price of \$22.35 per pole per year to wireless attachers is no longer required in the public interest (the "CCTA Pricing Provision"). The obligation in the said condition to allow wireless attachers access to THESL's poles shall remain, but with pricing and terms as set forth in 2(c) below.

2. The Parties agree that it would be in the public interest to amend THESL's Electricity Distribution Licence (ED-2002-0497), pursuant to section 74 (1) of the Act, to delete the CCTA Pricing Provision and substitute for it a provision containing the following terms:
 - (a) THESL will annually report the net revenue, and the calculations used to determine that net revenue, earned from allowing wireless attachments to its poles. Net revenues will be accumulated in a deferral account approved by the Board pursuant to THESL's request for an accounting order;
 - (b) THESL will credit that net revenue against its revenue requirement subject to Board approval in rate proceedings; and
 - (c) THESL will provide access for wireless attachments to its poles on commercial terms normally found in a competitive market.

The relief agreed to by the Parties is a modification of the relief granted in the CCTA Decision.

Because the Settlement contemplates the issuance of an order under section 74(1) of the Act rather than under section 29, and because the Issues List was drafted with Section 29 in mind, most of the Issues on the list are not relevant to the Settlement, save as set out below.

With respect to Issues 1 to 3 inclusive, the Board is referred, for informational purposes, to the Reports of Dr. Charles Jackson and of Nordicity Group and to the joint statement of those experts.

With respect to Issue 11, the Parties agree that, whether the public interest consists solely of THESL's ratepayers or includes wireless attachers or telecom users, the evidence is that no wireless attachers or telecom users will be materially harmed by the granting of this relief. In addition, the Parties agree that THESL's ratepayers will benefit from the granting of this relief. Finally, the Parties agree that the granting of this relief supports the Board objectives described in section 1(1) of the Act in that the relief protects the interests of consumers with respect to prices and the adequacy, reliability, and quality of electricity service, and facilitates the maintenance of a financially-viable electricity industry.