EB-2008-0138

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998 c.15, Sched. B, as amended;

AND IN THE MATTER OF a Motion by Toronto Hydro-Electric System Limited to Review and Vary the Decision of the Board in EB-2007-0680.

Reply Submissions of Toronto Hydro-Electric System Limited

Introduction

1. These submissions are in reply to those of Board Staff, dated July 11, 2008. THESL received no other submissions from any other party.

Opportunity to Apply for Recovery Within a Cost of Service Proceeding

2. Staff observes that it was procedurally open to THESL to apply for recovery of 2007 smart meter costs within THESL's 2008 Cost of Service application.

3. The fact that that avenue was available to THESL is irrelevant since the timing of THESL's 2008 Cost of Service application precluded the inclusion of actual 2007 smart meter costs and revenues. Even if it were possible, there is nothing to suggest that such an approach would be superior in any respect to the method already established and approved by the Board.

Purpose of the Smart Meter Rate Adder

4. Staff states at page 4 that THESL has in place a rate adder "to recover the costs related to the 2007 operating expenses for smart meters".

5. Staff's statement is inaccurate since the smart meter rate adder does not recover, but simply offsets pending disposition of the related deferral account balance, the costs of smart meter activities in the corresponding period. Furthermore, those costs are not limited to operating expenditures but also include capital-related costs of return, depreciation, and taxes. In

essence, the utility incurs a revenue requirement, composed of the usual elements, related to the periodic smart meter activity and this revenue requirement is offset by the revenue derived from the rate adder. The periodic deferral account balance to be cleared is the net of these two quantities.

The "Little Harm" Test

6. Staff submits at page 4 that "this is essentially a timing issue and submits that little harm, if any, would result from clearing the operating expenses as the Board has directed."

7. THESL disagrees that this matter "is essentially a timing issue"; timing has the least to do with the underlying principles. Rather, the matter has to do with the consistency, coherence, and completeness of the regulatory treatment of smart meter costs and revenues in the context of the established and ongoing deferral account regime.

8. It is unreasonable to suggest that the Board should be guided in any way by a test of "little harm", or that a possible course of action would be justified simply because it does little harm. Such a standard is vacant and offers no basis to discriminate between alternative courses of action, those courses in this instance being to continue with the existing approved methodology or to adopt without independent justification a new, incomplete methodology.

9. Staff goes on to compare the Board's direction on this issue to its separate finding concerning a proposal made by Hydro Ottawa. In that case Staff claims that the Board rejected the proposed change in the status quo, finding that there was insufficient harm in the existing situation to justify changing it. Apparently Staff takes the view that this observation supports the converse decision to change the status quo because doing so would not be too harmful. This reasoning is clearly flawed and should be rejected. The existing approved methodology for clearance is the status quo and it should not be changed without any other justification on the basis that doing so would cause little harm.

<u>Staff's Proposal for 'Subsequent Review'</u>

10. Despite its foregoing submissions, Staff acknowledges at page 4 that "that it is not the Board's practice to clear any operating expenses (smart meter or otherwise) accounted for in deferral accounts without recognizing the directly related revenues that have been collected as a result of a rate adder. The Board's practice has been to offset the smart meter costs with the rate adder revenue. At this point in time, the April 30, 2008 balances for the revenues from the smart meter rate adder are known to offset the approved 2007 smart meter operating expenses. While it is not generally the practice of the Board to clear deferral accounts without specific review, a matching of the costs with the lagging revenues with a subsequent review could be done."

11. Staff also observes at page 5 that it is the Board's practice to include capital-related costs when clearing smart meter deferral accounts.

12. Taken together, these acknowledgements amount in substance to the proposal that THESL made, but with a disjointed process. Staff effectively acknowledges that the smart meter revenue requirement should be netted against the smart meter rate adder revenue, but suggests a fragmented process for doing so. This process suggestion has no merit and should be rejected.

13. THESL submits that for the sake of a consistent, coherent, complete and transparent process the Board should vary its Decision to permit disposition of the 2007 Smart Meter Operating Expense through clearance of the 2007 Smart Meter Deferral Account, in the context of a separate proceeding.