



GARDINER ROBERTS

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File No.: 97294

May 10, 2012

E-FILED

Ms. Kirsten Walli
Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street (27TH Floor)
P.O. Box 2319
Toronto, ON
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Ontario Energy Board	
FILE No.	EB-2012-0064
EXHIBIT No.	K4.5
DATE	December 13, 2012
08/99	

Dear Ms. Walli,

Re: City of Toronto's Application that Toronto Hydro's Existing
Distribution Rates for Street Lighting to be Made Interim; file No. EB-2010-0219;
OEB File No. EB-2012-....

Purpose

The City of Toronto ("City") hereby applies to the Board for the following orders:

- An order, under s. 21(7) of the Act, making Toronto Hydro-Electric System Limited's ("THESL") existing and subsequently approved distribution rates for street lighting interim from the date of this Application until the Board's Decision/Reasons/Order on the first THESL 3GIR mechanism application or rate-rebasing application that is based upon the results of the consultation process on the underlying methodology and principles for allocating costs to the Street Lighting class and the embedding of the consequent new methodology in the Board's cost allocation model, all as recommended by the Board on page 24 of the March 31, 2011 Report Of The Board, Review of Electricity Distribution Costs Allocation Policy ("March 2011 Report") in the Board's proceeding No. EB-2010-0219;
- An order under s.34.01 of *Ontario Energy Board Rules of Practice and Procedure*, as revised, that this motion is to be determined by the Board by means of a written hearing; and,
- Such further or other order as seems appropriate in the circumstances.

Background

The City refers to EB-2010-0219 and the Board's March 2011 Report. That report considered, an earlier report prepared by Elenchus Research Associates and the comments of various parties respecting the appropriate cost allocation methodology for rate making purposes to be used by electricity distributors in Ontario. In the March 2011 Report, the subject of consultation about Street Lighting Rates was discussed. On p. i, the focus of this consultation was said to be to determine the



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need for and nature of any update and refinement to the elements of the Board's electricity distribution cost allocation policy on:

... unmetered loads (i.e., unmetered scattered loads, *street lighting* and sentinel lighting)
(emphasis added)

At page iii, the March 2011 Report said:

There is a need to clarify some aspect of the terminology surrounding the USL and Street Lighting classes (e.g., definition of a customer, an account, a device) and the associated modelling methodology. This matter will be addressed as part of a separate consultation process that will be initiated by the Board.

At page 20, under the heading **2.5.3 Stakeholder Comments**, the Board said:

Many stakeholders also believe that the allocation of costs to street lighting requires significant additional work in order to develop a more appropriate approach to determining the casual costs of street lighting.

At pp. 22-23, under the heading **Street Lighting class**, the Board considered the views of various intervenors on the Street Lighting class:

CHEC was concerned that the Elenchus' report did not address known issues with street lighting that have arisen in the preparation of cost allocation studies over the past three to four years. Specifically, it referred to the need for consistent treatment of allocating cost to street lighting by distributors across the province. In the case of Kitchener-Wilmot Hydro's 2010 cost of service rate application (EB-2009-0267) and Kingston Hydro's 2011 cost of service rate application, relay/service entrance switches, or daisy chains, have been used as the connection points. That has significantly reduced the number of connections for these two distributors and improved the street lighting revenue-to-cost ratio. In the evidence from Kitchener-Wilmot Hydro's 2010 rate application, using relay/service entrance switches as the connection points for the street lighting class moved the revenue-to-cost ratio from 26.2% to 127.3%. The Board approved Kitchener-Wilmot Hydro's approach. As a result, the 2010 street lighting rates for Kitchener-Wilmot Hydro were reduced when the revenue-to-cost ratio was adjusted downward to be within the Board's range. AMO and several municipalities also highlighted these decisions.

In CHEC's view, the steps taken by Kitchener-Wilmot Hydro and Kingston Hydro to improve the street lighting ratio is an acceptable practise.

The Association of Municipalities of Ontario ("AMO") did not take issue with the Board's targeted revenue-to-cost ratios of 0.7 to 1.2 for the street light class, as long as the method used to determine these ratios fairly represents the actual costs to service street lights. AMO stated that, as a result of the post 2007 CA Model, most municipalities were hit with high rate increases for street lights between 2007 and 2009. AMO was concerned about the objective in the current



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review stating that there "are potential for refinements" because distributors have already adjusted their revenue-to-cost ratios to fall within the current target ranges. AMO believed that unless the existing problems are corrected, any further adjustments to the revenue-to-cost ratios will undermine the Board's objectives and unfairly punish AMO's municipal members.

As a result, AMO had three requests related to the manner in which costs to service street lights are determined. First, the Board should clearly and strongly state that distributors are to use the daisy chain approach to determining the number of street light connections from this point onwards. All future rate applications should reflect this method as it more fairly reflects the actual costs to service street lights and avoids the street light class subsidizing other rate classes. All distributors should also be required to provide an explanation on how they have determined the number of street light connections as part of their rate application just as Kitchener-Wilmot Hydro has done. Second, the Board should define connections more clearly in its existing documentation and communicate this clarification to distributors and other stakeholders. Third, the Board should place a moratorium on any further movement in revenue-to-cost ratios until the first two requests have been evenly and consistently implemented across all distributors in the province. Similar recommendations were advanced by CHEC, the Town of Oakville, Oakville Hydro and NBH.

...

At page 24, under the heading: **Weighting factors for USL and Street Lighting classes**, the Board said:

The Board also agrees that clarification of the issues raised by various stakeholders related to the terminology and methodology used to allocate costs to the Street Lighting class is necessary. The need for clarification is demonstrated by the significant impact of a change in methodology that was observed in the Kitchener-Wilmot Hydro case discussed above. The Board believes that these issues are best addressed in the context of a separate consultation process focussed on the terminology and modelling methodology for the Street Lighting and USL classes.

Once that consultation process is completed, the underlying methodology and principles for allocating costs to the Street Lighting and USL classes will be identified and embedded in a separate worksheet in the CA Model. This worksheet will provide examples for how to derive weighting factors and will contain illustrative weighting factors.

The City's Submissions

The City observes that despite the Board's statement that it believed that these issues would be best addressed in the context of a separate consultation process focused on the terminology and modelling methodology for the street lighting and USL classes, there appears to have been no Board initiative to initiate or carry out such a process. The Board's current position appears to be that it continues to



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recognize the need for the process identified in the March 2011 Report, but has not yet done anything to actually implement it.

The City respectfully submits that it is now time for the Board to initiate and proceed with this consultation process and to adjust the cost allocation model applicable to rates for street lighting.

The City reminds the Board that over the last few years the City has consistently raised its concerns about THESL's rates for street lighting with the Board:

- On December 1, 2010, in EB-2010-0142, by letter the City requested the Board to proceed with the consultation process and adjustment to the cost allocation applicable to rates for street lighting referred to in EB-2010-0219. In that letter, the City also expressed its concern about the five-fold increase in its street lighting costs between 2003 and 2007. This letter was Ex.K2.4 in EB-2011-0144 (**Tab 1**).
- On September 26, 2011, in EB-2011-0144, the City intervened and stated that it was concerned about THESL's street lighting costs (**Tab 2**).
- On October 14, 2011, in EB-2011-0144, the City, through counsel, delivered interrogatories directed mainly at the issue of THESL's rates for street lighting and the City's street lighting costs (**Tab 3**).
- On October 25, 2011, in EB-2011-0144, the City, through counsel, stated that its goal in participating in the hearing was to have a regulatory platform sufficiently flexible to allow the City a full and fair exploration of the street lighting rate issue (**Tab 4**).
- On October 31, in EB-2011-0144, the City, through counsel, stated that it was the City's position that THESL's rates for street lighting "are excessively high" (**Tab 5**). This was demonstrated in Ex. K2.6, the City's comparison of its rates for street lighting with those of other LDCs (**Tab 6**).
- On November 11, 2011, in EB-2011-0144, at pages 61-69 of Volume 2 of the Transcript, the City, through counsel, cross-examined the THESL witness panel, about the City's deep concern about the level of THESL's street lighting rates. THESL's witnesses agreed that the current cost allocation methodology for street lighting rates is not the best one (**Tab 7**).
- On November 17, 2011, in EB-2011-0144, at pages 1-10 of Volume 4 of the Transcript, the City, through counsel's argument, urged the Board to allow a hearing process that would permit a full examination of THESL's street lighting rates (**Tab 8**).



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At present, the City is paying rates for street lighting authorized by EB-2010-0142. In EB-2012-0064, THESL will shortly file new proposed rates to be effective back to May 1, 2012¹ based on the 3GIR methodology. This means that the excessively high rates that the City is and has been paying for street lighting will continue until the next 3GIRM methodology proceeding, and so on until THESL's next rate-rebasing application which it is estimated will not occur until 2015-2016. Until the EB-2010 0219 consultation and cost allocation adjustment process is carried out, it appears to the City that that it is unjustly overpaying THESL and cross-subsidizing other customers. This may well be resulting in rates for street lighting that are not just or reasonable, contrary to s. 78(3) of the Act.

The City recognizes that the Board has required THESL to file a 3GIR methodology rate application. Accepting that policy, the City submits that if the consultation and cost allocation adjustment processes which the Board recommended in EB-2010-0219 were to be initiated and carried out expeditiously, corrections to the current cost allocation model for the street lighting rate class could be made quickly (within a year) and then be embedded in the 3GIRM methodology. If the Board would do that, it would discharge the expectations the Board created in the March 11 Report and correct a long standing problem. Further, doing that would then allow THESL's rates for street lighting to be adjusted in one of THESL's 3GIR mechanism applications; that is, prior to THESL's rate rebasing application in 2015-2016. This would correct what the City sees as its major rate-concern with THESL.

The City submits that until the Board initiates and complete the process which the Board itself recommended, it is only just and reasonable for all THESL's rates for street lighting be declared interim from the date of this application until the cost allocation model for street lighting is corrected and the Board approves THESL's rates for street lighting based on the resulting methodology. Interim rates for street lighting will permit the City to be kept whole if it turns out that the City has been overpaying and cross subsidizing other customers through rates for street lighting. Due to the small size of THESL's street lighting rate class, any future amendment would have only a small effect on other customers.

In the Board's Decision on Motion to Review in EB-2008-0016, it held that the adjustment of interim rates could be made retroactive to the date of the application.

Board staff submits that the Board cannot designate rates to be interim prior to the date of the decision making the rates interim. Specifically, as the Board's decision making the applicant's rates interim was issued on December 20, 2007, the earliest possible date that the Board could have chosen was December 21, 2007. The applicant argues that the Board is not so constrained. The applicant contends that the Board can make rates interim at any point after the date upon which the application is made. Specifically, as the application was filed on August 31, 2007, the Board can decide to make rates interim at any time after that date, regardless of when that decision is made.

The City submits that the Board has jurisdiction to grant the interim order that the City is requesting and to make it prospectively applicable to any rates for street lighting filed prior to the corrections to the street lighting cost allocation methodology. Section 21(7) of the Act states that: *The Board may make*

¹ THESL's Letters to the Board dated April 16 and April 24, 2012, in EB-2012-0064, request that its existing rates be made interim from May 1, 2012 forward. This means that THESL wants its new rates, once approved, to be effective from May 1, 2012 forward.



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interim orders pending the final disposition of a matter before it. The corrections to the cost allocation methodology for rates for street lighting contemplated by the March 2011 Report are matters still before the Board as are THESL's rates for street lighting in EB-2010-0142, as will be its rates for street lighting in EB-2012-0064 and subsequent 3GIR methodology applications. The Board therefore has the authority to make the order.

If the order is granted, the Board also has the authority to adjust rates already paid retroactively to the date of the application. If the City has in fact overpaid, the Board can determine a fair mechanism to compensate the City (*Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722).

The City's Request

For the above reasons, the City requests that THESL's existing street lighting rates set in EB-2010-0142 and any subsequent rates approved prior to completion of the consultation process recommended by the Board in EB-2010-0219 be made interim until completion of the consultation process and adjustment to the cost allocation methodology for street lighting rates recommended in the March 2011 Report and until the Board approves THESL's rates for street lighting based upon that adjusted methodology.

Yours truly,

GARDINER ROBERTS LLP

Ian A. Blue

TAB 1



RECEIVED

DEC 06 2010

ONTARIO ENERGY BOARD

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Cam Weldon
Deputy City Manager &
Chief Financial Officer

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December 1, 2010

Ms. E. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
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Dear Ms. Walli:

Re: 2011 Electricity Rate Application for Toronto Hydro Electric System Limited
OEB File No. 2010-0142

Ontario Energy Board

FILE No.
EXHIBIT No.
DATE

08/09

The City is pleased to have the opportunity to comment on the rate application of Toronto Hydro Electric System Limited in regard to the street lighting rate class.

In Exhibit L1 of THESL's 2011 rate application, it is being proposed that the Revenue to Cost ratio for Street Lighting be increased from 70.0% to 77.7%. As THESL's sole street lighting customer, the City of Toronto questions the appropriateness of this increase.

The City has seen its Distribution Charges for Street Lighting increase from \$3.2 million in 2007 to a proposed amount of \$17.7 million for 2011. This represents in excess of a five-fold increase over four years, a significant burden on the City. With over 160,000 street lights in the system, it would take many years for the City of Toronto to mitigate the impact of these cost recoveries through cost efficiency practices.

In addition, the rationale is unclear for the underlying apportionment of costs to the street lighting as presented in the THESL rate application.

Toronto Hydro has generously agreed to meet with City staff to explain its methodologies and rationale. We also note that in THESL's filed evidence in its 2008 rate application, THESL stated (bold and underline added):

"Of particular note are the results for the Streetlighting and Unmetered Scattered Load rate classes. The results of the Cost Allocation Model for these classes indicate a significant under-recovery of costs. THESL believes the primary reason for this apparent over-allocation of costs is:

For streetlighting, THESL's number of streetlights per connection to the secondary system is quite low – 1.8 streetlights per connection – resulting in streetlights making up a significant proportion of total connections (more than 10 percent). Since the number of connections is used to allocate approximately 40 percent of all non-meter related costs, this results in a significant allocation of costs to streetlights. It is not at all obvious that this allocation is appropriate. The design of streetlight connections in Toronto reflects operational considerations in the areas of ease of maintenance and reliability. Other provincial systems, which design their streetlighting connections differently may have different reasons, and may show higher streetlights per connection, and hence allocate lower primary and secondary costs to each streetlight. These differences in design do not necessarily imply that allocation by number of connections is the best allocator of these costs." (EB-2007-0680, Exhibit L1, Tab 1, Schedule 1, pages 5-6).

We are also aware that the Board is currently reviewing the Cost Allocation model and methodologies (EB-2010-0219), with one of the components being the allocation to unmetered loads.

We urge the Board to approve no further increases to the Revenue to Cost ratio for Street Lighting until such time as the cost allocation methodologies have been demonstrated to be reasonable or appropriate changes have been considered.

Sincerely,



Cam Weldon
Deputy City Manager & Chief Financial Officer

C. Glen Winn
Manager, Regulatory Compliance & Applications
Toronto Hydro Electric System Limited

TAB 2



Anna Kinastowski, B.A., LL.B.*
City Solicitor
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File No.

September 26, 2011

Via E-Mail boardsec@ontarioenergyboard.ca and Regular Mail (2 Copies)

Ms. Kirsten Walli
Board Secretary
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Toronto, Ontario M4P 1E4
Fax: (416) 440-7656

Dear Ms. Walli:

Re: Board File No. EB-2011-0144 – Toronto Hydro-Electric System Limited
- 2012, 2013 and 2014 Rate Application – Request for Intervenor Status

This will confirm that the City wishes to intervene in the above hearing, since the outcome of these proceedings may have some direct effect on the City. The extent of that impact will be determined after these proceedings are more advanced. The City is rate-payer and has an agreement for the provision of street lighting services with Toronto Hydro Energy Services and has had certain street lighting assets transferred to Toronto Hydro-Electric System Limited under orders of the Ontario Energy Board. The City has an indirect interest in Toronto Hydro-Electric System Limited (THESL), which is regulated by the Board, through its ownership of Toronto Hydro Corporation, THESL's parent company.

The City Solicitor has just received instruction to submit this notice of intention to intervene, without sufficient time to allow for consultation with the various client-stakeholder groups within the City, to obtain the necessary Committee or Council direction or approval to intervene in this matter, or, to obtain outside legal expertise.

I am therefore requesting that the City be granted Intervenor Status with respect to the above matter, pending confirmation of the appropriate level of the City's participation in these proceedings.

The City requests that, in addition to electronic copies one hard copy of all documents filed with the Board by each party to this proceeding be provided to:

Mr. Robert Hatton, Manager,
Corporate Finance, Business Investments & Intergovernmental Finance
100 Queen Street West, 5th Floor, East Tower
Toronto City Hall, Toronto, Ontario M5H 2N2
Tel: 416-392-9149
Fax: 416-397-4555
E-Mail: rhatten@toronto.ca

And to:

Ms. Lorraine Searles-Kelly
City of Toronto Legal Division
55 John Street, 25th Floor
Toronto, Ontario M5V 3C6
Tel: 416-392-7240
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The City will also be seeking an award of costs, based on its indirect interest in THESL and the outcome of these proceedings, its direct interest as shareholder of Toronto Hydro Corporation (the parent of THESL), as a ratepayer with substantial electricity consumption, particularly for street lighting, and, its broad public interest representing the taxpayers of the City of Toronto in its capacity as a municipal shareholder and the indirect owner of THESL.

I appreciate your assistance in this matter.

Very truly yours,

L. Searles-Kelly for:

Anna Kinastowski
City Solicitor

Copies: Toronto Hydro-Electric System Limited
Attn: Mr. Glen Winn
Via E-Mail: regulatoryaffairs@toronto.com

Borden Ladner Gervais LLP
Attn: Mr. J. Mark Rodger
Via E-Mail: mrodger@blg.com

Mr. Joseph Pennachetti, City Manager, City of Toronto
Mr. Cam Weldon, Deputy City Manager and Chief Financial Officer, City of Toronto
Mr. Rob Hatton, Manager, Corporate Finance, Business Investments &
Intergovernmental Finance, City of Toronto

TAB 3

EB-2011-0144
Toronto Hydro-Electric System Limited
2012, 2013 and 2014 Electricity Distribution Rates
Preliminary Issue

City of Toronto Interrogatories

The City of Toronto has concerns about the Ontario Energy Board's Cost Allocation model, specifically with respect to the costs allocated to the Street Lighting (SEL) customer class. It is vital that the City be able to explore this issue and challenge the model in a public hearing before the Board.

1. For the purposes of this question please assume that THESL's 2012-14 rates are to be set using the OEB's IRM rate-setting methodology. So assuming, please:

- a) provide the 2012-14 SEL distribution rates;
- b) describe in detail how these rates would be calculated;
- c) discuss how other changes to SEL rates (eg., due to the inclusion in rate base of SEL assets and proposed changes to the computed Revenue:Cost ratio) would be treated and the reasons for this treatment;
- d) describe how differences between THESL's proposed SEL rates and those authorized for other LDCs in Ontario would be tested and reconciled;
- e) discuss how allocated SEL distribution costs respond to reduced energy use by the customer class;
- f) discuss how THESL's SEL distribution rates compare to those authorized for other customer classes;

- g) discuss how the load characteristics of the SEL customer class compares to those of other customer classes who are charged lower distribution rates; and
 - h) discuss whether in a rates proceeding that uses the OEB's IRM rate-setting methodology it would be THESL's position that the City could explore the issues described in parts b) – g) above fully and fairly.
- 2) For each of the historic years 2006- 2010 inclusive:
- a) Please provide THESL's actual OEB authorized Base Distribution rates in the same format as EM1/T1/S1/p2/Tbl1.
 - b) Please provide or confirm that ED1/T7/S2/p1 provides THESL's actual quality of service using the OEB's Service Quality Indicator metrics.
 - c) Please provide or confirm that ED1/T7/S3 provides THESL's actual reliability of service (i.e., SAIDI, SAIFI and CAIDI.)
- 3) Please confirm that EA1/T1/S2/p28/Tbl5 provides the quantification of the achievable return on equity, assuming that rates are set using the OEB's IRM rate setting methodology and THESL's proposed OM&A and CAPEX.
- 4) Please assume that THESL's 2012 – 2014 base distribution rates are set using the OEB's IRM rate setting methodology and that THESL will achieve the OEB authorized return on equity in each year. Based on those assumptions, please quantify each of the following scenarios independently:
- a) The resulting change to the forecast OM&A expense;
 - b) The resulting change to the forecast CAPEX.
 - c) Please describe how THESL would allocate the resulting reductions between OM&A and CAPEX and describe the rationale for this allocation. Please also

discuss how these reductions are expected to impact THESL's operations.
Please state all assumptions and supporting facts.

- 5) Please discuss the pattern of change exhibited by THESL's OEB authorized base distribution rates for the years 2006-2011 inclusive from the perspective of THESL's customers. (eg., smooth, stepwise, saw-toothed). Please discuss whether the proposed Cost of Service based rates for the period 2012-2014 are expected to continue this pattern or not and the advantages and disadvantages of this pattern.
- 6) Please discuss why it would be in the public interest for the OEB to restrict its own discretion regarding the choice of rate setting methodology given THESL's circumstances.
- 7) Please describe why, in THESL's view, it would be necessary to consider all of THESL's application before deciding the preliminary issue.
- 8) ED1/T3/S1-2/p3 and EF2/T1/S6/AppA/p1 both provide information on THESL's regulatory expenses.
 - a) Please provide the estimated costs of the this Application;
 - b) Considering THESL's circumstances, please estimate the costs of an application to adjust THESL's rates under the OEB's IRM rate setting methodology; and
 - c) Please discuss the impact on rates of the recovery of these separate amounts.

TAB 4



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October 25, 2011

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Dear Ms. Walli,

Re: EB-2011-0144; re: Procedural Order No. 2

These are the Submissions of the City of Toronto pursuant to paragraph 1 of Procedural Order No. 2.

To further the City's goal of having a regulatory platform sufficiently flexible enough to allow it a full and fair exploration of the street lighting rate issue, the City supports the request of THESL for an order varying Procedural Order No. 1 to allow THESL to present a witness panel to provide *viva voce* evidence relevant to the preliminary issue during the oral hearing scheduled on November 1, 2011, and prior to hearing the oral submissions from Board staff, interveners and the applicant.

The City supports the submissions of THESL stated in the grounds for its motion. In addition, the City draws the Board's attention to section 10.1 of the *Statutory Powers Procedures Act, RSO, 1990, c. s. 22*, which is incorporated by reference in Section 34.01 of the OEB Rules of Practice and Procedure and reads as follows:

10.1A party to a proceeding may, at an oral or electronic hearing,

- (a) call and examine witnesses and present evidence and submissions; and
- (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

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The City submits that since the Board intends to hold an oral hearing on the preliminary issue, THESL has the above statutory right to adduce *viva voce* evidence as it requests in its motion.

Yours truly,

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Ian A. Blue, Q.C.

cc. Lorraine Searles-Kelly
Robert Hatton

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TAB 5



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File No.: 97294

October 31, 2011

E-FILED

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Toronto, ON
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Dear Ms. Walli,

Re: EB-2011-0144; Toronto Hydro Electric Systems Limited (THESL)

These are the Submissions of the City of Toronto (City) under Procedural Order No. 3 with respect to an interrogatory response by THESL which the City submits is deficient and should be answered.

The City respectfully requests that the Board exercise its discretion under Rule 7 to extend the time sufficiently to receive the submissions of the City.

In Procedural Order No. 1, the Board defined the preliminary issue which is as follows:

[I]n the context of its EB-2010-0142 Decision and the Board's letters of April 20, 2010 and March 1, 2011, and in advance of further procedural steps, is the application filed by THESL acceptable or should it be dismissed. The City sees this issue really boiling down to whether THESL should be required to file a rate application based on the Board's IRM methodology rather than an application based on a cost of service methodology?

In Procedural Order No. 3 the Board gave leave to THESL to adduce oral evidence from a witness panel on this preliminary issue

It is the City's position that THESL's SEL distribution rates are excessively high and that this is demonstrated through a comparison of Street Lighting distribution rates authorized for other LDCs which the City proposes to file shortly.

When THESL's witnesses on the preliminary issue are sworn in, the City intends to examine them on how THESL's 2012 SEL distribution rates determined using the Board's IRM rate setting methodology compare with the SEL distribution rates of authorized for comparator utilities. In order to be able to address this comparison, the City needs to know what THESL's 2012 SEL distribution rates determined using the Board's IRM rate setting methodology would be.

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The City requested this information in Ex. R1, Tab 5, Sch. 1 (City Interrogatory 1 a)), where it asked THESL to provide the 2012-14 SEL distribution rates under the Board's IRM rate setting methodology. THESL refused to provide this information on the grounds that it was not relevant to the preliminary issue.

The City submits that this information is indeed relevant to the preliminary issue. In its response to Ex. R1, Tab 5, Sch. 1, page 2, (City Interrogatory 1 h)) THESL told the City that the costs *and* efficiency issues supporting the SEL distribution rates *would not be explored in the context of an IRM-PC Proceeding but could be explored in a COS context*. Because IRM is not a competent mechanism for probing the determination of rates from a quantifiable, line item based presentation for the test period, the City submits that a cost of service rate making approach is required.

Additionally, if THESL's SEL distribution rates determined using the Board's IRM rate setting methodology are materially higher than those of comparator utilities and if the causes of this material difference cannot be explored in an IRM rate setting proceeding, then for this reason too, the City will argue in respect of the preliminary issue that the Board should allow a full cost of service hearing.

The City submits that there can be no practical difficulty for THESL to produce the 2012-2014 SEL distribution rates using the Board's IRM rate setting methodology. The City therefore submits the Board should order THESL to produce 2012-2014 distribution rates based on that methodology prior to THESL's witness panel appearing.

Yours truly,

GARDINER ROBERTS LLP



Ian A. Blue, Q.C.

cc. Lorraine Searles-Kelly
Robert Hatton

TORONTO: 2748861 (97294)

TAB 6

2011 Street Lighting Rates

	2011 Street Lighting Rates		2011 Bill				
	Fixed Charge *	Variable**	Dx***	Total ****	kW	kWh	Total Bill
	\$	\$/ (kWh, kW or KVA)	\$	\$			\$/kWh
Toronto Hydro-Electric System Limited (1)							
As Approved in Rate Order EB-2010-0142	1.30	28.7248					
As Draft Rate Order filed on July 14, 2011	1.30	28.7011	1,069,021.03	2,043,017.58	25,506	9,182,013.75	0.2225
Power Stream Inc. - South							
As Approved in Rate Order EB-2010-0110 and EB-2010-0365	0.83	4.8192					
As Draft Rate Order filed on April 7, 2011	0.83	4.8192	2.56	9.62	0.2	73	0.1318
Veridian Connections Inc. - For all Service Areas Except Gravenhurst							
As Approved in Rate Order EB-2010-0117	0.65	3.6337					
As Draft Rate Order filed on April 7, 2011	0.65	3.6337	1.88	8.92	0.2	73	0.1222
Enersource Hydro Mississauga Inc.							
As Approved in Rate Order EB-2010-0078	1.33	10.1692					
As Draft Rate Order filed on March 17, 2011	1.33	10.1692	4.09	11.45	0.2	73	0.1568
Hydro Ottawa Limited							
As Approved by Rate Order EB-2010-0326	0.49	3.4563					
As Draft Rate Order filed on April 14, 2011	0.49	3.4563	1.96	9.05	0.2	73	0.1240
Enwin Utilities Limited (2)							
As Approved by Rate Order EB-2010-0079	5.62						
As Draft Rate Order filed on April 21, 2011	5.62		6.34	14.07	0.2	73	0.1927
Horizon Utilities Corporation (3)							
As Approved in Rate Order EB-2010-0131	2.31	6.1604					
Hydro One Networks Inc. (4)							
As Approved in 2011 Rate Order EB-2009-0096	1.05	0.05219					

* Connection Charge (per connection)

** It covers Distribution Volumetric Rate. Toronto Hydro bills on KVA basis, Hydro One on kWh basis, and the remaining LDCs on kW basis.

*** It includes distribution and regulatory charges

**** Total Bill for Toronto Hydro excludes GST

(1) Toronto Hydro has reported 162,353 connections

(2) Enwin does not apply Distribution Volumetric Rate

(3) Bill impact analysis contained in the Horizon's Updated Draft Rate Order filed subsequent to the issuance of the 2011 EDR decision did not cover Street Lighting Rates

(4) Bill impact analysis contained in the Hydro One's Draft Rate Order filed subsequent to the issuance of the 2011 EDR decision did not cover Street Lighting Rates

Ontario Energy Board

FILE NO.
EXHIBIT NO.
DATE

TAB 7

1 you very much.

2 MS. CHAPLIN: Thank you, Mr. Faye. We will take a 15-
3 minute break.

4 --- Recess taken at 11:10 a.m.

5 --- On resuming at 11:33 a.m.

6 MS. CHAPLIN: Thank you. Please be seated. Mr. Blue,
7 I believe you're next, unless there are any preliminary
8 matters.

9 MR. BLUE: Yes. Thank you, Madam Chair.

10 **CROSS-EXAMINATION BY MR. BLUE**

11 MR. BLUE: Panel, just to put my questions in context,
12 the city sees this proceeding to go to the issue of whether
13 the process the Board should follow is a cost of service
14 methodology or an IRM methodology, and it's in that context
15 that I'm going to address the questions I want to put to
16 you.

17 Is that fair?

18 MR. McLORG: Thank you.

19 MR. BLUE: Okay. Panel, I've handed out to you and to
20 counsel a letter dated December 1, 2010, from the City of
21 Toronto to Kirsten Walli, the Secretary of the Board, and
22 it was in the context of OEB File No. 2010-0142. Do you
23 have that letter in front of you?

24 MR. McLORG: Yes.

25 MR. BLUE: Now, would it be fair to say that what this
26 letter presents to the Board is that the City of Toronto is
27 deeply concerned about the level of street lighting rates
28 being charged to it by THESL?

1 MR. HAINES: That's what we understand.

2 MR. BLUE: Right. And we see that in the third,
3 fourth, and fifth paragraphs on page 1 of the letter, which
4 I won't read, since the letter was an exhibit, but if we go
5 to the bottom of page 1 and the top of page 2, there the
6 city quotes from evidence filed by THESL in its 2008 rate
7 application. Do you see that quote?

8 MR. McLORG: Yes.

9 MR. BLUE: And if you could go to page 2, there are
10 some underlying passages, and the first one says, with
11 respect to how street lighting rate costs are allocated,
12 quote:

13 "It is not at all obvious that this allocation is
14 appropriate."

15 Do you see that?

16 MR. HAINES: Yes.

17 MR. BLUE: And that's true today, isn't it? In terms
18 of the cost allocation of street lighting rates, it's still
19 not obvious that the allocation factor that THESL is using
20 is appropriate?

21 MR. McLORG: Mr. Blue, THESL is operating under the
22 guidance of the Board's findings on the cost allocation
23 methodology, and we have a view about those, and we've made
24 our views known. But we're certainly not going to depart
25 from that Board-approved cost allocation methodology prior
26 to the Board -- well, at any time, I should say, but we'll
27 change our approach when the Board approves a different
28 approach.

1 MR. BLUE: Thank you, Mr. McLorg, but that wasn't what
2 I asked you.

3 I asked you: Is it as true today in Toronto Hydro's
4 view, as it was in 2008, that it is not at all obvious that
5 the allocation of street lighting costs to rates is
6 appropriate?

7 MR. McLORG: We think there are questions around that.
8 I think we still do.

9 MR. BLUE: Thank you. And at the bottom of the quote,
10 there is another underlined passage which says:

11 "These differences in design do not necessarily
12 imply that allocation by number of connections is
13 the best allocator of these costs."

14 And there are references. Do you see that?

15 MR. McLORG: Yes, I do.

16 MR. BLUE: And, again, sitting here today, is that
17 still so, in THESL's view?

18 MR. McLORG: I think that's fair, yes.

19 MR. BLUE: Thank you.

20 MS. CHAPLIN: Shall we mark that letter as an exhibit,
21 Mr. Blue?

22 MR. BLUE: Yes, may we, please, Madam Chair?

23 MS. SEBALJ: It will be K2.4.

24 **EXHIBIT NO. K2.4: LETTER DATED DECEMBER 1, 2010 FROM**
25 **THE CITY OF TORONTO TO KIRSTEN WALLI.**

26 MR. BLUE: Now, Mr. McLorg, could we turn to Exhibit
27 R1, tab 5, schedule 1, which is THESL's response to the
28 City of Toronto's Interrogatory No. 1?

1 MR. McLORG: Yes, we have that.

2 MR. BLUE: All right. Now, in that interrogatory, the
3 city asks you in part (h), which is on the second page:

4 "Discuss whether in a rates proceeding that uses
5 the OEB's IRM rate-setting methodology it would
6 be THESL's position that the City could explore
7 the issues described in parts b) -g) above fully
8 and fairly."

9 Do you see that?

10 MR. McLORG: Yes, I do.

11 MR. BLUE: And we agree that the issues in (a) to (g)
12 above really go to all the cost allocation factors and
13 issues that enter into how you set street lighting rates?

14 MR. McLORG: Yes, I agree with that.

15 MR. BLUE: Okay. And you have told us in (h) to see
16 the answer to (c), and the answer to (c) says:

17 "The Ontario Energy Board is the authority that
18 sets the scope and process for proceedings before
19 it. THESL's understanding is that these issues
20 would not be explored in the context of an IRM-
21 PCI proceeding, but could be explored in a COS
22 context."

23 MR. McLORG: That's correct, sir. That's our
24 response.

25 MR. BLUE: Just so we have it clear in the record,
26 then, is it fair to say THESL would take the position, if
27 the Board required it to hold an IRM hearing, to be that
28 the city could not explore the street lighting rates issue?

1 MR. McLORG: It's really not in our mouths to take
2 that position, Mr. Blue. That said, we've indicated what
3 our understanding of the Board's discretion over its
4 procedures is, and it will be up to the Board to determine
5 what it would allow.

6 But I would add that I think the premise of your
7 question is something that may not be entirely accurate,
8 because you referred to an IRM hearing, and I think that
9 the hearings that are involved are basically written
10 hearings that deal with a very limited number of issues.

11 MR. BLUE: Fair enough. IRM methodology, the
12 proceeding, is what I meant to ask you. I know it's always
13 up to the Board, but as you're sitting there today, would
14 it be THESL's position, in an IRM methodology for rate
15 setting, that it would be inappropriate to go into what
16 underlies its street lighting rates?

17 MR. McLORG: Well, I think that it's fair to say that
18 THESL would take the view that any changes in cost
19 allocation methodology necessarily impact customers in
20 other classes than street lighting. If street lighting is
21 allocated more or less cost and the revenue requirement is
22 given, that means that there will be an impact on other
23 classes.

24 And in order for THESL to lead evidence on the factual
25 consequences and the implications of those changes, we
26 would suggest that that would best be done in a cost of
27 service context.

28 MR. BLUE: Thank you.

1 Would another way of putting it, then, to summarize
2 your view, be that a detailed examination of street
3 lighting rates would be outside the scope of an IRM
4 methodology; is that fair?

5 MR. McLORG: I think that's a fair statement of our
6 understanding.

7 MR. BLUE: Thank you.

8 Now, panel, electronically yesterday I circulated a
9 couple of tables that I said I was going to canvass with
10 you, and one of them is entitled "THESL Street Lighting
11 Data". Do you have a copy of that table?

12 MS. CHAPLIN: I think their counsel is providing it to
13 them, Mr. Blue.

14 MS. SEBALJ: Sorry, the Board Panel has it.

15 MR. McLORG: We do now have one copy. Thank you.

16 MS. SEBALJ: Can I mark that, Mr. Blue?

17 MR. BLUE: Yes, please.

18 MS. SEBALJ: It is K2.5.

19 **EXHIBIT NO. K2.5: MATERIALS DISTRIBUTED BY CITY OF**
20 **TORONTO.**

21 MR. BLUE: Panel, I don't want to spend much time on
22 this, but if we look at the top left quadrant of the table
23 under the year --

24 MR. McLORG: Sorry, Mr. Blue. There appear to be more
25 than one table.

26 MR. BLUE: Yes, there are two tables. There's one
27 called "THESL Street Lighting Data". Underneath that is
28 called "Charge Parameters".

1 MR. McLORG: Yes, I have that.

2 MR. BLUE: Okay. On the table entitled "THESL Street
3 Lighting Data Charge Parameters", on the top left quadrant
4 under the year 2011, we see the existing street lighting
5 rate of \$1.30 fixed, and variable of 28.7248 cents.

6 MR. McLORG: Yes, we see that.

7 MR. BLUE: Right. Dollars, I'm sorry.

8 Now, as I understand it, under the Board's third
9 generation IRM methodology, you would multiply that by the
10 1.30 percent inflation factor, less the total of the
11 72 percent universal stretch factor and the 0.6 percent
12 THESL-specific stretch factor; is that correct?

13 MR. McLORG: Well, I think with one exception, that
14 the universal stretch factor is more commonly referred to
15 as the productivity factor.

16 MR. BLUE: Thank you for that clarification.

17 But with that clarification, is what I said correct?

18 MR. McLORG: Yes, I believe it's correct.

19 MR. BLUE: Okay. So essentially, for the period of
20 2012 to 2015, the rates which the City of Toronto have
21 regarded as excessive will stay at that level under the IRM
22 methodology?

23 MR. McLORG: Well, Mr. Blue, I think the variable that
24 is expected to be subject to change -- we don't know the
25 magnitude of the change, but the variable that would be
26 subject to change is the inflation factor. And that could
27 vary from the level shown here of 1.3.

28 Generally speaking, I think that THESL agrees that the

1 magnitude of the overall PCI adjustment is likely to be
2 near zero.

3 MR. BLUE: Okay. So you're saying that what I
4 described as 1.30 percent, the inflation factor, might
5 change, but my essential point is that between 2012 and
6 2015, the street lighting rates, which the City believes
7 are excessively high, are not going to change materially?

8 MR. McLORG: I think that's fair.

9 MR. BLUE: Okay. Thank you.

10 Now, I handed out another table, entitled "2011 street
11 lighting rates."

12 Do you have that table?

13 MR. McLORG: Yes, we have it.

14 MS. SEBALJ: We also have it. Thank you.

15 I had intended to mark that separately, so it will be
16 K2.6.

17 **EXHIBIT NO. K2.6: TABLE ENTITLED: "2011 STREET**
18 **LIGHTING RATES."**

19 MR. BLUE: Now, panel, what -- you will see that all
20 we have done here is go to Board decisions, and we have
21 done a schedule of street lighting rates of Toronto Hydro-
22 Electric System's to the comparator utilities we show on
23 this sheet; fair enough?

24 MR. McLORG: That appears to be what has been done,
25 yes.

26 MR. BLUE: And as Mr. Haines has said, to make a valid
27 comparison, we've got to look at all of the underlying
28 data. We've got to see what the allocation factors are in

1 the other utilities and their unique circumstance for this
2 to be a valid comparison; is that right, Mr. Haines?

3 MR. HAINES: That's my position, yes.

4 MR. BLUE: Okay. And again, Mr. McLorg, would that
5 sort of an analysis, in your view, be outside the scope of
6 an IRM methodology rate-setting proceeding?

7 MR. McLORG: I believe it would be, Mr. Blue.

8 MR. BLUE: Thank you, panel. Those are my questions.

9 MS. CHAPLIN: Thank you, Mr. Blue.

10 Mr. Brett, I have you next on my list.

11 **CROSS-EXAMINATION BY MR. BRETT**

12 MR. BRETT: Thank you.

13 First question, panel, is I just want to confirm that
14 you understand my characterization of this proceeding.

15 My view of this is that you're seeking a decision by
16 the Board in this preliminary proceeding to have your cost
17 of service application heard, that you're not seeking any
18 assurances from the Board that you will get one year, two
19 years or three years of approval, nor are you seeking any
20 assurances about a particular revenue requirement.

21 What you're really here to do is to ask the Board to
22 hear your case?

23 MR. HAINES: That's absolutely correct.

24 MR. BRETT: If you turn to -- thank you. If you turn
25 to R1, tab 3, schedule 3, now, that is BOMA's
26 interrogatories, so schedule -- tab 3, schedule 3, page 2.

27 MR. McLORG: We have that.

28 MR. BRETT: Do you have that?

TAB 8

1 Thursday, November 17, 2011

2 --- On commencing at 9:48 a.m.

3 MS. CHAPLIN: Please be seated.

4 Good morning, everyone. We are sitting today to hear
5 arguments from the intervenors and Board Staff on the
6 preliminary issue. I believe we have an order.

7 Are there any preliminary matters before we begin?

8 MR. RODGER: Just one, Madam Chair. Good morning.

9 At the November 11th proceeding, Toronto Hydro gave
10 various undertakings, and responses to those undertakings
11 were all delivered on November 15th.

12 MS. CHAPLIN: Thank you. So I have as an order for
13 arguments today the City of Toronto, then AMPCO and BOMA,
14 to be followed by Board Staff, then Energy Probe, VECC, CCC
15 and Schools.

16 So if there are no other preliminary matters, Mr.
17 Blue, are you ready to proceed?

18 **FINAL ARGUMENT ON THE PRELIMINARY ISSUE**

19 **SUBMISSIONS BY MR. BLUE**

20 MR. BLUE: Thank you, Madam Chair.

21 I understand that the order is chosen on the basis of
22 who supports THESL and who is opposed. And normally in a
23 procedure, those who speak first would get a chance to
24 reply to those who take a contrary position. I don't need
25 to do that, but I may make some anticipatory submissions,
26 just to deal with that point so that I don't have to speak
27 twice.

28 Madam Chair and Members of the Board, the City has had

1 an opportunity to read and fully consider the argument
2 presented by Mr. Rodger on Monday. I am happy to inform
3 the Board that the City fully supports Mr. Rodger's
4 argument on behalf of THESL and adopts that argument as
5 part of its own.

6 Now, because of the anticipatory nature of the
7 hearing, I believe that those who oppose THESL may well
8 argue that the Board has made its intentions to have
9 applicants conduct an IRM methodology very clear, and
10 therefore THESL should be bound by it.

11 So I draw your attention to the Board's decision in
12 EB-2006-0087, and Ms. Litt has copies which she can hand up
13 to you.

14 Madam Chair, what this decision points out is that on
15 April 27th, 2006 the Board stated its intention to develop
16 two codes in relation to multi-year electricity rate-
17 setting, a review of the cost of capital, and a generation
18 incentive regulation mechanism.

19 And it recites that the Board sought and received 14
20 submissions, representing 19 of 21 intervenors, and that
21 many intervenors had raised with the Board: Do you have
22 the jurisdiction to impose a multi-year mechanism?

23 And in the submission of Board Staff -- it's quoted on
24 page 2, and I just believe I should read it into the
25 transcript, the Board Staff stated:

26 "The issue of the authority for, and
27 appropriateness of, the proposed method for
28 setting distribution rates through codes and

1 licence amendments is unlikely to be resolved in
2 the short term. At the same time there is a need
3 to get on with establishing distribution rates
4 for 87 distributors to be effective May 1, 2007.
5 In these circumstances, Board Staff recommends
6 that the Board discontinue the code-based
7 approach and therefore discontinue this hearing.
8 The work underway in the two related co-
9 proceedings should continue in the form of
10 promulgation of filing guidelines for 2007
11 distribution rates..."

12 And then the Board's decision was:

13 "This Board Panel agrees with Board Staff's
14 submission that the first priority of the Board
15 is to proceed promptly with the 2007 distribution
16 rates. Therefore the Panel also submits the
17 Board Staff's recommendation that the Board
18 discontinue the code-based approach at this
19 time."

20 Perhaps we should mark that decision as just an
21 exhibit to this hearing, for identification.

22 MS. SEBALJ: Yes. It will be K4.1.

23 **EXHIBIT NO. K4.1: OEB DECISION IN EB-2006-0087**

24 MR. BLUE: And then, Madam Chair and Members of the
25 Board, on November 23rd, 2006, in a letter to all
26 participants in proceedings EB-2006-0087, EB-2006-0088 and
27 EB-2006-0089, the Board, referring to multi-year ratemaking
28 mechanisms, stated, and I quote:

1 "The Board will instead implement its cost of
2 capital second generation incentive regulation
3 policies by means of guidelines."

4 I only have one copy of this letter, but I'll hand it
5 up, and we'll get copies made at the break, if that could
6 be the next exhibit.

7 MS. SEBALJ: It will be marked as Exhibit K4.2.

8 **EXHIBIT NO. K4.2: OEB LETTER TO PARTICIPANTS IN EB-**
9 **2006-0087, EB-2006-0088 AND EB-2006-0089, DATED**
10 **NOVEMBER 23, 2006.**

11 MR. BLUE: Right. Now, Madam Chair, Members of the
12 Board, I can do no better than quote Captain Barbossa in
13 one of the "Pirates of the Caribbean" movies, when the
14 beautiful Elizabeth Swann threw herself on his mercy and
15 claimed the benefit of the pirates' code. And he said:
16 It's not really a code, Elizabeth, it's more of a
17 guideline.

18 And so a guideline -- guidelines are guidelines, but
19 they are not codes; they are not binding rules.

20 Now, because of the thoroughness and the force of Mr.
21 Rodger's argument on Monday, I don't need to go into and
22 argue the awkward question of whether the Board has
23 authority to say to any applicant: No, I will not hear
24 your case, and dismiss the case without hearing it, because
25 I don't like the way you've presented it.

26 The City submits that the Board should request Board
27 counsel to address that issue in argument. I also submit
28 that Board Counsel should have a look at section 4(5) of

1 the Statutory Powers Procedure Act, which gives only
2 certain limited rights to a board or any tribunal not to
3 process an application.

4 And with respect to what the Board had said
5 previously, it used to be said and I believe it's still the
6 law that the Board cannot fetter its discretion by previous
7 decisions when it's confronted with a new application. But
8 that's all I need to say.

9 Now, there are a couple of additional points I want to
10 make about why a cost-of-service hearing is necessary.

11 First, if we look at Procedural Order No. 1 in this
12 hearing, it defined the preliminary issue as basically,
13 first: Can THESL justify a cost-of-service hearing and say
14 that it is necessary, and why it can't manage its resources
15 under an IRM successfully? Can THESL do that? Or should
16 the application be dismissed?

17 Now, in Procedural Order No. 3, in respect of that
18 preliminary issue, the Board gave THESL the right to adduce
19 viva voce evidence. THESL did that in the testimony that
20 we heard last Friday from Mr. Haines, Mr. Couillard and Mr.
21 McLorg.

22 It was open to any intervenor or to Board Counsel
23 after they read THESL's evidence, had they wanted to, to
24 adduce viva voce evidence or affidavit evidence of their
25 own to contradict what was in THESL's evidence. No
26 intervenor sought that right. Board Counsel did not seek
27 that right.

28 So what we are left with is what inference does the

1 Board draw from the state of the evidence? The proper
2 inference that the Board should draw, in the City's
3 submission, is that the intervenors did not adduce evidence
4 contrary to THESL's because they could not.

5 The same is true of Board Counsel. It did not adduce
6 evidence contrary to THESL's because it could not.

7 Therefore, the evidence upon which this preliminary
8 motion is based is strictly the unchallenged evidence of
9 the THESL witnesses.

10 Now, my second point is that the City submits that a
11 cost-of-service hearing is necessary in order for the City
12 to be able to explore the street lighting rates issue. You
13 may take administrative notice of the fact that the City of
14 Toronto has a budget stringency. You have read in the
15 media about library closings, about flat-lining police and
16 TTC budgets, about sale of social housing, about other
17 initiatives because of the City's lack of funds. The
18 street lighting rates issue is central to the City's budget
19 needs, and it has been a burning issue in the City's mind
20 for several years.

21 The evidence is that the City is deeply concerned
22 about the level of street lighting rates to be charged by
23 THESL. That is clear from the letter that the City wrote
24 in 2010, which is Exhibit K2.4, and the THESL witnesses
25 agreed with that in the transcript at page 61, line 19 to
26 page 62, line 8.

27 Now, with respect to how the street lighting rates are
28 constructed using the Board's model of number of

1 connections as a cost allocator, the THESL witness
2 testified that it is not obvious that that method of cost
3 allocation is appropriate. Mr. McLorg said that in 2008.
4 He confirmed it last Friday on this witness stand in this
5 case.

6 And he said that there were still questions around the
7 application of that particular device. And he said that at
8 page 62, line 2 to page 63, line 8.

9 Mr. McLorg also agreed with respect to the street
10 lighting rates cost-allocation methodology by number of
11 connections that it was not the best allocation of costs
12 that could be used. Again, that was true in 2008, and his
13 evidence is that it remains true today. That's page 63,
14 line 9 to 18.

15 Now, you will recall that I asked Mr. McLorg if the
16 effect of his response to the City's Interrogatory No. 1,
17 which is Exhibit R1, tab 1, schedule -- tab 6, schedule 1
18 was that it detailed examination of the costs and costs
19 allocation underlying THESL's street lighting rates. I
20 asked him if that would be beyond the scope of an IRM
21 methodology, and he testified that it would be. And the
22 effect of that is that if you follow an IRM methodology the
23 City would not be able to explore street lighting rates.

24 Now, the evidence before you -- I'm sorry. That was
25 at page 63, line 26 to page 66, line 4.

26 Now, the evidence before you is that the street
27 lighting rates is \$1.30 per connection per month in fixed
28 charges, with a variable charge of \$28.72 per month per

1 kilovolt-ampere. That's Exhibit K2.5. And Mr. McLorg
2 testified that if THESL was required to use the third-
3 generation IRM methodology, that that level rate would not
4 change materially between now and 2015. They would remain
5 at that high level. And that's at page 67, line 18 to page
6 68, line 8.

7 So the City of Toronto is faced with rates set at a
8 rate they consider excessively high, when the evidence
9 before this Board that the basis on which they are set is
10 dubious. And that, I submit, is not appropriate.

11 Finally, the evidence is that a comparison of street
12 lighting rates shows that THESL's street lighting rates are
13 approximately 80 percent higher than those of Enersource
14 Mississauga, its nearest competitor. That's Exhibit K2.6,
15 the comparison.

16 Now, Mr. Haines testified that before we could
17 conclude finally that that comparison was invidious, that
18 we would have to do a detailed analysis of the underlying
19 data to determine whether the prima facie comparison is
20 justified or not. And he testified, as did Mr. McLorg,
21 that only a cost-of-service hearing would provide that
22 opportunity. That's at page 68, line 19 to page 69,
23 line 9.

24 So Board Members and Madam Chair, the City submits
25 that you should have a cost-of-service hearing so that the
26 City can explore the street lighting rates issue, which is
27 of deep concern to it and has been for some time.

28 Thank you very much. Those are the City's

1 submissions.

2 MS. CHAPLIN: Thank you.

3 MS. HARE: Mr. Blue, you did show an exhibit which did
4 demonstrate that Toronto Hydro rates for street lighting
5 are the highest of any distributor's, but we later saw an
6 exhibit which showed that, for all rate class, Toronto
7 Hydro rates are the highest.

8 And so my question is, as the shareholder, is the City
9 of Toronto not concerned about the impact on all ratepayers
10 if this application goes forward as filed, which would have
11 an impact on all ratepayers, including street lighting?

12 MR. BLUE: The City believes that -- does not have a
13 concern about that, Madam Chair and Member Hare, because it
14 believes that if any of those rates are inappropriate the
15 cost-of-service hearing is the most appropriate forum to
16 sort that out and have them changed.

17 MS. HARE: Thank you.

18 MS. CHAPLIN: Mr. Blue, you took us through the
19 Board's decision back in 2006, wherein it set aside the
20 process of setting rates via code. So, yes, I think we've
21 established -- but the issue before us here isn't setting
22 rates by a code. So I just would like to be clear. Is it
23 the City's position that the Board is prevented from making
24 any decision at this stage other than to go forward and
25 hear the balance of the application?

26 MR. BLUE: Madam Chair, I would have to formulate the
27 position with the City, but the position I would formulate
28 is, yes, I think the Board has severe challenges in saying

1 to an applicant, an LDC, Sorry, you cannot file your
2 application in this form.

3 Your duty, I respectfully submit, is to -- your duty
4 is to make an order respecting the rates to be charged
5 under the act, under 78. That's the only statutory -- and
6 you have a broad discretion about how to do that. But you
7 cannot fetter your discretion in advance.

8 You have to -- my submission is the Board is required
9 to make sure that the application is complete. Once it
10 does that, it must hear the case that the applicant wants
11 to present, and it must hear the intervenors' submissions
12 on that case and then make a decision on that case. What
13 the Board cannot do is say, I don't like the form in which
14 you filed this. We're going to dismiss it to bring it back
15 in another form.

16 I would submit, absent specific regulations authorized
17 by your act, you do not have the authority to do that. But
18 I have not discussed that position with the City.

19 MS. CHAPLIN: Thank you.

20 MR. WARREN: Madam Chair --

21 MR. BLUE: I will get direction at the break and
22 confirm it.

23 MR. WARREN: Madam Chair, just as a follow-up to that,
24 is that Mr. Blue's position or not, that the Board is
25 fettering its discretion if it refuses to hear the
26 application in its present form? Is that the City's
27 position or not?

28 MS. CHAPLIN: Sorry, your mic is off now, Mr. Blue.