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January 21, 2013

Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Application by Toronto Hydro-Electric System Limited; EB-2012-0064

We are writing on behalf of Toronto Hydro-Electric System Limited (Toronto Hydro) in response to Mr. Elson's letter to the Board dated January 17, 2013. In his letter, Mr. Elson suggested that an oral hearing of the phase of this proceeding dealing with the Bremner Station project can proceed "sometime after February 14, 2013", in order to suit the availability of both Mr. Elson and the witness who has pre-filed evidence on behalf of Mr. Elson's client, Environmental Defence.

In his letter, Mr. Elson also proposes to call a witness from the Ontario Power Authority ("OPA") – an agency who is not a party, and who has not been involved in this proceeding – to testify at the oral hearing of this matter.

Toronto Hydro urges the Board not to allow the hearing process for the Bremner phase of the proceeding to be held hostage by one particular intervenor.

As stated in Toronto Hydro's letter to the Board of January 14, 2013, Environmental Defence was given an indulgence allowing it late intervenor status and delaying the process for the Bremner phase of the proceeding for the filing of evidence. It was clear from Procedural Order No. 3 (issued in early November), in which this indulgence was granted, that the interrogatory process in respect of the Environmental Defence evidence would conclude on January 9, 2013.

Based on this procedural order, Environmental Defence could reasonably have expected that its representatives would need to be available for the Bremner phase to go to hearing after January 9th. Despite the provisions of the procedural order and Toronto Hydro's clearly-stated position that the Bremner phase needs to be heard expeditiously,¹ Mr. Elson indicates that he and another representative of Environmental Defence have scheduled their affairs in such a way that the Board should not start a hearing until sometime after mid-February.

It is worthy of note that Environmental Defence was granted late intervenor status following a letter dated November 5, 2012 written on its behalf by Mr. Klippenstein in which it was reiterated that Environmental Defence is not seeking "special indulgences or extended timelines". Clearly, Mr. Elson is not the only lawyer from the Klippensteins law firm who has been involved in this matter on behalf of Environmental Defence.

Toronto Hydro also urges the Board not to lose sight of the comments that were made about scheduling in Procedural Order No. 3 (at page 3), which included the following:

- ~ the Bremner Station project will be considered as part of a separate process ... that will run in parallel with the dates outlined for the remaining oral component of this proceeding;
- ~ the Board will consider whether to have an oral component for the Bremner Station project as more information becomes available;
- ~ the Board's intention is that the two processes will come back together at the submission phase; and
- ~ the Board will monitor the processes and adjust them appropriately with a view to not unduly delaying its decision with respect to the issues being heard in each process. (Emphasis added.)

Toronto Hydro does not agree with Mr. Elson's assertion that an oral hearing is a "fundamental procedural right". Rule 34.01 of the Board's *Rules of Practice and Procedure* states that, in any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute

¹ See for example the letter to the Board from Aird & Berlis LLP dated October 31, 2012, at page 3, footnote 4.

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under which the proceeding arises. Section 5 of the *Statutory Powers Procedure Act* authorizes a tribunal, whose rules deal with written or electronic hearings, to hold a written hearing or an electronic hearing in a proceeding.

Toronto Hydro respectfully asks the Board to set a process for the expeditious hearing of the Bremner phase of the proceeding, such that there will be no undue delay in the decision with respect to either the Bremner phase or the phase of this proceeding that has preceded it.

On the issue of calling a witness from the OPA, Toronto Hydro notes that this Application is for spending approval for a very important and time-sensitive distribution asset. Toronto Hydro submits that it is not a referendum on the adequacy or inadequacy of the OPA's Conservation and Demand Management strategy. In addition to the irrelevance of any evidence that may become available to the Board through such a witness, it is unclear as to how the introduction of an OPA witness could work (especially at this late stage of the process).

If you have any questions in this regard, please do not hesitate to contact us.

Yours truly,

AIRD & BERLIS LLP

Fred D. Cass

FDC/

c.c. All EB-2012-0064 Intervenors
Amanda Klein, Toronto Hydro