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September 30, 2013

*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”)  
OEB File No. EB-2012-0064  
Preliminary Submissions, Draft Phase 2 Issues List**

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THESL writes to the Ontario Energy Board (“OEB”) in respect of the above-noted matter and Procedural Order No. 6, dated September 20, 2013 in the above-noted matter. This submission sets out THESL’s comments on the OEB’s proposed Draft Issues List for Phase 2 of this proceeding.

As a preliminary comment, THESL welcomes the OEB’s decision to proceed with a focussed and pointed issues list for the second phase of this proceeding. In THESL’s reading, the OEB’s decision reflects the fact that Phase 2 is the continuation of a proceeding in which the OEB has already provided substantial guidance and in which many issues relevant to both Phase 1 and Phase 2 have already been ruled upon. THESL accordingly submits that the scope of Phase 2 is necessarily reduced from that of Phase 1.

Based on the perspective described above and in the interest of promoting an efficient process, THESL makes the following submissions on the Draft Phase 2 Issues List.

**Issue 1. “Is THESL’s interpretation of the Phase 1 Partial Decision and Order of April 2, 2013 appropriate?”**

As written, Draft Issue 1 could be read more broadly than is necessary or appropriate for Phase 2 of this proceeding. THESL submits that, in most respects, interpretation of the OEB’s Partial Decision and Order, April 2, 2013 (“Phase 1 Decision”) was completed, as per normal practice, during the Draft Rate Order process which culminated in the OEB’s Decision and Rate Order, dated May 9, 2013 (“Phase 1 Rate Order”). As described below, THESL submits that this issue may not be necessary. However, to the extent that the OEB believes the issue is required, THESL proposes a slight revision to focus the issue on those interpretive questions that were not settled in the Phase 1 Rate Order.

THESL expects that the OEB intends Draft Issue 1 to capture discrete interpretive questions that are relevant to the current phase of the proceeding, akin to those raised by THESL in the Manager's Summary that accompanied its 2014 Evidentiary Update (Tab 9, Schedule 1). As an example, THESL raised specific interpretive questions under the heading "Confirmation of ICM Monitoring & Tracking Requirements" beginning on page eight of the Manager's Summary. THESL raised those particular questions because, in THESL's view, they have bearing on issues that are ongoing in Phase 2 (i.e. tracking of spending on ICM segments and the eventual true-up of those expenditures against ICM rate riders).

Other than the example described above, THESL is not aware of any other outstanding issues regarding the interpretation of the Phase 1 Decision. THESL submits that the questions it has identified are captured by Draft Issue 4. To the extent that the OEB believes that other interpretive questions remain regarding the Phase 1 Decision, THESL respectfully submits that Draft Issue 1 should be limited to the determination of interpretive questions that were not settled in the Phase 1 Rate Order. If the OEB prefers to retain the issue, THESL would propose that the following revision would avoid potential confusion:

*"Is THESL's interpretation of the Phase 1 Partial Decision and Order of April 2, 2013 appropriate as it relates to Phase 2 of this proceeding?"*

### **Issue 3. "Is THESL's application of the ICM criteria appropriate?"**

THESL notes that Draft Issue 3 is identical to Issue 2.1 in Phase 1. THESL respectfully proposes that, to avoid confusion, the Draft Issue could be adjusted to reflect the OEB's ruling on this issue in Phase 1.

In the first phase of this proceeding, the OEB performed a thorough review of THESL's application of the ICM criteria, including a detailed, segment-by-segment review of the evidence provided in respect of the proposed ICM work program. The OEB also made explicit findings on the appropriateness of THESL's application and interpretation of the ICM criteria in its Phase 1 Decision. For example, the OEB accepted:

1. THESL's criteria for determining if a project is non-discretionary<sup>1</sup>; and
2. The principle that, when a distributor carries out non-discretionary work, it is prudent and cost-effective to complete other important associated work, despite the fact that such work may not be non-discretionary.<sup>2</sup>

As THESL stated in the Manager's Summary accompanying the 2014 Evidentiary Update, the nature and organization of the ICM segments has not changed between Phase 1 and Phase 2 (Tab 9, Schedule 1, page 11, lines 15-16). The only area where the organization (but not the nature) of THESL's proposed capital work has materially changed in Phase 2 is in the Operations Portfolio Capital segment (Schedule C1). THESL notes that the Operations Portfolio Capital segment is not an ICM segment and, as such, the ICM criteria do not apply.

To the extent that THESL does not identify, define and apply ICM criteria in Phase 2 any differently than in Phase 1, THESL submits that the OEB has already decided on this issue within this proceeding. Any party seeking to effectively re-litigate those matters already decided upon would, in effect, be challenging the integrity of the OEB's decision and reasons in Phase 1 of this proceeding.

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<sup>1</sup> Phase 1 Decision, page 17.

<sup>2</sup> *Ibid.*

THESL submits that only if the nature and organization of work within an ICM segment had changed between Phase 1 and Phase 2 would it be appropriate to re-assess THESL's application of the ICM criteria. Otherwise, the OEB's ruling on the issue should not be re-opened.

As a consequence, THESL respectfully submits that it would avoid confusion and simplify the proceeding if the issue were re-phrased so as to maintain the integrity of the OEB's findings in Phase 1. THESL proposes that the Draft Issue could be modified as follows:

*"If THESL has applied the ICM criteria differently in Phase 2 than in Phase 1, is THESL's application of those criteria appropriate?"*

**Issue 6. "Are THESL's proposals relating to rate implementation, including the disposition of the smart meter accounts, currently before the Board as a stand-alone application, appropriate for the year 2014?"**

THESL understands that the reference in Draft Issue 6 to THESL's application for disposition of smart meter deferral account balances (OEB File No. EB-2013-0287) is intended to address the implementation of rate riders resulting from the OEB's ultimate decision in that application. If THESL's understanding is correct, then what follows is that the OEB is not contemplating joining the two applications, but rather is concerned with the mechanics of implementing rates determined by the OEB in the two proceedings concurrently on May 1, 2014.

In order to clarify the meaning of Draft Issue 6 in accordance with the understanding described above, THESL proposes the following minor revision:

*"Are THESL's proposals relating to rate implementation, including the disposition of the smart meter accounts, currently before the Board as a stand-alone application, appropriately coordinated for the year 2014?"*

However, if the OEB is considering joining or otherwise substantively combining the two proceedings, THESL respectfully submits that doing so would unnecessarily complicate both. The smart meter deferral account proceeding is already at an advanced stage; interrogatories are currently ongoing and submissions are scheduled to close in November. In THESL's view, there would be no efficiency benefit in joining the two applications. In contrast, it would be comparatively simple to implement any rate riders determined in that proceeding via the rate order process in this application.

## Written Hearing

THESL reiterates its request that the OEB adopt a written process for Phase 2 of this proceeding. As THESL's counsel noted in their letter accompanying the 2014 Evidentiary Update, the evidence provided by THESL in support of the 2014 ICM work program is informed by and follows the OEB's guidance in the Phase 1 Decision. THESL submits that a written process would be consistent with the OEB's decision to proceed with a focussed and pointed Phase 2 Issues List. Given the advanced state of this proceeding and the OEB's guidance to-date, a written process would effectively address the outstanding issues and, in THESL's submission, would represent the most efficient use of the OEB's and parties' resources.

Please do not hesitate to contact me if you have any questions.

Yours truly,

*[original signed by]*

**Rob Barrass**

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cc: Fred Cass of Aird & Berlis LLP, Counsel for THESL, by electronic mail only  
Intervenors of Record for EB-2012-0064 by electronic mail only