



EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

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

AND IN THE MATTER OF an application pursuant to section 60 of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking an electricity distribution licence;

AND IN THE MATTER OF an application pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets as an entirety or substantially as an entirety to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(b) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets necessary in serving the public to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(c) by Toronto Hydro-Electric System Limited and 1798594 Ontario Inc. seeking leave to amalgamate;

AND IN THE MATTER OF a request pursuant to section 77(5) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking the cancellation of the distribution licence applied for in a separate application under section 60 of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application pursuant to section 18(2) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited for an order assigning Toronto Hydro-Electric System Limited's electricity distribution licence to a proposed amalgamated entity consisting of 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Ken Quesnelle
Member

DECISION AND ORDER

1 BACKGROUND

On June 15, 2009, Toronto Hydro Corporation's subsidiaries, 1798594 Ontario Inc. ("NewCo"), Toronto Hydro Energy Services Inc. ("THESI") and Toronto Hydro-Electric System Limited ("THESL") (collectively referred to as the "Applicants") filed applications with the Ontario Energy Board (the "Board") under sections 60(1), 86(1)(a)(b)(c) and 77(5) of *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act"). The applications were later amended to include a request for an order under section 18(2) of the Act and to withdraw the request which had been made under section 77(5) of the Act. The Board assigned the applications file numbers EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183.

The applications collectively sought a declaration by the Board that streetlighting assets owned by THESI in the City of Toronto (the "SEL System Assets"), are deemed to be a distribution system and, ultimately, to make those assets part of a new amalgamated distribution company consisting of THESL and NewCo.

The Board issued its Decision and Order on the applications on February 11, 2010 (the "February Decision"). In accordance with the February Decision, the Applicants filed additional evidence with the Board on January 31, 2011 (the "Additional Evidence").

Pursuant to Procedural Order No. 4, Board Staff, the Electrical Contractors Association of Ontario/Greater Toronto Electrical Contractors Association ("ECAO/GTECA") and the School Energy Coalition ("SEC") filed interrogatories ("IRs") with respect to the Additional Evidence. The Applicants' responses to the IRs were filed with the Board on March 23, 2011.

On April 6, 2011, the Board issued Procedural Order No. 5 in which it required the Applicants to provide a complete response to Board Staff IR 4.1 in the manner set out by the Board in Procedural Order No. 5. In Procedural Order No. 5, the Board also set dates for filing of submissions on the Additional Evidence.

On April 13, 2011, THESL filed a letter with the Board stating that it could not produce the information required by the Board in Procedural Order No. 5 by the date set by the Board.

Procedural Order No. 6 was issued on April 21, 2011, in which the Board directed THESL to provide the Board and all intervenors in this proceeding with a date by which THESL expected to file with the Board the further evidence requested by the Board in Procedural Order No. 5. The Board also cancelled the filing dates established in Procedural Order No. 5.

On May 6, 2011, THESL filed a letter with the Board stating that it was unable to provide the information requested by the Board.

Procedural Order No. 7 was issued on May 24, 2011, in which the Board indicated that it will not require that any further evidence be filed. In Procedural Order No. 7, the Board also set the dates for filing of submissions on the Additional Evidence by parties to the proceeding.

The Applicants filed its argument-in-chief on June 3, 2011 and ECAO/GTECA filed a submission on June 14, 2011.

Procedural Order No. 8 was issued on June 22, 2011 which extended certain filing dates to allow SEC to file a submission. On June 24, 2011, SEC filed its submission and on July 4, 2011, the Applicants filed their reply submission.

1.1 The February Decision

In its February Decision, the Board considered whether the SEL System Assets can be categorized as electricity distribution system assets. Based on the definitions of “distribute” and “distribution system” in the Act the Board found that an essential feature of a distribution asset is that the asset must be used to convey electricity and that the concept of distribution implies “multiple recipients”. The Board also found that in order to determine whether certain SEL System Assets are appropriately considered distribution system assets, the Board must consider the purpose or functionality of the assets. The Board agreed with the Applicants that a criterion that depended on use at any particular point in time would result in a cumbersome and likely inoperable scheme by which to separate distribution system assets and non-distribution system assets. The Board found that a criterion based on the functionality or the *intended use* (the “Intended Use Test”), addresses this concern because the classification would remain constant irrespective of the use at any particular time.

In describing the Intended Use Test, the Board provided guidance on how the type of assets, type of supply (i.e. overhead and underground) and the area setting (i.e. residential and mixed use urban) could be considered. The Board found certain types of SEL System Assets to be distribution system assets and conditionally approved their transfer to NewTHESL.

The Board's approval was conditional on the Applicants filing additional evidence setting out the revised transactions including an asset valuation. In addition, the Board asked the Applicants in their additional evidence to provide further evidence as to whether expressway lighting should be classified as distribution or non-distribution assets as the Board was unable, on the evidence before it, to determine the proper classification for this category of assets.

The Board also determined that certain categories of the SEL System Assets are not distribution assets and accordingly did not approve their transfer to NewTHESL.

1.2 The Additional Evidence

On January 31, 2011, the Applicants filed the Additional Evidence with the Board which included:

- a description of the studies and processes for enumerating and categorizing the streetlighting assets;
- an asset valuation for the total SEL System Assets;
- an asset valuation for those categories of assets which the Board has determined are distribution assets;
- an asset valuation for those categories of assets which the Board has determined are not distribution assets;
- further evidence on the categorization of expressway lighting assets; and
- a statement of the revised transaction amounts.

The Applicants now seek:

- (a) a finding by the Board that the assets described in the Additional Evidence as distribution assets¹ are eligible for transfer to NewTHESL by substantially the same means and structure of transactions (but with revised amounts) as set out in the June 15, 2009 applications and as conditionally approved in the February Decision;
- (b) a finding by the Board that \$29.418 million² represents an appropriate amount to attribute to ratebase as a result of the transfer; and
- (c) a finding by the Board that the ratebase, revenue requirement, and rate consequences of the transfer will be determined in the context of THESL's next cost of service application for 2012 rates.

The Applicants withdrew their request for transferring the expressway lighting assets to NewTHESL. The Applicants stated that expressway lighting assets do not fall within the criteria established by the Board in the February Decision for distribution assets since beyond the point of demarcation with the distribution system they do not provide distribution capability for loads other than expressway lighting.

2 THE ISSUES

In reaching its decision, the Board has considered the following issues:

- Does the method used by the Applicants to classify the SEL System Assets as distribution or non-distribution meet the criteria set in the February Decision?
- Should all handwells and pole foundations be classified as distribution system assets?
- Is the proposed transfer price reasonable?

Each of these issues is considered in turn below.

¹ In their reply submission, the Applicants proposed to reduce the transfer of pole foundations to NewTHESL by 10% (by number) such that in all cases ownership of the pole and any associated foundation resides with one or the other company but not both. (Applicants' Reply Submission, para 35, page 12).

² THESL proposed to reduce this amount by \$479.9 thousand as a result of its proposal to reduce the transfer of pole foundations to THESL by 10% (Applicants' Reply Submission, para 35, page 12,).

2.1 Does the method used by the Applicants to classify the SEL System Assets as distribution or non-distribution meet the criteria set in the February Decision?

The Additional Evidence indicates that the Applicants undertook an inventory study³ to develop an inventory of the SEL System Assets and to create a database for each of the identified assets and their characteristics for the purpose of classifying those assets as transferable or non-transferable according to the findings of the February Decision.

The Applicants classified the subject assets as either distribution or streetlighting based on the asset definitions and type of supply and in limited circumstances, where the intended use of certain assets was not evident by observation, used the City of Toronto's Road Classification System (the "RCS") to implement the Board's Intended Use Test. Specifically, the Applicants classified all eligible streetlight assets in mixed use areas on Collector and Arterial Roads defined in the RSC as distribution assets on the basis that these assets objectively meet the Board's Intended Use Test as Collector and Arterial Roads have existing and future bus shelters, traffic signals and pedestrian crossings which do or will require connection to the distribution system.

In their submissions, both ECAO/GTECA and SEC objected to the Applicants' use of the RCS as a tool to classify the SEL System Assets as distribution or non-distribution assets.

ECAO/GTECA stated that to classify the SEL System Assets as distribution or streetlighting assets, it is necessary to determine whether they are in a residential setting or a mixed use setting. ECAO/GTECA submitted that the Applicants' use of the RCS to classify assets is based on an incorrect premise that no roads other than local roads can or do have a residential character, in whole or in part. ECAO/GTECA further submitted that RCS was developed for a different purpose than that adopted by the Applicants and submitted that the Applicants' use of the RCS to determine which assets are of "mixed use" is problematic. ECAO/GTECA added that there is no evidence that the poles and conductors on the subject roads are not or will not be used almost exclusively for streetlighting and submitted that the Applicants have failed to provide evidence that appropriately delineates between poles and conductors in residential settings as opposed to mixed use urban settings.

³ The Applicants indicated that, "while THESL provided oversight and project management resources, it engaged the firm of HDR/iTRANS to conduct the patrol and data gathering exercise" (Applicants' Additional Evidence, page 8).

In its submission, SEC indicated that certain percentages of poles and other streetlighting assets are proposed to be allocated to distribution by the Applicants based on the assumption that all streetlighting assets on arterial and collector roads should be considered distribution assets. SEC submitted that the Applicants have not filed sufficient data to support the reasonableness of this assumption and that in fact the assumption is inconsistent with the evidence⁴. SEC added that there is no apparent correlation between the RCS and distribution use of assets. SEC further submitted that the Board should only approve transfer of poles that have distribution attachments and non-pole assets should be treated in the same manner.

In their reply submission, the Applicants addressed the distinctions made between residential and mixed use urban areas. Specifically, the Applicants submitted that the February Decision has been misconstrued by ECAO/GTECA as one establishing that roads with residential characteristics are not in the mixed use category and that SEL System Assets in residential areas cannot be classified as distribution assets. The Applicants submitted that SEC has reached the same conclusion as ECAO/GTECA.

The Applicants argued:

The Board did not include an explicit definition of “residential” and “mixed use urban” areas in its February Decision. Instead, the Board relies upon its assessment of the intended use of the assets in each of these areas. As a result, the Applicants submit that the intended use of the assets represents the principal consideration in determining whether an area should be classified as “residential” or “mixed use urban” for the purposes of the February Decision.⁵

The Applicants added that:

The critical distinction made by the Board in the February Decision did not turn on whether a local area was ‘residential’, but rather on whether the streetlighting assets in the area were fed through underground assets (as distinct from overhead assets), and supported or were intended to support no other forms of equipment loads. The term ‘residential’ in this context is simply denotes the most prevalent instance of land use in areas that are

⁴ SEC relies on the Applicants’ response to Interrogatory 1.3 by ECAO/GTECA where the Applicants identified 12,607 poles as having distribution attachments and the Applicants’ Additional Evidence where the Applicant classified 40,274 poles as distribution assets.

⁵ Applicants’ Reply Submission, para 10, page 5

served by local roads and underground-supplied, single purpose streetlighting. Therefore while it is illustrative of areas contemplated by the Board as being of non-mixed use character, the characteristic of being 'residential' is not an essential part of the Board's intended use test.⁶

The Applicants asserted that, in some residential neighbourhoods with an underground supply, SEL System Assets supply other mixed use equipment such as pedestrian crossings, traffic lights, and bus shelters.

With respect to the Applicants' use of the RCS, in their reply submission, the Applicants emphasized the relevance of the information provided by the RCS to the Intended Use Test established in the February Decision. The Applicants stated:

...the RCS provides an independent, accurate and reliable base of information about the characteristics of the road system which hosts current and future customers served by the underground-supplied streetlighting assets in the City of Toronto, which information is highly pertinent to the intended use analysis.⁷

The Applicants further stated:

The RCS contains explicit and implicit references too numerous to mention of the facts that collector and arterial roads host traffic signals, pedestrian cross-overs, transit routes (with associated shelters) and other forms of street furniture, all of which require connection to the electricity distribution system. Conversely, it clearly identifies local roads as being primarily for the purpose of low-traffic-volume local property access, and therefore as being without the need for signalized intersections and the other kinds of loads associated with collector and arterial roads.⁸

The Applicants stated that the RCS intended use analysis in no case overrode the asset definition or supply type criteria established by the Board in the February Decision.

The Applicants submitted that their asset classification approach using the information from the inventory study and the RCS is reasonable, appropriate and correctly implements the Board's February Decision.

⁶ Applicants' Reply Submission, para 23, page 9

⁷ Applicants' Reply Submission, para 15, page 6

⁸ Applicants' Reply Submission, para 28, page 10

In response to SEC's submission relating to the evidence on existing use of assets (i.e. only poles with distribution attachments should be allocated to distribution), the Applicants submitted that the February Decision did not suggest that mixed use was to be determined based on the existing use. In support of their submission, the Applicants referred to the following part of the February Decision:

The Board agrees with the Applicants that a criterion that depended on use at any particular point in time would result in a cumbersome and likely inoperable scheme by which to separate distribution system assets and non-distribution system assets. However, a criterion based on the functionality or the *intended* use, addresses this concern because the classification would remain constant irrespective of the use at any particular time. For example, a distribution circuit that has been legitimately put in place to service multiple customers remains a distribution facility even if only one customer is attached at a particular time.⁹

The Applicants explained that:

The only practical way to operationalize the classification rules established by the Board is to abstract from the particular conditions that *exist* at a given moment and instead to characterize street segments according to intended or potential use. This does not mean that the entire length of any street would be designated one way or the other, but rather that all assets on a particular segment of a given street would be classified according to the pertinent characteristics until those characteristics changed further along the street.¹⁰

The Applicants submitted that SEC's submissions in this regard should be rejected by the Board.

2.1.1 Board Findings

For the reasons provided below, the Board finds that the Applicants' method for classifying the SEL System Assets as distribution or non-distribution meet the criteria set out in the February Decision.

The Board agrees with the Applicants' interpretation of the Intended Use Test established in the February Decision. Specifically, the Board accepts the Applicants'

⁹ Page 6-7 of the February Decision and Applicant's Reply Submission, Para 6, pages 3-4

¹⁰ Applicants' Reply Submission, para 44, page 15

submission that the intended use of the assets represents the principal consideration in determining whether an area should be classified as “residential” or “mixed use urban” for the purposes of the February Decision. In the February Decision the Board distinguished between residential areas and mixed use urban areas for the purpose of SEL System Assets classification as distribution or non-distribution. That distinction was established for the purpose of generalizing the functionality or intended use of the SEL System Assets in those areas. The Board does not accept the submissions asserting that no SEL System assets on roads with residential characteristics can be classified as distribution assets.

With respect to the Applicants’ use of the RCS as a tool to classify the SEL System Assets as distribution or non-distribution, the Board accepts the Applicants’ arguments. In the Board’s view the Applicants have used the RCS designation protocol in an analytically reasonable manner in the application of the criteria set in the February Decision for classifying the SEL System Assets as distribution or non-distribution.

The Board does not accept the submissions of either ECAO/GTECA or SEC relating to evidence on the existing use of the assets classified as distribution by the Applicants¹¹. Network distribution assets are linear and radial in nature whereby the usefulness of all assets is dependent on the supporting upstream assets. It would not be in keeping with the Board’s Intended Use Test to assess the functionality of a pole asset for instance based on the sole analysis of the function of its attachments. Consideration of the function of all downstream assets is also a determinative factor of current use.

As articulated by the Applicants in their reply submission, the purpose of the Board’s Intended Use Test was to ensure that the assets that are identified as distribution assets are intended for use by multiple recipients and not dependant upon the use of the assets at any particular point in time. Since collector and arterial roads with underground supplies host or may host loads other than streetlights which require connection to the electricity distribution system either now or in the future, the use of the road designation is an acceptable method to determine intended use.

¹¹ ECAO/GTECA Submission, paras 11 and 12, page 4 and SEC Submission, paras 20-22, page 5 and paras 25-26, page 6

2.2 Should all handwells and pole foundations be classified as distribution system assets?

The Additional Evidence showed that all handwells and pole foundations were classified as distribution system assets by the Applicants. ECAO/GTECA objected to this classification and submitted that “for those poles that are not categorized as distribution assets, the related handwells and pole foundations should be excluded from distribution assets.”¹²

The Applicants responded that it is appropriate to classify all handwells as distribution assets. The Applicants submitted that handwells serve only a distribution function as all conductors that feed into and out of handwells are classifiable as distribution assets in accordance with the February Decision.

With respect to pole foundations, the Applicants responded that:

Substantially all streetlight pole foundations (i.e., 90% by count and over 90% by value) are found in commercial-industrial areas (especially the downtown core) where the area type is either Overhead or Mixed Use, and where direct burial is too costly or is infeasible due to the presence of other buried infrastructure. Since the Board has determined in the February Decision that all streetlight poles in Overhead and Mixed Use areas can be classified as distribution, and since the foundation is an integral part of the streetlight pole, pole foundations can appropriately be classified as distribution for the same reason as the associated pole is.¹³

The Applicants agreed with ECAO/GTECA that for the poles that are not classified as distribution assets, the related pole foundations should be excluded from distribution assets. The Applicants therefore proposed to “reduce the transfer of pole foundations to THESL by 10% (by number) such that in all cases ownership of the pole and any associated foundation resides with one or the other company but not both”.¹⁴ The Applicants stated that this reduction will result in a \$479.9 thousand corresponding reduction in the proposed transfer price.

¹² ECAO/GTECA Submission, para 14, page 5

¹³ Applicant’s Reply Submission, para 34, page 12

¹⁴ Applicant’s Reply Submission, para 35, page 12

2.2.1 Board Findings

The Board agrees with the Applicants that the classification of handwells as distribution assets conforms to the findings of the February Decision. With respect to pole foundations, the Board agrees with ECAO/GTECA that if a pole is classified as non-distribution assets, the related pole foundations should also be classified as non-distribution assets. The Board also finds the Applicants' proposal to address this point to be reasonable.

2.3 *Is the Proposed transfer price reasonable?*

The Additional Evidence indicates that the results of the inventory study were used by a third party valuator, ValuQuest to establish a valuation for the assets, in all the categories required by the February Decision. The valuation produced was by way of the Depreciated Replacement Cost ("DRC") methodology. The valuation produced a total DRC value of the SEL System Assets of \$99.141 million of which the DRC value attributable to the assets that have been classified as distribution assets by THESL is approximately \$45.976 million.

The Applicants indicated that the unaudited 2010 year end net book value of the total SEL System Assets was \$63.453 million (the "NBV"). THESL proposed to pay \$29.418 million¹⁵ in return for the transfer of the SEL System Assets classified as distribution assets. That amount was determined by applying the percentage of the total SEL System Assets classified as distribution assets (46.4%) to the NBV of the total SEL System Assets.

In their argument-in-chief, the Applicants argued that the DRC methodology approximates the value of the assets in their current, partially depreciated condition. Further, the Applicants stated that although the DRC results show that the physical, cost based valuation of the SEL System exceeds the current carrying value of those assets on the Applicants' books, the Applicants propose to transfer the SEL System assets classified as distribution at the current carrying value of those assets due to accounting and regulatory constraints. The Applicants submitted that "in absence of perfect historic information, and given that the DRC valuation has found that the fair market value of the

¹⁵ THESL proposed to reduce this amount by \$479.9 thousand as a result of its proposal to reduce the transfer of pole foundations to TEHESL by 10% (Applicants' Reply Submission, para 35 page 12)

assets substantially exceeds their current carrying value, the current net book value represents a fair value of those assets for inclusion in rate base¹⁶”.

SEC objected to the Applicants’ proposed transfer price. Specifically, SEC submitted that the Applicants rely on a valuation approach that is identical to the approach rejected by the Board in the February Decision. SEC also submitted that the Applicants have not attempted to determine either directly or by proxy the historic cost and resulting book value of the subject assets and that “there does not appear to be any credible argument offered or available that the replacement cost of old assets, no matter how adjusted, can be used as a proxy for the historic cost of those assets”.¹⁷ SEC added that the Applicants “failed to make any attempt to deal with the underlying premise of the question, i.e. that depreciated replacement cost generally is higher than historical acquisition cost”.¹⁸ SEC proposed that the Board approve the transfer of appropriate assets at a value of \$1.

The Applicants responded that they have not reverted to the valuation methodology rejected by the Board in the February Decision (i.e. discounted cash flow methodology). The Applicants submitted that a physical valuation study was conducted by a third party valuator in accordance with the terms of the February Decision. The Applicants added that the Board directed the Applicants to undertake a physical asset valuation as it recognized that the historic value of the subject assets was not available.

With respect to the use of the DRC methodology and SEC’s submission that the Applicants “failed to make any attempt to deal with the underlying premise of the question, i.e. that depreciated replacement cost generally is higher than historical acquisition cost”, the Applicants submitted that:

In fact, in the absence of the historical information, the DRC approach represents the most credible and plausible ‘physical’ valuation of the assets in question. It involves not only a physical count of the assets but a rigorous determination of replacement cost, from which is subtracted accumulated depreciation based on the expired portion of asset life valued at current replacement cost. Therefore the DRC approach substantially overstates accumulated

¹⁶ Applicants’ Argument-in-Chief, para 25, page 8

¹⁷ SEC submission, para 11, page 4

¹⁸ SEC submission, para 9, page 3

depreciation relative to the historic cost method and is not simply a replacement cost model.¹⁹

The Applicants reiterated that because the physical DRC valuation produced a value higher than the current NBV of the assets, the Applicants had to adjust down the transfer value substantially because of the “write-up constraint”. The Applicants added that:

The Applicants specifically do not submit that that relationship holds necessarily or characteristically as between DRC and historic NBV approaches, but nevertheless that degree of reduction should certainly reassure the Board that a very conservative transfer value has been proposed, in fact, by the Applicants, regardless of the means by which it was reached.²⁰

2.3.1 Board Findings

For the reasons provided below, the Board finds the proposed transfer price of \$28.938 million to be reasonable.

In the June 2009 applications, it was proposed to sell the SEL System Assets for a NBV of the assets which was based on a discounted cash flow (“DCF”) of the streetlight businesses’ future revenue stream. In the February Decision, the Board found that the Applicants’ DCF based value was not appropriate for regulatory purposes and confirmed that for regulatory purposes, the Board relies on the depreciated historic cost (“DHC”) of assets. The Board therefore directed the Applicants to undertake a physical asset valuation.

The Applicants’ response to the Board direction complied with the literal direction of the Board but did not provide any basis on which the Board could determine the DHC of the assets to be transferred. In P.O. No. 5 the Board identified a methodology to the Applicants with the expectation that a reasonable proxy for the DHC of the assets could be established through the production of a representative proportional relationship between DHC and DRC valuations of similar assets. As stated above the Applicants have submitted that the data to perform such an analysis does not exist and it would be too costly to create it.

¹⁹ Applicant’s Reply Submission, para 62, page 20

²⁰ Applicant’s Reply Submission, para 65, page 21

The Board does not agree with the Applicants' submissions regarding the significance of the NBV amount of \$63.453 million. The Applicants claim that the amount represents a ceiling of what could be considered to be an appropriate transfer price and that any amount in excess of the amount would be a "premium" that the Board does not allow. There is no dispute that the \$63.453 million does not represent the DHC of the SEL System Assets. The value is the product of a DCF analysis of a future revenue stream associated with the business of the company presenting the value in its financial statements. The value may be acceptable as a NBV for the purposes of the financial statements of the non-regulated company, but the Board does not consider its existence or its quantum to have any determinative value in this application.

The Board sought to have the Applicants estimate the relationship or proportionality between DHC and DRC as a means to establish a reasonable transfer value rooted in DHC. Had the analysis been possible and had it demonstrated that the applied proportionality was reasonable and when applied resulted in an amount in excess of the \$63.453 million, the Board would not necessarily have considered there to be any "premium" included in that value.

Given that historic costs are unavailable, the Board must consider a "next best" solution and concludes that the DRC valuation methodology is a reasonable approach to establish a starting point for the determination of an appropriate transfer value.

The Applicants have provided some descriptive analysis illustrating the comparative effects of a DHC valuation versus a DRC valuation. It is not possible to gain an optimum level of precision as to the expected proportional relationship between the two, but it is not disputed that the DHC analysis of a group of assets will result in a lower value than the DRC valuation.

The Board notes that the basis on which the Applicants have made their proposal has the effect of discounting the DRC value by approximately 40%. While the Board dismisses the reasoning provided by the Applicants in support of the proposal, it will accept the value itself. The Board does so in consideration of the particularly unusual circumstances related to the ownership and accounting history of the assets in question.

The Board finds that rate base, revenue requirement, and rate consequences of the subject transfer should be determined in the context of THESL's next cost of service based rates application.

3 COST AWARDS

In the February Decision, the Board determined that costs will be assessed against THESL. The Board has also dealt with the cost claims of eligible intervenors for costs incurred up to and including the date of the February Decision. The Board notes that only ECAO/GTECA and SEC have participated in this phase of the proceeding. Therefore, the Board will make provisions for filing of cost claims by ECAO/GTECA and SEC and related submissions.

IT IS ORDERED THAT:

1. The application for an electricity distribution licence by NewCo is granted, on such conditions as are contained in the attached licence.
2. THESI is granted leave to sell the SEL System Assets classified as distribution assets in the Additional Evidence as amended by the Applicants' reply submission to NewCo.
3. THESL and NewCo are granted leave to amalgamate.
4. The Applicants shall promptly notify the Board of the completion of the transactions referred to in paragraphs 2 and 3.
5. The leave granted in paragraphs 2 and 3 above shall expire 18 months from the date of this Decision and Order. If the transactions have not been completed by that date, new applications will be required in order for the transactions to proceed.
6. Once the notice referred to in paragraph 4 above is provided to the Board, the Board will cancel NewCo's electricity distribution licence.
7. Once the notice referred to in paragraph 4 above is provided to the Board, the Board will assign THESL's electricity distribution licence to the new amalgamated distribution company consisting of THESL and NewCo.
8. ECAO/GTECA and SEC shall file with the Board and forward to THESL their respective cost claims within 21 calendar days from the date of this Decision and Order.

9. THESL may file with the Board and forward to the applicable intervenor(s) any objections to the claimed costs within 35 calendar days from the date of this Decision and Order.
10. Intervenors whose cost claims have been objected to may file with the Board and forward to THESL a response to any objection for cost claims within 42 calendar days of the date of this Decision and Order.
11. THESL shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

Any filings to the Board must quote file numbers EB-2009-0180, EB-2009-0181, EB-2009-0182 and EB-2009-0183, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, August 3, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary