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Delivered by Email

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: SSMWG Notice of Motion filed October 7, 2011
EB-2010-0142 - Phase II**

We respond to the Smart Sub-metering Working Group (“SSMWG”) Notice of Motion (the “Notice”) filed with the Board on October 7, 2011. As the Board is aware, THESL filed its Suite Metering Supplementary Evidence in the above-named proceeding on September 30, 2011. One week later - and on a Friday afternoon before a holiday weekend (two days after which interrogatories on the evidence were due) - the SSMWG filed the Notice regarding THESL’s evidence.

In the motion SSMWG requests that the Board compel THESL to file its “Current CA Model in a fully populated live Excel spreadsheet format supported by appropriate explanations”. In an effort to maintain the Board’s schedule for this hearing, THESL will provide all parties with the live Excel spreadsheet later this afternoon.

With this information provided to parties and for the reasons set out below, THESL believes this motion consists of allegations which are neither explained nor supported, and to the extent it seeks disposition of matters that should properly be disposed of in the hearing, is premature. In any event, the relief SSMWG seeks is duplicative of the processes provided for by the Board in Procedural Order No. 11 (the “Procedural Order”).

Summary of what SSMWG seeks in its Motion

SSMWG alleges very broadly that THESL’s evidence is “inadequate, contrary to and/or inconsistent with the Board’s Partial Decision & Order dated July 7, 2011 (the “Partial Decision”). In its Notice, it seeks various forms of relief, which fall into three categories:

- (a) production of further information that underlies THESL’s evidence (paragraph 3 of the Notice);
- (b) a change to the current Board-approved schedule for the proceeding (paragraph 4 of the Notice); and

- (c) deletion of certain parts of THESL's evidence (paragraph 2 of the Notice).

The Motion appears to duplicate the process in Procedural Order No. 11

In the Procedural Order, the Board has provided for an interrogatory process for “Board staff and intervenors [to seek] information and material that is in addition to the suite metering supplementary evidence, and that is relevant to the hearing.” The Board has also provided intervenors (including SSMWG) and Board staff an opportunity to file evidence in this proceeding and for parties to explore that evidence by way of an interrogatory process. The Board elected not to schedule a technical conference.

THESL is of the view that the Board has therefore already established a process that dispenses with issue (a) raised in SSMWG's Notice, and that remaining on the current schedule is appropriate in the circumstances (rendering item (b) inappropriate). SSMWG is free to ask for production of further information that concerns THESL's evidence in the course of testing THESL's evidence pursuant to the current Board-approved interrogatory process, and it remains free to submit its own evidence to be tested. Only after the remainder of the interrogatory and evidence-filing process is completed would it be appropriate for SSMWG to ask the Board to hear a motion regarding the insufficiency of THESL's evidence. THESL is of the view that for the Board to hear such a motion now would be premature and disruptive to the current proceeding schedule.

THESL also notes the statement in Procedural Order No. 11 that “In the Board's view it is very important that the outcome of the proceeding be available for the next potential effective rate change date and the Board is therefore exercising caution in ensuring sufficient time to hear the matter.” As noted above, THESL does not believe that a technical conference as requested by the SSMWG is necessary given the process already defined by the Board. In the event that the Board finds that the addition of a technical conference to the current proceeding schedule is appropriate, THESL respectfully requests that such a conference be conducted prior to the hearing dates already established by the Board, and not cause those dates to be postponed.

A 'live' version of the Cost Allocation Model

The version of the Cost Allocation Model filed by THESL in its evidence in Phase 2 of this proceeding is the standard, fully populated, summarized version of the Board-approved Cost Allocation Model. The summarized version of the Board-approved model aggregates low-level detail contained in the base version of the model, and in doing so converts all cell formulas to their corresponding values given those formulas and the input data embodied in the base version. However, the base version of the model containing all formulas in the model is available to SSMWG and the public on Board's website.

As indicated above THESL will be providing a live Excel spreadsheet to the parties. Therefore SSMWG's motion to compel production is unnecessary. However, THESL notes that the underlying logic of the model is now and always has been available to SSMWG, and that the version filed already by THESL contains the relevant input data. Therefore, the claim by the SSMWG that it 'is not in a position to ask meaningful interrogatories' is groundless. The SSMWG should not be permitted to disrupt the Board's established schedule for the submission of interrogatories, but to the extent that THESL receives late interrogatories from the SSMWG, it

must reserve the right to the same number of days for reply to those interrogatories as was provided in the Procedural Order.

Rate Design is an issue in this Proceeding

SSMWG's Notice refers to rate design for residential rates as an issue that is not within the scope of this proceeding, but provides no explanation or definition of that term as it used in the Notice. THESL is at a loss to understand how the issue of rate design cannot arise in a proceeding in which THESL has been directed by the Board to produce a proposal for a tariff, which itself necessarily involves rate design.

Furthermore, it is not open to the SSMWG to define what issues are within, or not within, the scope of this proceeding. THESL is instead guided by a plain reading of the EB-2010-0142 Partial Decision and Order and Procedural Order No. 11.

If the concerns of the SSMWG are around the specific proposals made by THESL regarding the suite metering tariff, then the SSMWG should bring forth those objections at the appropriate time – namely through the interrogatory, evidence and argument processes which the Board has provided for in the Procedural Order.

Yours very truly,

Borden Ladner Gervais LLP

Original signed by J. Mark Rodger

J. Mark Rodger

Copy to:

Dennis O'Leary, SSMWG counsel

Parties of record

JMR/jv