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September 28, 2009

Via Email and Delivered

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Notice of Intention to Make an Order for Compliance against Toronto
Hydro-Electric System Limited
Board File: EB-2009-0308
Satisfaction of Undertaking**

At the oral hearing on Friday, September 25, 2009, the presiding member, Gordon Kaiser, requested and I undertook to file a copy of the "issues list" which relates to the EB-2009-0111 proceeding which considered the issue of authorizing discretionary metering in residential tenancy buildings.

While no separate issues list was issued by the Board, a list of issues is attached at page page 3 of the Notice of Written Hearing and Procedural Order No. 1, dated May 5, 2009.

Yours very truly,

AIRD & BERLIS LLP



⁰⁷ Dennis M. O'Leary

DMO/ct

cc George Vegh, McCarthy Tétrault LLP, Counsel to Toronto Hydro
cc Glenn Zacher, Stikeman Elliott LLP, Compliance Counsel
cc Michael Millar, Board Counsel
cc Maureen Helt, Board Counsel

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EB-2009-0111

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

AND IN THE MATTER OF an order or orders authorizing
certain distributors to conduct specific discretionary metering
activities under section 53.18 of the *Electricity Act, 1998*,
S.O. 1998, c. 15, Schedule A.

NOTICE OF WRITTEN HEARING AND PROCEDURAL ORDER NO. 1

The Ontario Energy Board (the "Board") has commenced a proceeding to determine whether, and if so under what conditions, certain distributors that have not otherwise been authorized to conduct discretionary metering activities in accordance with section 53.18 of the *Electricity Act, 1998* (the "Electricity Act") should be authorized to do so by an order or orders of the Board. The file number assigned to this proceeding is EB-2009-0111.

Section 53.18 of the *Electricity Act* states that:

- (1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this Act, a regulation, an order of the Board or a code issued by the Board or it is required to do so under the *Electricity and Gas Inspection Act* (Canada).
- (2) For the purpose of this section,

"discretionary metering activity" means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the *Electricity and Gas Inspection Act*

(Canada), by regulation, by an order of the Board or by a code issued by the Board or authorized by a regulation made under this Act.

The distributors that may be authorized to conduct certain discretionary metering activities in this proceeding are distributors that are exempt from licensing and other requirements under sections 4.0.1(1)(a)(2) and (3) of Ontario Regulation 161/99—*Definitions and Exemptions* (made under the *Ontario Energy Board Act, 1998*). In order to fall within these exemptions, the distributor must:

- (a) distribute electricity for a price no greater than that required to recover all reasonable costs; and
- (b) distribute the electricity through a distribution system that is owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located:
 - (i) a residential complex as defined in the *Residential Tenancies Act, 2006*; and
 - (ii) an industrial, commercial, or office building.

For the purposes of this proceeding, these distributors will be referred to as the "Exempt Distributors". Distributors, including the Exempt Distributors, are prohibited from conducting discretionary metering activities unless they have been authorized to do so through one of the means set out in section 53.18 of the Electricity Act.

The Compliance Office was made aware of consumer concerns regarding the installation and use of smart sub-metering systems by Exempt Distributors. In many instances, the smart sub-metering systems have been installed, and are being used to bill consumers, by a licensed smart sub-metering provider on behalf of the Exempt Distributor. On March 24, 2009, the Board's Chief Compliance Officer issued Compliance Bulletin 200901, which stated that the installation of smart sub-metering systems in residential complexes (as defined in the *Residential Tenancies Act, 2006*) by distributors that have not been authorized is a discretionary metering activity that is prohibited by section 53.18 of the Electricity Act. Since that time, the Board has been informed of situations where the smart sub-metering systems are providing benefits to the Exempt Distributors and the consumers and the parties want those benefits to continue.

The Board has commenced this proceeding to determine whether the Exempt Distributors that have previously engaged in, or intend in the future to engage in, discretionary metering activities should be authorized to conduct those activities. In particular, the discretionary metering activity that may be authorized by the Board in this proceeding is the installation of smart sub-metering systems in the Exempt Distributor's buildings or facilities ("buildings"). If the Board does authorize Exempt Distributors to conduct these activities, the Board also needs to determine what conditions, if any, should apply to that authorization.

Issues the Board may consider in this proceeding include the following:

- whether the discretionary metering activities should be allowed in all buildings (including buildings under development) or whether it should be limited to buildings where the smart sub-metering systems are already in place;
- whether the smart sub-metering system, once installed, should only be used to bill the tenant/consumer if there is tenant/consumer consent;
- whether the smart sub-metering system should be allowed to be used for billing purposes for existing tenants/consumers, new tenants/consumers, or both;
- whether a licensed smart sub-metering provider must be retained to provide and install the smart sub-metering system in the buildings; and
- whether a licensed smart sub-metering provider must be retained to provide services associated with the smart sub-metering system, including billing.

The Board's determination in this proceeding may have an effect on:

- Exempt Distributors;
- consumers who receive electricity distribution services from an Exempt Distributor or its agent; and
- licensed smart sub-metering providers who have contracted with an Exempt Distributor for the commercial provision of smart sub-metering systems and associated services.

At this time, the Board intends to proceed in this matter by way of a written hearing unless a party satisfies the Board that there is good reason for not holding a written hearing.

The Board will provide funding to groups representing the interests of tenant/consumers that may be affected by this proceeding. The funding will be limited to a maximum of 10 hours per group for legal counsel in order to prepare the submissions for the group. The rates for the legal counsel's hourly fees will be determined in accordance with the Tariff in the Board's Practice Direction on Cost Awards. Groups requesting the funding shall make that request in writing at the same time their written submissions in this proceeding are due. The request for funding should include an explanation of who the group is, what interest they represent, why they require financial assistance (including an explanation of any other sources of funding the group has access to), a copy of the legal counsel's dockets for this proceeding, and the year of call for the legal counsel. Please note that a request for funding does not guarantee that the request will be granted nor does it guarantee that the maximum amount will be awarded if the request for funding is granted.

The Board considers it necessary to make provision for the following procedural matters. The Board may issue further procedural orders from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. Licensed smart sub-metering providers shall provide, within one business day, a copy of this Notice of Written Hearing and Procedural Order No. 1 to each Exempt Distributor with whom it has entered into a contract for the commercial provision of smart sub-metering systems and/or associated services. Furthermore, the licensed smart sub-metering provider shall inform the Exempt Distributor that the Exempt Distributor must, within 2 business days of receiving the Notice from the smart sub-metering provider: (i) post a copy of this Notice of Written Hearing and Procedural Order No. 1 in a prominent location in each building in which a smart sub-metering system has been installed; and (ii) provide a copy of this Notice of Written Hearing and Procedural Order No. 1 to the tenants/consumers in their buildings in which a smart sub-metering system has been installed.
2. Licensed smart sub-metering providers shall file with the Board a list of the Exempt Distributors identified in paragraph 1 and confirmation that it has provided a copy of the Notice of Written Hearing and Procedural Order No. 1 (and the instructions in paragraph 1) to each of those Exempt Distributors.

3. Any objection to a written hearing, along with the written reasons for why an oral hearing is necessary, must be filed with the Board on or before May 12, 2009.
4. Board staff shall file a written submission in this proceeding with the Board on or before May 12, 2009.
5. Any other person may file a written submission in this proceeding with the Board on or before May 26, 2009.

All submissions will be posted on the Board's website.

All filings to the Board must quote file number EB-2009-0111, and consist of two (2) paper copies and one (1) electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. 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.oeb.gov.on.ca. If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file seven (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. Parties must also include the Case Manager, Barbara Robertson (barbara.robertson@oeb.gov.on.ca), on all electronic correspondence related to this proceeding.

Address of the Board

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Board Secretary

Tel: 1-877-632-2727 (toll free)
Fax: 416-440-7656
E-mail: Boardsec@oeb.gov.on.ca

Important

If you do not file an objection to a written hearing or if you do not participate in the written hearing in accordance with this Notice, the Board may proceed without your participation and you will not be entitled to further notice in this proceeding.

ISSUED at Toronto, May 5, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary