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BY EMAIL

October 19, 2009

File No.: 100519.1011

Ms. Kirsten Walli
Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319, Suite 2700
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Notice of Intention to Make and Order for Compliance under
Section 112.3 of the OEB Act, 1998
Board File No: EB 2009-0308**

We are writing with regards to the Board's Decision and Order dated October 14, 2009.

It is our understanding that the Board's Decision and Order requires Compliance Counsel to produce all documents in its possession relating to suite metering or smart metering practices of: (i) THESL in relation to Avonshire or Metrogate; (ii) Metrogate; or (iii) Avonshire. Our understanding is based on the Panel's decision, in particular, paragraph 26 which states:

[26] The Notice of Intention to Make an Order issued by the Board on August 4 limits the questionable conduct to *actions of Toronto with respect to Metrogate and Avonshire*. No allegations are made with respect to other condominiums. Accordingly, any production of documents should be limited to documents in the possession of Compliance Counsel *that relate to Metrogate and Avonshire*. (emphasis added)

It is our understanding that Compliance Counsel is not required to produce documents concerning suite metering or smart metering practices of THESL as may relate to other condominiums or entities that are not the subject of the Notice of Intention to Make an Order. Paragraph 1 of the

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Order, however, could be read more broadly as requiring the production of such documents.

We respectfully request that the Board provide clarification if our understanding of the Decision and Order is not correct, in which case we will produce any additional documents that may be required.

Yours truly,


Glenn Zacher

/sc

cc: Patrick Duffy
Maureen Helt
George Vegh, *Counsel to THESL*
Dennis O'Leary, *Counsel for SSMWG*