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October 20, 2009

Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Suite 2700  
Toronto ON M4P 1E4

**Attention: Ms Kirsten Walli**  
**Board Secretary**

Dear Ms. Walli:

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

We are in receipt of Mr. Zacher's letter of October 19, 2009, where he seeks the Board's interpretation of its Order.

The Board's order reads as follows:

"1. Compliance Counsel will within ten days produce all information that may relate to suite metering or smart metering practices of Toronto or Metrogate or Avonshire, prepared, sent, received, or reviewed by or exchanged with any employee of the Board who was involved in the review and/or investigation of Toronto in relation to Toronto's smart metering of condominium units."

Mr. Zacher's letter asks the Board to restrict the scope of that order, presumably so that Compliance Counsel can justify less disclosure and production than included in the Order.

In THESL's submission, this reduction of scope is inappropriate. The Board contrasted the order granted with the request of THESL at paragraph 25 of its reasons as follows:

"This is narrower disclosure than Toronto seeks. Toronto is seeking 'all information that may relate to suite metering or smart metering practices of Toronto or third parties, prepared, sent, received or reviewed by or exchanged with any employee of the Board

who was involved in the review and/or investigation of Toronto in relation to Toronto's smart-metering of condominium units.'"

As a result, the only difference between the Board's order and the information requested in Toronto Hydro's motion is that the Board's order replaced the term "**or third parties**" with "**or Metrogate or Avonshire**." Accordingly, the scope of production is restricted to those specific third parties, as opposed to "all" third parties. The remainder of the requested disclosure was granted by the order and, in THESL's submission, should be provided. Otherwise, Compliance Counsel will remain in possession of material that is relevant to THESL's suite metering or smart metering practices (i.e., the very subject of the prosecution) but not have to disclose it. This would be an inappropriate outcome.

Sincerely,

*Signed in the Original by*

George Vegh

c: Maureen Helt – Ontario Energy Board  
 Dennis O'Leary – Aird & Berlis  
 Guru Kalyanraman – Electricity Distributors Association  
 Glen Zacher – Stikeman Elliott  
 Colin McLorg – Toronto Hydro Electric-System Limited

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