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**BY E-MAIL**

October 23, 2009

To All Parties

RE: EB-2009-0308 Amended Decision and Order

On October 14, 2009, the Board issued a decision and order on a motion for production and certain procedural matters from Toronto Hydro Electric Systems Ltd ("THESL"). That decision required the production of certain documents by the Board staff compliance team ("Compliance staff").

On October 19, 2009, the Board received a letter from counsel for Compliance staff seeking clarification of the Board's order. In this letter, Compliance staff described how it interpreted the order, and asked that the Board clarify if this interpretation was correct.

On October 20, 2009, the Board received a letter from counsel for THESL. The letter indicated that THESL does not agree with Compliance staff's interpretation of the order, and provided rationale for its interpretation of the order.

The dispute surrounds the appropriate interpretation of the order itself, which reads as follows:

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.

In Compliance staff's view, this should be read to require Compliance staff to produce all information related to suite metering or smart metering of: (i) THESL in relation to Avonshire and Metrogate, (ii) Avonshire, and (iii) Metrogate. In THESL's view, the order should be read to require Compliance staff to produce all information related to suite metering or smart metering of: (i) THESL (irrespective of whether or not these documents also relate to Avonshire or Metrogate), (ii) Avonshire, and (iii) Metrogate.

The Board panel has reviewed this correspondence. The decision makes it clear that the order was only intended to require Compliance staff to produce information relating to THESL that also related to Avonshire or Metrogate (in addition to any other information related to Avonshire or Metrogate on their own). Paragraph 26 of the decision is clear in this regard:

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.

The Board has therefore amended the order part of the decision for purposes of clarification and to remove any possible confusion. There is no requirement for an amendment to the substance of the decision itself. The order part of the decision (at page 12) has been amended as follows (amendments shown here in bold):

Compliance Counsel will within ten days produce all information that may relate to suite metering or smart metering practices of Toronto **in relation to Metrogate or Avonshire**, 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.

A copy of the amended decision and order is attached to this letter.

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary