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November 30, 2009

BY COURIER

Ontario Energy Board
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Toronto ON M4P 1E4

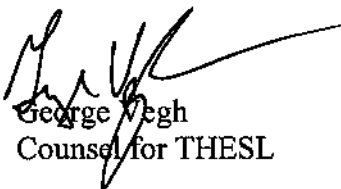
Attention: Ms Kirsten Walli
Board Secretary

Dear Ms. Walli:

**Re: Suite Metering
Board File EB-2009-0308**

Enclosed please find the written interrogatories of Toronto Hydro-Electric System Limited.

Sincerely,



George Vegh
Counsel for THESL

c: Maureen Helt – Ontario Energy Board
Michael Millar – 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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Notice of Intention to Make an Order of Compliance

EB-2009-0308

Interrogatories of Toronto Hydro Electric-System Limited

Interrogatory 1. Reference: Witness Statement of Paul Gasparatto, Exhibit B-1, page 1, Preamble.

The preamble to this exhibit states that Mr. Gasparatto “may be called as witness at the hearing of this matter to give, inter alia, the following evidence.”

(i) Please confirm that this witness statement constitutes the entirety of Mr. Gasparatto’s evidence in chief in this proceeding. If not, please provide the entirety of Mr. Gasparatto’s evidence in chief in this proceeding.

Interrogatory 2. Reference: Witness Statement of Paul Gasparatto, Exhibit B-1, page 1, Paragraph 3.

The evidence states that the complaints from Avonshire and Metrogate were received by compliance staff on or about April 30 and refers to Exhibit C-14. C-14 is a letter from counsel for the Smart Sub-Metering Working Group (the “Working Group”) to the OEB dated April 29, 2009.

(i) please advise whether Avonshire and Metrogate contacted the OEB directly with respect to this complaint or whether this complaint was made solely through counsel for the Working Group.

(ii) please advise whether the OEB compliance staff considered counsel for the Working Group to also be acting as counsel for Avonshire and Metrogate. For example, did compliance staff believe that counsel for the Working Group had the authority to speak on behalf of Avonshire and Metrogate?

(iii) please provide copies of all communications between OEB compliance staff and Avonshire and Metrogate.

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(iv) please provide copies of all materials used in or resulting from investigations of the allegations of Avonshire and Metrogate that have not yet been produced.

(v) the letter at Exhibit C-14 includes a brief of materials that was apparently provided by the Working Group to the Market Surveillance Panel (the "MSP") of the OEB with respect to the Avonshire and Metrogate complaints. Please request the MSP to provide all information that it has in its possession respect these complaints.

(vi) approximately a week before receiving the letter at Exhibit C-14, counsel for the Working Group provided Ms Helt with copies of some of the materials included in C-14 (See Materials Provided by Compliance Counsel in response to the Board's Order dated October 14, 2009 (the "Disclosed Documents"), Tab 7). Specifically, Counsel for the Working Group argues in its communications to Ms Helt that THESL's position with respect to Avonshire and Metrogate is "clearly wrong." Counsel for the Working Group also argues that THESL's position "will eliminate the competitive smart sub-metering industry in Ontario." He also states that he want to "discuss the immediate steps that can be taken to insure [*sic*] that these projects are provided with sufficient power to allow construction to proceed."

(a) please provide all materials (including research memoranda and analysis) that compliance staff prepared or relied upon in investigating the impact of THESL's position on the competitive smart sub-metering industry in Ontario.

(b) please advise of the substance of all communications between compliance staff and counsel for the Working Group that addressed the "immediate next steps" referred to in this correspondence.

(c) please advise the steps taken by compliance staff to determine whether the Avonshire and Metrogate projects were provided with electrical power to allow construction to proceed.

Interrogatory 3. Reference: Witness Statement of Paul Gasparatto, Exhibit B-1, page 1, Paragraph 4

The evidence states that, following the receipt of the Avonshire and Metrogate complaints, Mr. Gasparatto wrote a letter to THESL advising that the Board had received the complaints.

(i) please confirm that the complaints and information referred to in this paragraph all come from the letters from Avonshire and Metrogate to THESL dated March 6 and March 10, 2009. If there is additional material or information from Avonshire, Metrogate or the Working Group that informed the information in this paragraph, please advise what it is and produce same.

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(ii) With respect to the Avonshire and Metrogate letters, please advise whether the compliance staff reviewed Avonshire's and Metrogate's initial requests for offers to connect.

(iii) the Avonshire and Metrogate letters state that, "It has come to our attention that contrary to the advice received...[Avonshire and Metrogate] does have the right under Subsection 53.17 of the Electricity Act, 1998 to choose to have this project smart sub-metered by a licensed sub-metering company." Please advise whether that advice came from compliance staff.

(iv) in either event, please advise whether compliance staff agrees with that interpretation of s. 53.17 and, if so, please advise what provision of s. 53.17 provides that choice.

Interrogatory 4. Reference: Witness Statement of Paul Gasparatto, Exhibit B-1, page 1, Paragraphs 7 and 8.

The evidence states that Mr. Gasparatto became aware that section 2.3.7.1.1 of THESL's conditions of service "inappropriately required new condominium buildings to be 'suite metered' by THESL and that he brought this to the attention of Mr. Hewson.

(i) please provide all correspondence between Mr. Gasparatto and Mr. Hewson (including e-mails, memoranda and transcribed voice mail messages) where the appropriateness of this provision of THESL's conditions of service was addressed.

(ii) please advise whether Mr. Gasparatto shared this position with anyone else either inside the Board or externally, advise with whom the information was shared, and provide copies of those communications.

Interrogatory 5. Reference: Disclosed Documents, Tab 18; "Briefing Note" dated July 15, 2009.

(i) Please confirm that Mr. Gasparatto was the author of this briefing note;

(ii) please advise whether this briefing note (or a subsequent version thereof) was provided to anyone outside of compliance staff and, if so, please provide all copies of subsequent versions of this briefing note and the agenda for the meeting where this Note was presented and/or discussed, the identity of all of the individuals to whom this Note was circulated, the identity of all of the individuals who attended the meeting where this Note was presented or discussed, the minutes of any meeting where this Note was presented or discussed, and the notes of all the individuals who attended this meeting;

(iii) this briefing note states that “THESL’s idea that there will be renewable generation projects on an individual condominium unit level appears to be unrealistic”. Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether it was realistic for there to be renewable generation projects on an individual condominium unit level. Please produce all materials that were consulted in carrying out this research. Please also provide the same information and materials with respect to renewable generation projects for the common areas of a condominium unit.

(iv) the briefing note also states that “conservation is driven by customer choice regardless of who bills them for electricity.” Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether and how conservation may be impacted by sub-metering versus suite metering. Please produce all materials that were consulted in carrying out this research.

(v) the briefing note also refers to THESL’s statement respecting the relationship between suite metering and distributors’ obligations respecting the smart grid. Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether and how facilitating the smart grid may be impacted by sub-metering versus suite metering. Please produce all materials that were consulted in carrying out this research.

Interrogatory 6 Reference: Witness Statement of Brian Hewson, Exhibit B-2, page 1, Preamble.

The preamble to this exhibit states that Mr. Hewson “may be called as witness at the hearing of this matter to give, inter alia, the following evidence.”

(i) Please confirm that this witness statement constitutes the entirety of Mr. Hewson’s evidence in chief in this proceeding. If not, please provide the entirety of Mr. Hewson’s evidence in chief in this proceeding.

Interrogatory 7 Reference: Witness Statement of Brian Hewson, Exhibit B-2, page 1, Paragraph 1.

The evidence states that Mr. Hewson was the Board’s Chief Compliance Officer during the period September 13, 2004 and July 1, 2009.

(i) please confirm whether, during the period where Mr. Hewson was Chief Compliance Officer, his responsibilities included determining whether exempt distributors were compliant with the provisions of Regulation 161/99, including section 4.0.1 thereof;

(ii) please confirm that, during this period, Mr. Hewson or his staff did conduct reviews of exempt distributors to confirm that they were compliant with section 4.0.1;

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(iii) please confirm that, in determining whether distributors were exempted, the criteria for exemption included a requirement that a distributor distributes the electricity at a cost that recovers, in total, only the amount it is billed to the exempt distributor by the licenced distributor;

(iv) please confirm that if a condominium developer or a smart meterer sought to earn a return on delivering electricity it would not qualify for an exemption under section 4.0.1;

(v) please confirm that if a condominium developer received a royalty payment from a sub-meterer in exchange for allowing a sub-meterer to sub-meter the condominium units, that developer would not qualify for an exemption under section 4.0.1.

(vi) please advise whether Mr. Hewson or his staff have reviewed the compliance of condominium developers or their agents and contractors with the exemption requirements of section 4.0.1 and advise of the results of such a review.

Interrogatory 8 Reference: Witness Statement of Giuseppe Bello, Exhibit B-3, page 1, Preamble.

The preamble to this exhibit states that Mr. Bello “may be called as witness at the hearing of this matter to give, inter alia, the following evidence.”

(i) Please confirm that this witness statement constitutes the entirety of Mr. Bello’s evidence in chief in this proceeding. If not, please provide the entirety of Mr. Bello’s evidence in chief in this proceeding.

Interrogatory 9 Reference: Witness Statement of Giuseppe Bello, Exhibit B-3, page 1, Paragraph 2.

The evidence states that THESL made an offer to connect that contemplated THESL’s installation of smart meters.

(i) Please confirm that Avonshire’s initial request for an offer to connect contemplated THESL’s installation of smart meters.

(ii) Please confirm Avonshire’s understanding that THESL would install smart meters at no charge to Avonshire.

Interrogatory 10 Reference: Witness Statement of Giuseppe Bello, Exhibit B-3, page 1, Paragraph 3.

The evidence states that, on March 6, 2009, Avonshire requested a revised offer to connect that contemplated the installation of a bulk meter by THESL and the project being smart sub-metered by a licenced sub-metering company.

- (i) Please confirm that Exhibit D-2 is the written copy of that request;
- (ii) Exhibit D-2 states that, "it has come to our attention that contrary to the advice received, Residences of Avonshire Inc. does have the right under Subsection 53.17 of the *Electricity Act* to choose to have this project sub-metered by a licensed sub-metering company." Please advise how that was brought to your attention and, specifically, who brought that to your attention.
- (iii) please specify how subsection 53.17 of the *Electricity Act* provides the right alleged in the letter.
- (iv) please advise whether Avonshire received an offer by a sub-meterer to sub-meter the project.
- (v) please advise how Avonshire would be financially compensated by the sub-meterer for providing the right to sub-meter the project. If Avonshire is of the opinion that the specific amount of compensation is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.
- (vi) please advise how the sub-meterer would be financially compensated for by Avonshire or by unit owners for providing the sub-metering service. If Avonshire is of the opinion that the specific amount of compensation is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.
- (vii) please provide all contracts, agreements and other correspondence (including offers) with sub-meterers with respect to the Avonshire project. If Avonshire is of the opinion that the specific amount of compensation in these materials is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.
- (viii) Please advise whether Avonshire would be agreeable to confirm in writing that, if the Avonshire Project is offered a bulk-metering configuration as requested:
 - 1. Avonshire will ensure that all suites, commercial units, and common areas are individually metered by a licenced sub-meterer;
 - 2. Avonshire has not received and will not receive any royalty or other type of payment, including payment in kind, from a smart sub-meterer in exchange for Avonshire's consent for the sub-meterer to provide smart sub-metering services;
 - 3. The price charged for electricity by Avonshire or its sub-meterer to all sub-metered accounts will be no greater than that required to:

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- a. Exactly recover the costs charged to Avonshire by THESL through the bulk meter in proportion to each metered unit's consumption; and
 - b. Recover the reasonable costs required for the installation, administration, and maintenance of the sub-metering system.
4. Neither Avonshire nor its licenced sub-meterer will resell or charge any mark-up or profit on delivery services provided to Avonshire by THESL, and will only allocate those costs charged to Avonshire by THESL in proportion to each account's consumption.

If Avonshire is not prepared to provide that confirmation, please advise why not.

Interrogatory 11 Reference: Materials Provided by Compliance Counsel on November 27, 2009.

On November 27, 2009, Compliance Counsel provided counsel with THESL some additional materials, including an e-mail from Giuseppe Bello to Alex Foundos dated August 12, 2009 with copies to Robert Tomei, Leona Savoie, Dave Hamilton and Mark Gallow re: Avonshire A&B – OTC for Toronto Hydro.

- (i) please advise who are all the people to whom this e-mail was sent or copied.
- (ii) please provide all other material in Avonshire's possession or control (including correspondence, memoranda and e-mails) that address Avonshire's OTC request to THESL.

Interrogatory 12 Reference: Witness Statement of Lou Tersigni, Exhibit B-3, page 1, Preamble.

The preamble to this exhibit states that Mr. Tersigni "may be called as witness at the hearing of this matter to give, inter alia, the following evidence."

- (i) Please confirm that this witness statement constitutes the entirety of Mr. Tersigni's evidence in chief in this proceeding. If not, please provide the entirety of Mr. Tersigni's evidence in chief in this proceeding.

Interrogatory 13 Reference: Witness Statement of Lou Tersigni, Exhibit B-3, page 1, Paragraph 2.

The evidence states that THESL made an offer to connect that contemplated THESL's installation of smart meters.

(i) Please confirm that Metrogate's initial request for an offer to connect contemplated THESL's installation of smart meters.

(ii) Please confirm Metrogate's understanding that THESL would install smart meters at no charge to Metrogate.

Interrogatory 14 Reference: Witness Statement of Lou Tersigni, Exhibit B-3, page 1, Paragraph 3.

The evidence states that, on March 10, 2009, Metrogate requested a revised offer to connect that contemplated the installation of a bulk meter by THESL and the project being smart sub-metered by a licenced sub-metering company.

(i) Please confirm that Exhibit D-2 is the written copy of that request.

(ii) Exhibit D-2 states that, "it has come to our attention that contrary to the advice received, Metrogate Inc. does have the right under Subsection 53.17 of the *Electricity Act* to choose to have this project sub-metered by a licensed sub-metering company." Please advise how that was brought to your attention and, specifically, who brought that to your attention.

(iii) please specify how subsection 53.17 of the *Electricity Act* provides the right alleged in the letter.

(iv) please advise whether Metrogate received an offer by a sub-meterer to sub-meter the project.

(v) please advise how Metrogate would be financially compensated by the sub-meterer for providing the right to sub-meter the project. If Metrogate is of the opinion that the specific amount of compensation is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.

(vi) please advise how the sub-meterer would be financially compensated for by Metrogate or by unit owners for providing the sub-metering service. If Metrogate is of the opinion that the specific amount of compensation is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.

(vii) please provide all contracts, agreements and other correspondence (including offers) with sub-meterers with respect to Metrogate. If Metrogate is of the opinion that the specific amount of compensation in these materials is commercially confidential information, please file this information on a confidential basis with the Ontario Energy Board and a public version with the specific dollar amounts redacted.

Interrogatory 15 Reference: Materials Provided by Compliance Counsel on November 27, 2009.

On November 27, 2009, Compliance Counsel provided counsel with THESL some additional materials, including some correspondence from Metrogate to THESL. Please provide all other material in Metrogate's possession or control (including correspondence, memoranda and e-mails) that address Metrogate's OTC request to THESL.