

**NOTICE OF INTENTION TO MAKE AN ORDER OF COMPLIANCE**

**EB-2009-0308**

**COMPLIANCE COUNSEL'S RESPONSES TO INTERROGATORIES OF  
TORONTO HYDRO ELECTRIC-SYSTEM LIMITED**

December 7, 2009

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## COMPLIANCE COUNSEL INTERROGATORY 1

### QUESTION

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.

### RESPONSE

Mr. Gasparatto's witness statement summarizes the substance of the evidence that Mr. Gasparatto is being called to give and is expected to give in his evidence in chief.

## COMPLIANCE COUNSEL INTERROGATORY 2

### QUESTION

Reference: Witness Statement of Paul Gasparatto, Exhibit 8-1, 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 DEB 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.

(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.

#### RESPONSE

(i) The complaints from Avonshire and Metrogate were provided to the Board by counsel for the Working Group.

(ii) Mr. Gasparatto believed that counsel for the Working Group had the authority to provide the complaints from Avonshire and Metrogate to the Board. He did not inquire whether counsel for the Working Group was acting as counsel for Avonshire and Metrogate.

(iii) Mr. Gasparatto had telephone conversations with Messrs Bello and Tersigni, but has no record of those conversations. All written communications between Compliance staff and Avonshire and Metrogate were provided previously as required by the Board's Decision and Order dated October 14, 2009.

(iv) All materials used in or resulting from investigations of the allegations of Avonshire and Metrogate that are not subject to privilege were provided previously as required by the Board's Decision and Order dated October 14, 2009.

(v) As Compliance Counsel advised in its letter dated November 3, 2009 (attached to these responses), the Working Group's complaint was addressed to the MSP. Upon receipt of the complaint, the Board determined that the complaint was not related to the wholesale electricity market and it was therefore redirected to the Board's Compliance staff. The MSP has no information in its possession with respect to these complaints.

(vi)(a) Compliance Counsel has provided all materials related to the investigation of the Avonshire and Metrogate complaints that were not subject to privilege as required by the Board's Decision and Order dated October 14, 2009

(vi)(b) Compliance staff had no communications with counsel for the Working Group in respect of the Avonshire or Metrogate complaints other than those previously disclosed in response to the Board's Decision and Order dated October 14, 2009.

(vi)(c) Mr. Gasparatto relied on the information contained in THESL's letter of May 20, 2009, which confirmed that THESL provides a bulk meter to a building under construction. Mr. Gasparatto may also have confirmed that the buildings were being provided with power for construction in telephone conversations with Messrs Bello and Tersigni, but has no record of those conversations.

### COMPLIANCE COUNSEL INTERROGATORY 3

#### QUESTION

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.

(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.

#### RESPONSE

(i) The allegations related to Avonshire and Metrogate in Mr. Gasparatto's letter of May 9, 2009 are based on the materials provided to Compliance staff by counsel for the Working Group on April 29, 2009 (Compliance Counsel Pre-Filed Evidence, Exhibit C-14).

(ii) Mr. Gasparatto does not have possession of and did not review the initial requests for offers to connect made by Avonshire and Metrogate.

(iii) This advice was not provided by Mr. Gasparatto or any other member of the Board's staff.

(iv) The interpretation of s. 53.17 is a legal question for determination by the Board. Compliance staff's position has been set out in the letters issued to THESL by Brian Hewson on October 22, 2008 and January 29, 2009.

#### COMPLIANCE COUNSEL INTERROGATORY 4

##### QUESTION

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.

##### RESPONSE

- (i) This request for documents is outside the scope of the Board's Decision and Order dated October 14, 2009. In any event, without waiving this objection, there are no e-mails, memoranda and transcribed voice mail messages between Mr. Gasparatto and Mr. Hewson discussing this matter.
- (ii) This question is not relevant to the matters in issue in this proceeding. However, without waiving this objection, we can advise that: Mr. Gasparatto verbally advised other members of the Board's Compliance staff and legal counsel of this position. This position was communicated verbally to Messrs Bello and Tersigni by Mr. Gasparatto and to THESL by way of Mr. Hewson's letters of October 22, 2008 and January 29, 2009. There was no other external communication of this position.

## COMPLIANCE COUNSEL INTERROGATORY 5

### QUESTION

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.

### RESPONSE

- (i) Mr. Gasparatto is the author of the briefing note.
- (ii) As Compliance Counsel advised in its letter of November 3, 2009, this Briefing Note was not communicated to anyone outside of Compliance staff and legal counsel. There were no subsequent versions of the Briefing Note. The Briefing Note was not presented at any meetings and there are no agendas, notes or minutes that relate to this document.
- (iii) This statement was based on Mr. Gasparatto's general knowledge and belief. He did not



conduct specific research with respect to this statement.

(iv) This statement was based on Mr. Gasparatto's general knowledge and belief. He did not conduct specific research with respect to this statement.

(v) This statement was based on Mr. Gasparatto's general knowledge and belief. He did not conduct specific research with respect to this statement.

## COMPLIANCE COUNSEL INTERROGATORY 6

### QUESTION

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.

### RESPONSE

Mr. Hewson's witness statement summarizes the substance of the evidence that Mr. Hewson is being called to give and is expected to give in his evidence in chief.

## COMPLIANCE COUNSEL INTERROGATORY 7

### QUESTION

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.

(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.

### RESPONSE

(i) This question is not relevant to the matters in issue in this proceeding. However, without waiving this objection, we can advise that: Mr. Hewson's responsibilities as Chief Compliance Officer included issues of compliance with respect to exempt distributors.

(ii) This question is not relevant to the matters in issue in this proceeding. However, without waiving this objection, we can advise that: the Board did receive some complaints about exempt distributors and investigated those complaints to determine whether the exempt distributors were compliant with section 4.0.1.

(iii) This question is not relevant to the matters in issue in this proceeding. This is also a matter of legal interpretation. However, without waiving these objections, we can advise that: To date, it has not been addressed or adjudicated by the Board in the context of a condominium developer or condominium corporation.

(iv) This question is not relevant to the matters in issue in this proceeding. This is also a matter of legal interpretation. However, without waiving these objections, we can advise that: To date, it has not been addressed or adjudicated by the Board.

(v) This question is not relevant to the matters in issue in this proceeding. This is also a matter of legal interpretation. However, without waiving these objections, we can advise that: To date, it has not been addressed or adjudicated by the Board.

(vi) This question is not relevant to the matters in issue in this proceeding. However, without waiving these objections, we can advise that: Compliance staff has not received any complaints with respect to the smart sub-metering practices of Avonshire or Metrogate and has not undertaken a review of the practices of Avonshire or Metrogate. Complaints regarding other condominium developers were reviewed and found to have no merit and were not brought forward for adjudication.

## COMPLIANCE COUNSEL INTERROGATORY 8

### QUESTION

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.

### RESPONSE

Mr. Bello's witness statement summarizes the substance of the evidence that Mr. Bello is being called to give and is expected to give in his evidence in chief.

## COMPLIANCE COUNSEL INTERROGATORY 9

### QUESTION

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.

### RESPONSE

(i) Mr. Bello does not know whether Avonshire's initial request for an offer to connect contemplated the installation of smart meters by THESL. The initial request to connect was handled by Nexgen Utilities ("Nexgen") and Nexgen has been unable to locate the initial request for an offer to connect. A copy of the initial request should be in the possession of THESL.

(ii) This is not clear to Mr. Bello based on THESL's offer to connect dated January 29, 2009 (Compliance Counsel Prefiled Evidence, Exhibit D-1). Schedule B (Expansion Work and Fees) to the offer includes a "Basic Connection Charge" that is applied on a per meter basis. Schedule B applies that charge to 3 meters for the project and each of the sub-meters for the 41 townhouse units in the project.

## COMPLIANCE COUNSEL INTERROGATORY 10

### QUESTION

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:
  - 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.

RESPONSE

- (i) Exhibit D-2 is a copy of the written request.
- (ii) This advice was obtained from legal counsel.
- (iii) This is a matter of legal interpretation to be determined by the Board.
- (iv) This question is irrelevant to the matters in issue in this proceeding.
- (v) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.
- (vi) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.
- (vii) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.
- (viii) This is not a proper interrogatory question. It is also irrelevant to the issues in this proceeding whether Avonshire would be agreeable to the conditions proposed by THESL.



## COMPLIANCE COUNSEL INTERROGATORY 11

### QUESTION

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.

### RESPONSE

- (i) The people listed on the email are:
  - Alex Foundos – Lawyer, Del Zotto, Zorzi LLP
  - Robert Tomei – Project Director for the Avonshire project
  - Leona Savoie – Planner for the Avonshire project
  - David Hamilton – President, Provident Energy Management
  - Mark Gallow – Representative of K&G Group (partner in the Avonshire development)
- (ii) This question seeks information that was refused by the Board in its Decision and Order dated October 14, 2009.

## COMPLIANCE COUNSEL INTERROGATORY 12

### QUESTION

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.

### RESPONSE

Mr. Tersigni's witness statement summarizes the substance of the evidence that Mr. Tersigni is being called to give and is expected to give in his evidence in chief.

### COMPLIANCE COUNSEL INTERROGATORY 13

#### QUESTION

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.

#### RESPONSE

(i) Mr. Tersigni does not know whether Metrogate's initial request for an offer to connect contemplated the installation of smart meters by THESL. The initial request to connect was handled by Nexgen and Nexgen has been unable to locate the initial request for an offer to connect. A copy of the initial request should be in the possession of THESL.

(ii) This is not clear to Mr. Tersigni based on THESL's offer to connect dated February 2, 2009 (Compliance Counsel Prefiled Evidence, Exhibit E-1). Schedule B (Expansion Work and Fees) to the offer includes a "Basic Connection Charge" that is applied on a per meter basis. Schedule B applies that charge to 11 meters for the project and each of the sub-meters for the 74 townhouse units in the project.

## COMPLIANCE COUNSEL INTERROGATORY 14

### QUESTION

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.

### RESPONSE

- (i) Exhibit D-2 is not a copy of the written request for Metrogate. The written request for Metrogate is included in Compliance Counsel Pre-filed Evidence at Exhibit E-2.
- (ii) The advice in the letter at Exhibit E-2 was obtained from legal counsel and is subject to

solicitor/client privilege.

- (iii) This is a matter of legal interpretation to be determined by the Board.
- (iv) This question is irrelevant to the matters in issue and outside the scope of this proceeding.
- (v) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.
- (vi) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.
- (vii) This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009, THESL has failed to meet the burden of demonstrating that this information is clearly relevant.

## **COMPLIANCE COUNSEL INTERROGATORY 15**

### **QUESTION**

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.

### **RESPONSE**

This question seeks information that was refused by the Board in its Decision and Order dated October 14, 2009.

# **STIKEMAN ELLIOTT**

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**BY EMAIL**

November 3, 2009  
File No. 100519.1011

Mr. George Vegh  
McCarthy Tétrault LLP  
Barristers and Solicitors  
Suite 5300, TD Bank Tower  
Toronto Dominion Centre  
Toronto ON M5K 1E6

Dear Mr. Vegh:

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

We acknowledge receipt of your letter dated October 30, 2009.

Compliance Counsel has produced all documents required by the Board's decision and order dated October 14, 2009 and we object to your suggestion that we have withheld documents.

Your letter seeks to obtain documents that the Board ruled are not required to be disclosed. The Board's decision is clear that the Notice of Intention to Make an Order "limits the questionable conduct to actions of Toronto with respect to Metrogate and Avonshire" and "accordingly, any production of documents should be limited to documents in the possession of Compliance Counsel that relate to Metrogate and Avonshire". This point was reinforced by the clarification issued by the Board on October 23, 2009 in which the Board stated that: "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)".

As is clear from the documents produced, the Board received the complaints of Avonshire and Metrogate on April 24, 2009 and those

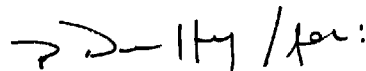
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complaints relate to THESL's refusal to connect those projects as of April 22, 2009. Compliance Counsel has produced all relevant (and non-privileged) documents that relate to these two complaints. Specifically, there are no documents included in the earlier SSMWG complaint concerning the suite metering or smart metering practices of THESL with respect to Metrogate or Avonshire that relate to the allegations made in the Notice of Intention to Make an Order.

With respect to the Briefing Note of July 15, 2009 that is referenced in your request number 5, this document was prepared by Paul Gasparatto and it was circulated to other Compliance staff and legal counsel. There are no agendas, notes or minutes that relate to this document.

During our call on November 2, 2009, you asked for clarification with regards to the reference in Tab 9 of the Produced Documents to a complaint by the SSMWG to the Market Surveillance Panel. This complaint, as noted above, is not relevant. That said, we can advise that upon receipt of the complaint, it was determined that the complaint was not related to the wholesale electricity market and it was therefore redirected to the Board's Compliance staff.

Yours truly,



Glenn Zacher

/mas

cc: Michael Miller  
Patrick Duffy  
Maureen Helt