

IN THE MATTER OF the *Ontario Energy Board Act, 1998* S.O. 1998, c. 15 (Schedule B) (the “OEB Act”);

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited

MATERIALS FOR MOTION ON INTERROGATORY RESPONSES

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IN THE MATTER OF the *Ontario Energy Board Act, 1998* S.O. 1998, c. 15 (Schedule B) (the “OEB Act”);

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited

NOTICE OF MOTION

The Moving Party, Toronto Hydro Electric System Limited (“**THESL**”) will bring a motion to the Board for an order directing the Compliance Team to respond to interrogatories 10 (v) to 10 (viii) (the “Avonshire Interrogatories”), and 14 (v) to 14 (vii) (the “Metrogate Interrogatories”). In order to maintain the current schedule for proceedings to the extent possible, THESL proposes that this motion be held through a written hearing based on the responses to the interrogatory responses filed by the Compliance Team and on the grounds set out below. Given that Rule 29.02 of the Board’s Rules of Practice and Procedure requires a party who refuses to provide a response to an interrogatory to set out the grounds for refusal, the Compliance Team has already had its opportunity to state its position on these issues within the interrogatory responses provided.

Specifically, THESL requests the following orders:

- (1) directing the Compliance Team to respond to interrogatories 10 (v) to 10 (viii), and 14 (v) to 14 (vii); and
- (2) if the order is granted, an order granting THESL leave to file supplementary evidence to address the information provided by those interrogatory responses within 7 days of receipt of the materials.

The Grounds for this order are as follows:

I. Generally

- (1) The Avonshire and Metrogate Interrogatories seek information on the way in which :
 - a. Avonshire and Metrogate are compensated by sub-meterers for granting the right to sub-meter condominium units; and
 - b. The way in which sub-meterers are compensated by Avonshire, Metrogate or unit owners.
- (2) The Compliance Team's refusal to answer these interrogatories are all supported by the following statement:

"This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009 [the "Pre-Trial Disclosure Order"], THESL has failed to meet the burden of demonstrating that this information is clearly relevant."

- (3) In response, THESL submits that:
 - a. The Board's Rules of Practice do not treat commercial sensitivity as a grounds for refusing to produce materials; rather, relevant materials are to be produced and commercial sensitivity is a grounds for arguing that materials should be kept off the public record; and
 - b. The Pre-Trial Disclosure Order is, in accordance with its own terms, and under the Rules of Practice and Procedure, not relevant to issue of whether a witness must answer Interrogatories on its written evidence.

These submissions are addressed in greater detail below.

The Relevance of the Information Requested

- (4) The main allegation against THESL in the Notice of Intentions to Make an Order for Compliance (the "Notice") is that THESL's refusal to connect Avonshire and Metrogate on the terms requested by them is contrary to, among other things, s. 3.1.1 of the Distribution

System Code (“DSC”). Among other defences to the allegations in the Notice, THESL relies on s. 3.1.1 (a) of the DSC, which provides that, “a distributor may consider the following reasons to refuse to connect, or continue to connect, a customer: (a) contravention of the laws of Canada or the Province of Ontario including the Electrical Safety Code.” All of the Avonshire and Metrogate Interrogatories are relevant to the issue of whether THESL’s offers to connect and connection policies can be supported on those grounds.

Notice, paragraph 2.

DSC, s. 3.1.1

(5). According to evidence filed by the Compliance Staff, both Avonshire’s and Metrogate’s initial “request for an offer to connect in respect of the above noted building did not contemplate this building being suite metered by any entity other and Toronto Hydro and the offer to connect received contemplates Toronto Hydro installing individual suite meters.” Subsequent to this initial request, both Avonshire and Metrogate requested THESL to provide a revised offer to connect that contemplated that they would be sub-metered by third party sub-meterers on the grounds that they were entitled to use a third party sub-meter provider under s. 53.17 of the *Electricity Act, 1998*.

Letter from Avonshire to THESL, March 6, 2009.

THESL Offer to Connect Avonshire, January 29, 2009

Letter from Metrogate to THESL, March 10, 2009

THESL Offer to Connect Metrogate, February 2, 2009.

(5) THESL’s response to these requests indicated that THESL disagreed with their interpretation of s. 53.17 of the *Electricity Act*. These letters confirmed Avonshire’s and Metrogate’s

understanding that, “for projects commenced after February 28, 2008 (‘new condominiums’), Toronto Hydro will provide smart metering as defined by the OEB (i.e., individual unit or suite metering compliant with smart metering regulations) for all separate units and for common areas (‘individually metered units’) at no charge to the developer”

THESL letter to Avonshire, April 22, 2009.

THESL Letter to Metrogate, April 22, 2009.

(6) Subsequently, on November 29, 2009, THESL delivered a letter to Avonshire which indicated the following:

- i. That upon further review, it was determined that the plans Avonshire provided to THESL in support of its request for an offer to connect were dated January 22, 2008, and thus prior to the effective date of THESL’s policy that all ‘new’ condominium developments may only be suite metered by THESL (i.e., February 28, 2008);
- ii. That THESL was prepared to provide Avonshire an amended offer to connect that would allow it to be sub-metered by a licenced sub-meterer provided that Avonshire met technical and legal requirements;
- iii. That one of the legal requirements that Avonshire would be required to demonstrate was its compliance with OEB licensing and exemption requirements as set out in Regulation 161/99 and OEB decisions, namely, that neither it nor its agents or contractors will charge mark-ups on distribution services.

Affidavit of Kristyn S. Annis, dated December 8, 2009.

(7) Compliance Counsel was advised of this offer on the day it was sent to Avonshire.

Compliance Counsel subsequently advised counsel for THESL that, in the Compliance Team’s view, this offer to Avonshire did not comply with the enforceable provisions identified in the Notice.

Affidavit of Kristyn S. Annis, dated December 8, 2009.

- (8) THESL's position in this proceeding throughout has been that its connection policies comply with all enforceable provisions and that, in addition, it is justified under s. 3.1.1 (a) as an effective means of ensuring compliance OEB licencing and exemption requirements that prohibit unauthorized mark-ups on distribution services. The Avonshire and Metrogate Interrogatories (which are identical apart from the addition of s.(iv) of the Avonshire Interrogatories to address the revised offer to connect) are all relevant to this issue. They are as follows:

Avonshire (IR 10)

(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.

Metrogate (14)

(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.

Compliance Counsel's Grounds for Refusal

- (9) Compliance Counsel has refused to respond to the Avonshire and Metrogate Interrogatories on the following grounds:

“This question requests sensitive commercial information from a third party. As the Board noted in its Decision and Order of October 14, 2009 [the “Pre-Trial Disclosure Order”], THESL has failed to meet the burden of demonstrating that this information is clearly relevant.”

- (10) Each of these grounds will be addressed in turn.

a. Sensitive Commercial Information

- (11) Identifying information as commercially sensitive is not grounds for refusal to answer an interrogatory. It is grounds for requesting that commercially sensitive information be redacted from the public record. The Board has addressed this distinction on several occasions. THESL is prepared to sign a confidentiality undertaking in accordance with the OEB’s Practice Direction on Confidential Filings.

a. The Pre-Trial Disclosure Order

- (12) The Pre-Trial Disclosure Order was made in a motion brought by THESL under s. 21 of the *OEB Act* and ss. 5.4 and 12 of the *Statutory Powers Procedure Act*. The Board described its approach to the request as follows:¹

“There is no question that the Board has jurisdictions to order third parties to produce documents [citing the above noted provisions] but this is an unusual step to be taken only when the documents identified are clearly relevant and no prejudice or undue burden on the third parties results from the disclosure....

Toronto has not identified specific documents. Rather, they request *all* seven members of the Working Group and each of the “complainants” to produce *all* proposals and *all* contracts with *all* condominium developers in the City of Toronto...[emphasis in the original]

Moreover, this is not a Stinchcombe case and Toronto’s conduct is being questioned regarding only two condominium units, Metrogate and Avonshire, not *all* condominium units in Toronto.”[Emphasis in the original]

¹ Pre-Trial Disclosure Decision, p. 10.

- (13) The Pre-Trial Disclosure Order thus emphasized two points: First, in the context of an order for pre-trial production of evidence by third parties, the Board was exercising an “unusual step” that required a relatively high threshold of relevance; and second, that the scope of requested disclosure was overly broad. Neither of these factors is present here.
- (14) First, this motion is not requesting the Board to make an “unusual” order for the third party production of evidence. Rather, it is a standard request for a response to an interrogatory filed with respect to evidence filed by a witness. As the Board observed in Procedural Order #4 establishing this interrogatory process, “The Board has reviewed the submission and has determined that it is appropriate to establish a procedure for the filing of evidence and interrogatories *in accordance with the Board’s standard practice for oral proceedings.*”
- (15) The standard practice when a party files pre-filed evidence is that its witness must provide responses to interrogatories that may be relevant to an issue in the proceeding. Relevance is not determined by the party on whose behalf the evidence is filed. Rather, it is determined by the issues that are joined *between* the parties. In this case, an issue is whether THESL’s treatment of the connection requests of Avonshire and Metrogate is appropriate in light of s. 3.1.1 (a) of the DSC. Both the Avonshire and Metrogate Interrogatories go precisely to that issue.
- (16) With respect to the Avonshire Interrogatories in particular, the very offer to connect at issue in these proceedings contains a condition that Avonshire comply with the OEB’s licensing and exemption requirements. Avonshire Interrogatory (viii) asks whether Avonshire is prepared to agree with that condition and, if not, why not. Compliance

Counsel's response to this interrogatory is that this question is not proper and not relevant. However, despite the requirement in Rule 29 of the Board's Rules of Practice to provide "specific reasons in support of that contention" gives no reasons at all for either of these assertions.

- (17) It is submitted that the relevance is obvious. If Avonshire is agreeable, then THESL will provide the revised offer to connect in accordance with its November 29, 2009 letter. If Avonshire is not agreeable, then the sole issue with respect to Avonshire is reduced to whether requiring these conditions is appropriate in light of the enforceable provisions. This is thus a relevant and perhaps central issue in the allegations respecting Avonshire that is not discussed or contemplated in the Pre-Trial Disclosure Order.
- (18) Second, the scope of the request is much more restricted in this motion than in the motion leading to the Pre-Trial Disclosure Order. It is not seeking broad disclosure premised on the *Stinchcombe* standard for disclosure. Rather, it is aimed only at Avonshire and Metrogate, both of whom have made allegations against THESL and have filed witness statements. The Board's determination in the Pre-Trial Disclosure Order that THESL was not entitled to productions from "all seven members of the Working Group and each of the "complainants" to produce *all* proposals and *all* contracts with *all* condominium developers in the City of Toronto" does not mean that THESL should not be entitled to documentation from two witness to produce *their* contracts with *their* sub-meterers.

Impact of Production on Schedule of Proceedings

- (19) As indicated, THESL requests a written hearing based on the submissions as filed so that it may file its evidence in accordance with the hearing schedule in Procedural Order #4. It

may be that, if additional materials are disclosed, THESL may be required or choose to file supplemental evidence. If so, THESL requests leave to file supplementary evidence to address the information provided by that evidence within 7 days of receipt of the materials.

All of Which is Respectfully Submitted

Date: December 8, 2009

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Materials to be used at Hearing of the Motion

1. OEB Disclosure Decision, October 23, 2009 (as revised).
2. Compliance Counsel Responses to Interrogatories 10 and 14, dated December 7, 2009.
3. Letter from Avonshire to THESL, March 6, 2009 (from Compliance Counsel Pre-Filed Evidence, Tab C-14).
4. THESL Offer to Connect Avonshire, January 29, 2009 (from Compliance Counsel Pre-Filed Evidence, Tab C-14).
5. Letter from Metrogate to THESL, March 10, 2009 (from Compliance Counsel Pre-Filed Evidence, Tab C-14)
6. THESL Offer to Connect Metrogate, February 2, 2009 (from Compliance Counsel Pre-Filed Evidence, Tab C-14).
7. Affidavit of Kristyn S. Annis, dated December 8, 2009.

TAB 1

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2009-0308

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF a Notice of Intention to Make an
Order for Compliance against Toronto Hydro-Electric System
Limited.

BEFORE: Gordon Kaiser
Vice-Chair and Presiding Member

Cynthia Chaplin
Member

AMENDED DECISION AND ORDER

[1] This Decision addresses a motion brought by Toronto Hydro-Electric System Limited ("Toronto") for the production and disclosure of certain documents from: the Board; certain complainants, Metrogate Inc. ("Metrogate"), Residences of Avonshire Inc. ("Avonshire"), Deltera Inc. ("Deltera") and Enbridge Electric Connections Inc. ("Enbridge"); and the members of the Smart Sub-Metering Working Group (the "Working Group")¹.

[2] This is a compliance proceeding in which Compliance Counsel is seeking an Order under section 112.3 of the OEB Act. That section states:

¹ The Smart Sub-metering Working Group is made up of the following members:

Carma Industries Inc.
Enbridge Electric Connections Inc.
Hydro Connection Inc.
Intellimeter Canada Inc.
Provident Energy Management Inc.
Stratacon Inc.
Wyse Meter Solutions

112.3 (1) If the Board is satisfied that a person has contravened or is likely to contravene an enforceable provision, the Board may make an order requiring the person to comply with the enforceable provision and to take such action as the Board may specify to,

(a) remedy a contravention that has occurred; or

(b) prevent a contravention or further contravention of the enforceable provision.

[3] In the Notice of Intention to Make an Order For Compliance dated August 4, 2009, the Board identified the enforceable provisions as: section 28 of the *Electricity Act, 1998* (the "*Electricity Act*"); section 53.17 of the *Electricity Act*; section 2.4.6 of the *Distribution System Code* (the "DSC"); section 3.1.1 of the DSC; and section 5.1.9 of the DSC.

[4] The foregoing provisions create a scheme under which condominium developers or corporations may opt to: (i) have a distributor smart-meter individual condominium units, in which case each unit owner becomes a customer of the distributor; or (ii) have a Board-licensed smart sub-meter provider smart sub-meter individual units, in which case the condominium corporation (through a bulk meter) continues to be the customer of the distributor and the smart sub-metering provider allocates the bulk bill to the individual unit owners.

[5] At issue in this proceeding is Toronto's practice of refusing to connect new condominium projects within its service area unless all units in the condominium are individually smart-metered by Toronto. This practice, it is alleged, effectively precludes condominium corporations or developers from the option of using services of licensed smart sub-meter providers.

[6] In this proceeding, the Board alleges that Toronto's practice violates the above-noted provisions of the *Electricity Act* and the DSC. The particulars of non-compliance are set out in the Compliance Notice:

1. Toronto's Conditions of Service, specifically section 2.3.7.1.1, states that Toronto "will provide electronic or conventional smart suite metering for each unit of a new Multi-unit site, or a condominium." By way of letters dated April 22, 2009, Toronto informed Metrogate Inc. ("Metrogate") and Avonshire Inc.

("Avonshire") that despite Metrogate and Avonshire's request that Toronto prepare a revised Offer to Connect for condominiums based on a bulk meter / sub-metering configuration, Toronto would not offer that connection for new condominiums and would not prepare a revised Offer to Connect on that basis.

2. Toronto's refusal to connect on that basis is contrary to the requirement of a distributor to connect to a building, to its distribution system as per section 28 of the Electricity Act and is contrary to section 3.1.1 of the DSC.
3. Toronto's practice is also contrary to section 5.1.9 of the DSC which states that distributors must install smart meters when requested to do so by the board of directors of a condominium corporation or by the developer of a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the *Condominium Act, 1998*.
4. Toronto's practice is also contrary to section 53.17 of the Electricity Act (and Ontario Regulation 442/07 – *Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums* (made under the Electricity Act)) which contemplates a choice between smart metering and smart sub-metering.
5. Toronto's Conditions of Service are therefore contrary to section 2.4.6 of the DSC which states that Conditions of Service must be consistent with the provisions of the DSC and all other applicable codes and legislation.

[7] On August 21, 2009 Toronto wrote to Compliance Counsel requesting "disclosure and production of all information that may relate to suite metering or smart metering practices of THESL or third parties".

[8] On September 1, 2009 Compliance Counsel responded and provided counsel for Toronto with a package of documents² containing:

- (a) Stakeholder complaints made to the Board;
- (b) Compliance office communications with Toronto; and
- (c) Extracts from Toronto's Conditions of Service, the Distribution System Code, and the Smart Sub-Metering Code.

² Affidavit of Patrick G. Duffy sworn September 22, 2009. Exhibit KM1.1.

[9] On August 28, 2009 Toronto wrote to the Working Group and requested disclosure of "all contracts made with, condominium developers with respect to the installation and operation of sub-meters for condominiums in the City of Toronto" from each member of the Working Group.

[10] On August 31, 2009, the Working Group informed Toronto by letter that it would not be providing the materials requested.

[11] In this motion, Toronto is seeking the production of:

- (a) 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 (referred to by Toronto as "Compliance Information");
- (b) all communications among the "Complainants" (Metrogate, Avonshire, Deltera, and Enbridge) and sub-meterers or condominiums developers addressing the terms on which sub-meters offer to provide sub-metering to condominium developers in the City of Toronto (referred to by Toronto as "Complainant Information"); and
- (c) materials from the members of the Working Group, specifically all proposals made to, and all contracts made with, condominium developers with respect to the installation and operation of sub-meters for condominiums in the City of Toronto (the "Working Group Materials").

Disclosure By Compliance Counsel

[12] Toronto is seeking extensive disclosure and production of documents based upon the Supreme Court decision in *Stinchcombe*³. The *Stinchcombe* standard was summarized by Supreme Court of Canada in *Taillefer*⁴.

"The Crown must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the Crown's discretion to refuse to disclose information that is privileged or plainly

³ *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

⁴ *R. v. Taillefer*, [2003] 3 S.C.R. 307.

irrelevant. Relevance must be assessed in relation both to the charge itself and to the reasonably possible defences. The relevant information must be disclosed whether or not the Crown intends to introduce it in evidence, before election or plea (p. 343). Moreover, all statements obtained from person who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses...

As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will exempt from the duty that is imposed on the prosecution to disclose evidence.

The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence."

[13] The *Stinchcombe* standard was established in the context of an indictable criminal offense and the disclosure requirements of a prosecutor. Mr. Justice Sopinka, the author of that opinion questioned at the time whether it would even extend to summary conviction offenses. *Stinchcombe* has however been applied to civil proceedings by administrative tribunals but that extension has largely been restricted to cases where an individual's livelihood is at stake.

[14] In *Re Berry*⁵ the Ontario Securities Commission (the "Commission") decided that *Stinchcombe* required that documents reflecting settlement agreements between other parties should be produced. In *Re Biovail*⁶ the Commission also recognized that the staff must provide disclosure similar to this *Stinchcombe* standard following the Supreme Court of Canada in *Deloitte and Touche LLP*⁷. Toronto also relies on the *Markandey*⁸ decision, a disciplinary proceeding against an ophthalmologist. At paragraph 43 the Court stated

⁵ (2008), 31 O.S.C.B. 5441.

⁶ (2008), 31 O.S.C.B. 7161.

⁷ *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713.

⁸ *Markandey v. Ontario (Board of Ophthalmic Dispensers)* [1994] O.J. No. 484. See also *Re Suman* 32 O.S.C.B. 592 at para 38.

"The importance of full disclosure to the fairness of the disciplinary proceedings before the Board cannot be overstated. Although the standards of pre-trial disclosure in criminal matters would generally be higher than in administrative matters (See Biscotti et al. v. Ontario Securities Commission, supra), tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent's position, in a timely manner unless it is privileged as a matter of law. Minimally, this should include copies of all witness statements and notes of the investigators. The disclosure should be made by counsel to the Board after a diligent review of the course of the investigation. Where information is withheld on the basis of its irrelevance or a claim of legal privilege, counsel should facilitate of review of these decisions, if necessary."

[15] Compliance Counsel responds that the *Stinchcombe* level of disclosure is limited to criminal or disciplinary proceedings where the accused faces a severe sanction. He relies on the recent Supreme Court of Canada decision in *May v. Ferndale*⁹ at paragraph 91:

"It is important to bear in mind that the *Stinchcombe* principles were enunciated in the particular context of criminal proceedings where the innocence of the accused was at stake. Given the severity of the potential consequences the appropriate level of disclosure was quite high. In these cases, the impugned decisions are purely administrative. These cases do not involve a criminal trial and innocence is not at stake. The *Stinchcombe* principles do not apply in the administrative context."

[16] Compliance Counsel also relies on the Federal Court decision in *CIBA-Geigy*¹⁰ which concerned the disclosure standards to be used by the Patented Medicine Prices Review Board. CIBA-Geigy was accused of excessive pricing and the company faced substantial fines relating to any excess profits. CIBA-Geigy requested all documents relating to all matters at issue that were or had been in the possession or control of the Board. The request was for all relevant documents whether favorable or prejudicial to the Respondent's position whether or not Board staff plan to rely upon those documents

⁹ *May v. Ferndale Institution*, [2005] 3 S.C.R. 809.

¹⁰ *CIBA-Geigy Canada Ltd.*, (1994) 83 F.T.R. 2.

as part of its case. In that sense the claim by CIBA-Geigy for disclosure was similar to the claim by Toronto before this Board.

[17] In the trial decision Mr. Justice McKeown refused the requested disclosure stating at paragraph 32:

"In summary, when the statutory scheme of this Board is looked at, the Board is a regulatory Board or tribunal. There is no point in the legislature creating a regulatory tribunal if the tribunal is treated as a criminal court. The obligations concerning disclosure imposed by the doctrine of fairness and natural justice are met if the subject of the inquiry is advised of the case it has to meet and is provided with all the documents that will be relied on."

[18] The Federal Court of Appeal upheld the trial decision¹¹ stating at paragraph 8:

"This is where any criminal analogy to the proceedings in the case at bar breaks down. There are admittedly extremely serious economic consequences for an unsuccessful patentee at a s. 83 hearing, and a possible effect on a corporation's reputation in the market place. But as McKeown J. found, the administrative tribunal here has economic regulatory functions and has no power to affect human rights in a way akin to criminal proceedings."

[19] To require a Board to disclose all possibly relevant information gathered in the course of its regulatory activities could easily impede its work from an administrative standpoint. As Macaulay and Sprague note "there must be a reason the functions have been mandated to an administrative agency and not to a court"¹². There is also a significant difference between disciplinary proceedings where an individual may lose his livelihood and a situation where a corporation faces a sanction by way of fine or administrative penalty. An economic regulator, such as this Board, has little ability to affect human rights in the manner of a criminal or disciplinary proceeding. No individual is at risk in this case. Counsel for Toronto suggested that there may be an analogy in that Toronto could lose its license and ability to operate. Compliance Counsel responded that he is not seeking such a remedy.

¹¹ *CIBA-Geigy Canada Ltd.*, (1994) 3 F.C. 425 (CA).

¹² *Macaulay and Sprague*, *Hearings Before Administrative Tribunals* (Carswell 2009) at 9-1 to 9-2.

[20] Toronto argued that the Board often requires extensive disclosure from utilities it regulates and it would be wrong if the Board were to impose a broad disclosure requirement on a utility as an Applicant and not provide similar rights when the utility is a Respondent facing charges that it failed to comply with the Act or its licence. In *West Coast Energy*¹³ the Board set out the standard of disclosure required of a utility and sanctioned the utility with a cost penalty for failure to comply:

“A public utility in Ontario with a monopoly franchise is not a garden variety corporation. It has special responsibilities which form part of what the courts have described as the “regulatory compact”. One aspect of that regulatory compact is an obligation to disclose material facts on a timely basis...

Failure to disclose has at least two unfortunate consequences. First, it can only result in less than optimum Board decisions. Second, it adds to the time and cost of proceedings. Neither of these are in the public interest.

A publicly regulated corporation is under a general duty to disclose all relevant information relating to Board proceedings it is engaged in unless the information is privileged or not under its control. In doing so, a utility should err on the side of inclusion. Furthermore, the utility bears the burden of establishing that there is no reasonable possibility that withholding the information would impair a fair outcome in the proceeding. This onus would not apply where the non-disclosure is justified by the law of privilege but no privilege is claimed here.”

[21] There is no question that the Board takes a broad view of disclosure for regulated utilities but that obligation flows from the unique status of a public utility with a monopoly franchise. As indicated in *West Coast Energy* that responsibility flows from the “regulatory compact” long recognized by the courts. That is not the situation here. The law respecting disclosure is well developed. The question before us is whether Stinchcombe extends to this type of regulatory proceeding where no individual rights are at issue. We take the view that it does not.

[22] Compliance Counsel responds that he is only required to produce documents he intends to rely on. Toronto claims that it should have access to all documents

¹³ Re *West Coast Energy Inc. and Union Gas Limited* EB-2008-0304, November 19, 2008 at p.11.

necessary to meet those charges and frame its defence. In this regard Toronto sets out a very specific defence. Toronto intends to argue that it has a statutory defence which allows them to refuse to connect if there is a violation of law. Toronto argues that it is illegal for unlicensed distributors to profit from distribution activities.

[23] Accordingly, Toronto seeks information on the financial arrangements between condominium developers and sub-meterers to determine whether either or both of these are seeking to profit from distribution activities. Toronto argues that this information is relevant to its defense under section 3.1.1 of the Distribution System Code¹⁴. That section authorizes a refusal to connect where the customer contravenes the laws of Ontario.

[24] Fairness is always a matter of balancing different interests. As indicated, we do not accept that *Stinchcombe* applies to the disclosure requirements in this case. On the other hand, we believe Toronto is entitled to frame its defence as it sees fit and to obtain documents necessary to argue that defence. Whether they will be successful in that legal argument remains to be seen. But as a matter of fairness they are entitled to have documents required to advance a defence particularly where, as here, they have identified a specific arguable defence. Accordingly, we will order Compliance Counsel to produce all documents relating to smart metering activities at Metrogate and Avonshire.

[25] 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".

¹⁴ DSC section 3.1.1 states that: In establishing its connection policy as specified in its Conditions of Service, and determining how to comply with its obligations under section 28 of the *Electricity Act*, a distributor may consider the following reasons to refuse to connect, or continue to connect, a customer:

- (a) contravention of the laws of Canada or the Province of Ontario including the Ontario Electrical Safety Code;
- (b) violation of conditions in a distributor's licence;
- (c) materially adverse effect on the reliability or safety of the distribution system;
- (d) imposition of an unsafe worker situation beyond normal risks inherent in the operation of the distribution system;
- (e) a material decrease in the efficiency of the distributor's distribution system;
- (f) a materially adverse effect on the quality of distribution services received by an existing connection; and
- (g) if the person requesting the connection owes the distributor money for distribution services, or for non-payment of a security deposit. The distributor shall give the person a reasonable opportunity to provide the security deposit consistent with section 2.4.20.

[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.

[27] These documents should be produced within ten days unless there is a claim of privilege. There is no question that this Board is required to recognize claims of privilege where appropriate¹⁵, but any claim of privilege must reference specific documents. We are not prepared to accept blanket claims of privilege.

Disclosure of Third-Party Documents

[28] Toronto is also seeking broad disclosure from third parties. Specifically they request "all communications among the "Complainants" (Metrogate, Avonshire, Deltera, and Enbridge) and sub-meterers or condominium developers addressing the terms on which sub-meters offer to provide sub-metering to condominium developers in the City of Toronto". They also request that all members of the Working Group produce *all* proposals and *all* contracts made with condominium developers relating to the installation and operation of sub-meters for condominiums in the City of Toronto. Seven companies form the Working Group.

[29] There is no question that the Board has jurisdiction to order third parties to produce documents¹⁶ but this is an unusual step to be taken only when the documents identified are clearly relevant and no prejudice or undue burden on the third parties results from the disclosure. We do not believe that Toronto has met the burden in this case.

[30] As the Ontario Municipal Board cautioned in *Hammersmith Canada*¹⁷ the Board "must be mindful of the possible abuse of the discovery process. We should be vigilant against any attempt to transform the right to discovery into a license to procure information from the world at large". Toronto has not identified specific documents. Rather, they request *all* seven members of the Working Group and each of the

¹⁵ *Blood Tribe Department of Health v. Canada (Privacy Commission)*, [2008] 2 S.C.R. 574.

¹⁶ See s. 21(1) of the *Ontario Energy Board Act, 1998*, and ss. 5.4 and 12 of the *Statutory Powers Procedure Act*.

¹⁷ *Hammerson Canada Inc. v. Guelph (City)*, [1999] O.M.B.D. No. 1174 at para. 7.

“complainants” to produce *all* proposals and *all* contracts with *all* condominium developers in the City of Toronto.

[31] Concern with a fishing expedition is particularly relevant here where the members of the Working Group all compete with Toronto in the supply of smart meters to condominium units. Moreover, this is not a Stinchcombe case and Toronto’s conduct is being questioned regarding only two condominium units, Metrogate and Avonshire, not *all* condominium units in Toronto.

[32] We also noted that the Board has appointed an independent lawyer to act as Compliance Counsel in this case largely in response to Toronto’s concerns that the Board should not be acting as both an investigator and prosecutor. Toronto originally sought an order from the board concerning the separation of those activities. That matter has been resolved by the Board appointing independent counsel and the agreement by counsel to certain joint undertakings set out in Appendix A to this decision.

[33] It is important in considering this aspect of the motion to note that paragraph 37 of the factum filed by Compliance Counsel states that “the complainant information and Working Group materials [requested by Toronto directly from the third parties] have not been shared with Board compliance staff and will not be relied upon by compliance counsel in this proceeding”. We would also note that of the production ordered with respect to Metrogate and Avonshire goes beyond the bare minimum that Compliance Counsel offered, namely that he produce only those documents that he intended to rely upon.

[34] In the circumstances we believe that the production ordered with respect to Metrogate and Avonshire materials held by Compliance Counsel meets any fairness concerns. Accordingly, no production will be ordered against third parties.

Role of Prosecution Staff

[35] In addition to orders for the production of various documents, Toronto also sought certain orders from the Board relating to procedural matters. The purpose of these requests was to ensure that sufficient separation was maintained between the members of Board staff (along with their external counsel) that were and had been working on the file from a compliance perspective to bring the case against Toronto

("Compliance Staff") and the members of Board staff that were and had been assisting the Board panel in this matter ("Board Staff").

[36] Prior to the commencement of the oral hearing on the motion, the parties reached an agreement on an appropriate procedural protocol, which was approved by the Board. A copy of this protocol, which has been signed by the counsel which are bound by it, is attached as Appendix A to this decision.

IT IS THEREFORE ORDERED THAT:

1. 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.

DATED at Toronto, October 23, 2009.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

Procedural Protocol

By Notice of Motion dated September 4, 2009, the Defendant Toronto Hydro Electric System Limited ("THESL") requested an order from the Board establishing a process for this proceeding, and in particular, governing how the Board will ensure that the Board Staff Team (consisting of individuals listed below) and the Panel hearing this proceeding (the "Panel") will govern their interactions with the Compliance Team (consisting of individuals listed below).

The Board Staff Team consists of persons who are assisting the Panel in this matter, specifically Michael Millar, Lenore Dougan and Adrian Pye.

The Compliance Team consists of persons who have been engaged in the investigation, compliance or prosecution of this application, specifically: Maureen Helt, MaryAnne Aldred, Joanna Rosset, Martine Band, Mark Garner, Brian Hewson, Jill Bada, (no longer an employee of the OEB) Fiona O'Connell, Lee Harmer, and Paul Gasparatto.

The Board Staff Team agrees to support the following protocol for the Panel's endorsement:

1. Members from each Team will have no contact with each other about matters relevant to this proceeding, except through the public hearing process or through correspondence copied to all other parties. Members of the Compliance team will have no contact with Board members on matters relevant to this proceeding, except through the public hearing process.
2. No member of either Team will place any files relevant to this proceeding that are not on the public record (computer or otherwise) in a place that can be accessed by the other team or anyone not on their Team.
3. The Team lists will be circulated to everyone at the Board, with instructions that no person at the Board that is not on one of the Teams may communicate with any member of either Team about this case except as specifically authorized in writing from the Board. If it is discovered that a person at the Board has either assisted the panel in this matter or engaged in the investigation and prosecution

of this matter throughout the course of this proceeding, or if, during the course of this proceeding, any additional persons either assist the panel in this matter or engage in the investigation and prosecution of this matter, then the Board Staff Team will immediately inform THESL and such person will be added to the appropriate list of persons.

4. The Board Staff Team will only provide advice to the Panel on questions of facts, law, policy or some combination thereof on the public record so that all other parties can respond. This restriction applies to substantive procedural matters. However, it does not apply to administrative procedural issues, such as advice on where items are addressed in the Board's Rules of Practice and Procedure or other matters that are similarly not contestable.
5. Point 4 (above) applies to advice on questions of facts, law policy or some combination thereof in communications between the Board Staff Team and the Panel after the hearing has concluded (including in discussing or reviewing a draft decision) so that the Board Staff Team will not provide any such advice unless the hearing is re-opened and all parties have an opportunity to hear staff's submissions and make their own submissions.

I undertake to abide by the protocol described above, to the extent that it applies:

Original signed by

Michael Millar

Original signed by

Maureen Helt

Original signed by

Glenn Zacher

Original signed by

Patrick Duffy

TAB 2

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 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.

TAB 3



4800 DUFFERIN STREET
TORONTO, ONTARIO
M3H 5S9

March 6, 2009

Toronto Hydro-Electric System Limited
14 Carlton Street
Asset Management
3rd Floor, 500 Commissioner Street
Toronto, ON M4M 3N7

Attention: Jim Trgachef, Supervisor

Dear Sir:

Re: Residences of Avonshire Inc.
Address: 100, & 115 Harrison Garden Boulevard and 5,7 & 9 Oakburn Crescent

You will recall that you hosted a meeting last fall with representatives of Deltera Inc. at which time the discussion turned to the metering of the planned condominium projects which Deltera and related companies are and will be building in Toronto. At this meeting, you advised that effective February 28, 2008, Toronto Hydro was the only entity that had the right to own and supply meters for any of our projects and that no other options for metering were available. As a result of this, Residences of Avonshire Inc. request for an offer to connect in respect of the above noted building did not contemplate this building being suite metered by any entity other than Toronto Hydro and the offer to connect received contemplates Toronto Hydro installing individual suite meters.

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, 1998* to choose to have this project smart sub-metered by a licensed sub-metering company. Residences of Avonshire Inc. is desirous of considering the sub-metered option and would have requested an offer to connect which contemplated the above project being smart sub-metered but for the information provided at the meeting at your offices last fall.

We therefore require that Toronto Hydro provide a further offer to connect which contemplates the above project being smart sub-metered by a licensed sub-metering company. This offer should specifically contemplate that Toronto Hydro will install a bulk meter and Residences of Avonshire Inc.'s intention to smart sub-meter the units at the project downstream of the bulk meter.

I would appreciate confirmation that an appropriate Offer to Connect will be prepared and forwarded to Residences of Avonshire Inc. within the next two weeks. Given your familiarity already with the project, we trust that you will make every effort to meet this timeframe.

Yours truly,
RESIDENCES OF AVONSHIRE INC.
Per:

Giuseppe Bello
Project Manager

TAB 4

January 29, 2009

Residences of Avonshire Inc. and
K & G Oakburn Apartments I Ltd.
299 Roehampton Avenue
Toronto, Ontario M4P 1S2



Attention: Mark Gallow

Dear Sir:

Re: Residences of Avonshire Inc. development of 100, & 115 Harrison Garden Boulevard
and 5, 7 & 9 Oakburn Crescent
as legally described in PIN Nos. 10104-1613 (LT), 10104-1614 (LT), 10104-1622 (LT) and
10104-1624 (LT) ("Property")
K & G Oakburn Apartments I Ltd. development of 105 Harrison Garden Boulevard
as legally described in PIN Nos. 10104-1623 (LT) and 10104-1625 (LT) ("Property")
748 high-rise residential units (748 Toronto Hydro suite meters)
41 townhouses
792 connections
Toronto Hydro Customer Class 4
Toronto Hydro Project No. P0016652 Work Order No. 158422 ("Project")

Toronto Hydro-Electric System Limited ("Toronto Hydro") acknowledges receipt of Residences of Avonshire Inc.'s and K & G Oakburn Apartments I Ltd. ("Customer") written request for connection of the Project to the Toronto Hydro main distribution system.

The Customer has represented to Toronto Hydro that 789 residential units will be constructed and connected to the Toronto Hydro main distribution system and the estimated increased demand load attributable to the Project will be 1,900 kW ("Estimated Incremental Demand").

In order to connect the Project, an expansion to the Toronto Hydro main distribution system will be needed.

Based on the plans dated January 22, 2008 ("Plans") this document, including all Schedules attached, is Toronto Hydro's firm Offer to Connect ("Offer to Connect") as required by the Distribution System Code ("Distribution System Code") established by the Ontario Energy Board ("OEB").

In addition to the obligations set forth in this Offer to Connect, the Customer shall be bound by and required to comply with all provisions of the Conditions of Service filed by Toronto Hydro with the OEB. A copy of the Conditions of Service can be obtained at www.torontohydro.com.

Terms used in this Offer to Connect shall have the meaning ascribed thereto in the Distribution System Code and the Conditions of Service unless otherwise defined herein.

The following Schedules attached hereto form a part of this Offer to Connect:

Schedule A – Connection Work and Fees;
Schedule B – Expansion Work and Fees;
Schedule C – Capital Contribution Requirements and Economic Evaluation;
Schedule D – Expansion Deposit;
Schedule E – Alternative Bid Process and Contestable Work;
Schedule F – General Terms and Conditions.

A Capital Contribution, as described in Schedule C, will be required from the Customer.

toronto hydro-electric system limited

An Expansion Deposit, as described in Schedule D, will be required from the Customer.

This Offer to Connect includes Contestable Work for which the Customer may obtain an alternative bid as described in Schedule E.

Based on the Plans and information provided to Toronto Hydro, as of the date of this Offer to Connect, an easement will be required to connect the Project. General easement requirements are set out under the heading "Easements" in Schedule F, General Terms and Conditions.

If the terms and conditions of this Offer to Connect are acceptable to the Customer, a duly authorized officer of the Customer shall sign the duplicate copy and return it to Toronto Hydro within 60 days of the date set forth above. If a signed copy is not returned to Toronto Hydro within that time period, Toronto Hydro reserves the right to revoke this Offer to Connect without further notice to the Customer. The Customer is advised that Toronto Hydro requires a minimum of 24 weeks, if not more ("lead time") to complete the Project, after receiving the signed Offer to Connect from the Customer, and, if necessary the Customer should make arrangements to return the signed Offer to Connect earlier, to accommodate the required lead time.

If the expansion work for this Project has not commenced within one (1) year from the date set forth above, Toronto Hydro has the right to terminate this Offer to Connect in accordance with its rights of termination as set out herein.

Any notice, communication, inquiry and payment regarding this Offer to Connect shall be directed as follows:

To: Toronto Hydro-Electric System Limited
Asset Management - 3rd Floor, 500 Commissioners Street
Toronto, Ontario M4M 3N7
Attention: Jim Trgachef, Supervisor
Standards and Policy Planning
Telephone (416) 542-2514, Facsimile: (416) 542-2731

To: The Customer at the address set forth below:
Residences of Avonshire Inc. and
K & G Oakburn Apartments I Ltd.
299 Roehampton Avenue
Toronto, Ontario M4P 1S2
Attention: Mark Gallow
Telephone: (416) 487-2844, Facsimile: (416) 487-7550

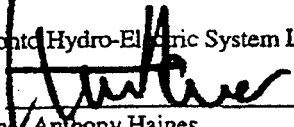
All payments and security as may be required hereunder shall be due and payable, or deliverable, upon acceptance of this Offer to Connect by the Customer.

Each of Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd. shall be jointly and severally liable for all the obligations in this Offer to Connect.

Please sign in the appropriate place below and return one signed copy, and all payments and security as may be required, to the address indicated above.

Yours truly,

Toronto Hydro-Electric System Limited

Per: 
Name: Anthony Haines,
Title: President

I have authority to bind the Corporation.

Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd. each acknowledges its understanding of, accepts, agrees jointly and severally to comply with, and be bound by, all of the terms and conditions of this Offer to Connect, which include the provisions set forth above and all of the Schedules attached. Each acknowledges that by accepting this Offer to Connect a binding agreement is created and, upon signing, this Offer to Connect constitutes a legally valid and binding obligation, enforceable in accordance with its terms.

Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd. each confirms that it will not be obtaining alternative bids for the Contestable Work described in Schedule E.

Residences of Avonshire Inc.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

K & G Oakburn Apartments I Ltd.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

OR

Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd. each confirms it is not accepting Toronto Hydro's Offer to Connect and it will be proceeding by way of an alternative bid process for the Contestable Work, as described in Schedule E.

Residences of Avonshire Inc.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

K & G Oakburn Apartments I Ltd.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

Offer to Connect Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd., 100, 105, & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent, January 29, 2009

**SCHEDULE A
CONNECTION WORK and FEES**

1. Connection Assets are the assets between the point of connection to the Toronto Hydro main distribution system and the ownership demarcation point as defined in Table 1.3 of Toronto Hydro's Conditions of Service.
2. The Connection Work and Connection Fees to supply and install the Connection Assets for the Project are described below.
3. Toronto Hydro shall recover costs associated with the installation of Connection Assets through:
 - (a) Basic Connection Fees which are part of the Economic Evaluation; and
 - (b) Variable Connection Fees collected directly from the Customer. The variable Connection Fees arise from the Variable Connection Work and are in addition to the Basic Connection Fees.
4. The Variable Connection Fees are payable by the Customer to Toronto Hydro pursuant to this Offer to Connect upon acceptance of this Offer to Connect by the Customer, or, if the Customer pursues an alternative bid process described in Schedule E, to the Customer's qualified contractor.

Connection Work shall mean the following:

- All necessary engineering design and inspections;
- Supply & Install:
 - U/G road crossing and primary cable.
- Supply:
 - The necessary switching and isolations required to connect the Customer to the Toronto Hydro distribution system;
 - Primary connections and terminations in transformer vault and to the Toronto Hydro distribution system;
 - All transformation, switchgear and termination as required.

NOTE:

- Customer is responsible for:
 - Trenching, supplying and installing a 2Wx2H concrete encased duct structure on private property from street line to transformer building vaults.

Connection Fees:

- a) Basic Connection Fees of \$1,310.00 per meter connection and \$850.00 per meter connection have been included in Toronto Hydro's Economic Evaluation.

b) Variable Connection Fees	\$193,930.60
GST 5%	<u>\$ 9,696.53</u>
TOTAL CONNECTION FEES, GST	\$203,627.13
Less Deposit and GST received	- \$ 0
BALANCE OUTSTANDING	\$203,627.13

The Connection Fees are based on the Connection Work being done during non-winter conditions. If the Customer requires the Connection Work to be done during winter conditions that would result in additional costs, Toronto Hydro will advise the Customer of the estimated additional costs and if the Customer provides a written request to Toronto Hydro to proceed, a Project Invoice will be issued and payment must be received by Toronto Hydro prior to the commencement of any of the applicable work.

SCHEDULE B EXPANSION WORK AND FEES

1. The Uncontestable Expansion Work and Contestable Expansion Work that must be performed to connect the Project to the Toronto Hydro main distribution system, and corresponding Fees and Total Expansion Fees ("Total Expansion Fees") are described below.
2. The Customer will also be responsible for the payment of the operating, maintenance and administration costs ("OM&A Costs") of the Project, including applicable taxes. The OM&A Costs are included in the Economic Evaluation.
3. The Expansion Fees and OM&A Costs are recovered by Toronto Hydro by way of Capital Contribution if applicable, as described in Schedule C and the increased distribution revenues attributable to the Project, which are received by Toronto Hydro ("Incremental Revenues").

Uncontestable Expansion Work shall mean the following:

- All necessary engineering design and inspections;
- Supply & install:
 - Primary terminations and connections to the existing Toronto Hydro distribution system;
 - The necessary switching and outage arrangements to allow connections to existing distribution system.

Uncontestable Expansion Fees:

Enhancement Costs (1,900 x \$260 per kW)	\$ 494,000.00
Materials	\$ 24,500.00
Labour (engineering design, inspections)	\$ 32,500.00
Equipment	\$ 1,500.00
Basic Connection Charge (3 x \$1,310.00 and 41 x \$850.00, per meter connection)	\$ 38,780.00
Overhead (including administration)	<u>\$ 63,326.08</u>
TOTAL UNCONTESTABLE EXPANSION FEES	\$ 654,606.08

Contestable Expansion Work shall mean the following:

- Supply & install:
 - All necessary duct structures, cable chambers, tap boxes, splice vaults, submersible transformer vaults, switchgear foundations on Harrison Garden extension and Oakburn Crescent to Avondale Avenue cable riser poles.

Contestable Expansion Fees:

Materials	\$ 358,759.09
Labour (construction)	\$ 198,380.43
Equipment	\$ 26,793.96
Overhead (including administration)	<u>\$ 62,539.28</u>
TOTAL CONTESTABLE EXPANSION FEES	\$ 646,472.76
TOTAL UNCONTESTABLE EXPANSION FEES	\$ 654,606.08
TOTAL EXPANSION FEES (CONTESTABLE AND UNCONTESTABLE)	\$1,301,078.84
GST (5%)	<u>\$ 65,053.94</u>
TOTAL EXPANSION FEES, GST	\$1,366,132.78

The Expansion Fees are based on the Expansion Work being done during non-winter conditions. If the Customer requires the Expansion Work to be done during winter conditions that would result in additional costs, Toronto Hydro will advise the Customer of the estimated additional costs and if the Customer provides a written request to Toronto Hydro to proceed, a Project Invoice will be issued and payment must be received by Toronto Hydro prior to the commencement of any applicable work.

SCHEDULE C
CAPITAL CONTRIBUTION REQUIREMENTS and ECONOMIC EVALUATION

1. The Customer acknowledges that it has represented to Toronto Hydro that the estimated increased demand load attributable to the Project will be 1,900 kW ("Estimated Incremental Demand") and that 789 residential units will be connected to the Toronto Hydro main distribution system.
2. To determine the amount of Capital Contribution that is required from the Customer for this Project, Toronto Hydro has performed, as described in Appendix B of the Distribution System Code, an economic evaluation ("Initial Economic Evaluation"). A copy of the Initial Economic Evaluation, including the calculation used to determine the amount of the Capital Contribution to be paid by the Customer, including all of the assumptions and inputs used to produce the Initial Economic Evaluation, is included with this Offer to Connect.
3. As a result of Toronto Hydro's Initial Economic Evaluation of the Project, the Customer shall pay to Toronto Hydro, upon acceptance of this Offer to Connect, a Capital Contribution in the amount set forth below:

Capital Contribution	\$92,981.00
GST (5%)	<u>\$ 4,649.05</u>
Capital Contribution and GST	<u>\$97,630.05</u>

SCHEDULE D EXPANSION DEPOSIT

1. An Expansion Deposit is intended to ensure that Toronto Hydro is held harmless in respect of the Expansion Fees and OM&A Costs by securing payment of the Total Expansion Fees in the event the Estimated Incremental Demand does not materialize. The Expansion Deposit shall be in the form of cash, or an irrevocable commercial letter of credit issued by a Schedule 1 bank as defined in the Bank Act, or a surety bond. The form of security must expressly provide for its use to cover the events for which it is held as a deposit. Any portion of the Expansion Deposit held as cash, which is returned to the Customer, shall include interest on the returned amount from the date of receipt of the full amount of the Expansion Deposit, at the Prime Business Rate set by the Bank of Canada less two (2) percent.
2. The Customer is required to post an Expansion Deposit, upon acceptance of this Offer to Connect, for the difference between the actual Expansion Fees and GST and the amount of the Capital Contribution and GST paid by the Customer, in accordance with Toronto Hydro's Initial Economic Evaluation of the Project.
3. This Expansion Deposit is in addition to any other charges that may be payable to Toronto Hydro under this Offer to Connect, or the Conditions of Service, or otherwise.
4. The amount of the Expansion Deposit is set out below.
5. After the facilities are energized, the Expansion Deposit shall be reduced, at the end of each 365-day period, by an amount calculated by multiplying the original Expansion Deposit by a percentage derived by dividing the actual connections completed or materialized in that 365-day period, by the total number of connections contemplated in this Offer to Connect. For information about reduction in the amount of the Expansion Deposit after each 365 day period, please contact Carrie Matthew at (416) 542-3100 ext. 32076.
6. If after five (5) years from the energization date of the facilities, the total number of connections contemplated by the original Offer to Connect have not materialized, Toronto Hydro shall retain any cash held as an Expansion Deposit, or to be entitled to realize on any letter of credit or bond held as an Expansion Deposit and retain any cash resulting therefrom, with no obligation to return any portion of such monies to the Customer at any time.

EXPANSION DEPOSIT:

TOTAL EXPANSION FEES AND GST	\$1,366,132.78
LESS CAPITAL CONTRIBUTION AND GST	-\$ 97,630.05
EXPANSION DEPOSIT	\$1,268,502.73

SCHEDULE E
ALTERNATIVE BID PROCESS AND CONTESTABLE WORK

1. Toronto Hydro advises the Customer that part of the work that will be required for the expansion and connection to the existing distribution facilities includes work for which the Customer may obtain an alternative bid i.e. work that would not involve work with existing Toronto Hydro assets. The work for which the Customer may obtain alternative bid, "Contestable Work" is described below.
2. The Customer must use a contractor for the Contestable Work qualified by Toronto Hydro in accordance with its Conditions of Service. To qualify, contractors shall submit a "Contractor Qualification Application" and meet the requirements posted at:
http://www.torontohydro.com/electricsystem/customer_care/cond_of_services/index.cfm
at least 30 business days prior to their selection by the Customer to undertake Contestable Work. The Customer shall not be entitled to start performance of the Contestable Work until the contractor has completed its qualification by Toronto Hydro and has been qualified for no less than 30 business days.
3. Toronto Hydro does not make any representation or warranty regarding any contractor selected by the Customer to do any work regardless of whether the contractor has been qualified by Toronto Hydro or not and shall have no liability to the Customer in respect of such work.
4. If the Customer decides to hire a qualified contractor to perform the Contestable Work, the Customer will be required to select, hire and pay the contractor's costs for such work and to assume full responsibility for the construction of all of the Contestable Work.
5. The Customer shall ensure that the Contestable Work is done in accordance with Toronto Hydro's design and technical standards and specifications.
6. The Customer and his qualified contractor shall only use materials that meet the same specifications as Toronto Hydro approved materials (i.e. same manufacturers and same part numbers). Once the Customer has hired a qualified contractor, the Customer may request and obtain from Toronto Hydro the listing of approved materials that may be required for the Contestable Work.
7. The Customer will be required to pay for administering the contract with the qualified contractor, or if agreed by Toronto Hydro, pay Toronto Hydro a fee for performing this activity on its behalf. Upon request if Toronto Hydro is agreeable to performing such activity, Toronto Hydro will advise the Customer of the amount of the fee. Administering the contract includes, among other things, acquiring all permissions, permits and easements.
8. Toronto Hydro shall have the right to inspect and approve all aspects of the facilities constructed by the qualified contractor as part of its system commissioning activities, prior to connecting the expanded facilities to the Toronto Hydro main distribution system. If all of Toronto Hydro's requirements for the Contestable Work, including but not limited to, those set out in Sections 5, 6, and 7 above, have not been completed satisfactorily to Toronto Hydro, acting reasonably, the Project will not be energized, until the Contestable Work is in compliance with all of Toronto Hydro's requirements.
9. If the Customer decides to pursue an alternative bid for the Contestable Work, Toronto Hydro may charge the Customer costs, including, but not limited to, the following, for:
 - (a) additional design, engineering or installation of facilities required to complete the Project that are required in addition to the original Offer to Connect; and,
 - (b) inspection or approval of the work performed by the contractor hired by the Customer; and
 - (c) making the final connection of the new facilities to the Toronto Hydro distribution system. ("Additional Costs for Alternative Bid Work").

10. If the Customer decides to hire a qualified contractor to perform the Contestable Work, the Customer must:
 1. Sign an Alternative Bid Agreement;
 2. Hire a qualified contractor;
 3. Pay to Toronto Hydro, the firm amount of Toronto Hydro's Additional Costs for Alternative Bid Work, as set out below;
 4. Provide the Alternative Bid Expansion Deposit as set out below.
11. After the Customer has performed the Contestable Work and Toronto Hydro has inspected and approved the constructed facilities, the Customer shall transfer the expansion facilities that were constructed under the alternative bid option to Toronto Hydro and Toronto Hydro shall pay to the Customer, a transfer price, ("Transfer Price") to be determined, as hereinafter set out.
12. The Transfer Price for the Contestable Work shall be the lower of the Customer's Costs or the amount set out in this Offer to Connect of the Contestable Work. The Customer's Costs shall mean:
 - (a) the costs the Customer paid to have the Contestable Work performed, excluding the Variable Connection Work, as provided by evidence satisfactory to Toronto Hydro;
 - (b) the Additional Costs for Alternative Bid Work charged by Toronto Hydro.Toronto Hydro shall be satisfied that all Customer's Costs shall have been properly incurred.
13. If the Customer does not provide the calculation setting out the Customer's Costs to Toronto Hydro within 30 days of all new facilities being energized, then the amount of the Transfer Price shall be the amount set out in this Offer to Connect for the Contestable Work.
14. Toronto Hydro shall carry out a final economic evaluation after the facilities are energized ("Final Economic Evaluation"). The Final Economic Evaluation shall be based on the amounts used in this Offer to Connect for costs and forecasted revenues, and the amount of the Transfer Price to be paid by Toronto Hydro to the Customer for the Contestable Work, where applicable. A copy of the Final Economic Evaluation shall be provided to the Customer.
15. Any amount payable by the Customer to Toronto Hydro, may be deducted from the Transfer Price owing to the Customer by Toronto Hydro.
16. If the Customer pursues an Alternative Bid, the Customer shall post an Alternative Bid Expansion Deposit in the amount of 10% of the Expansion Deposit as set out in Schedule D.
17. Toronto Hydro will retain the Alternative Bid Expansion Deposit for a warranty period of up to two years. The warranty begins at the end of the Realization Period, defined below.
18. The Realization Period for a Project ends, upon the first to occur of:
 - (i) the materialization of the last forecasted connection in the expansion project, or
 - (ii) Five (5) years after energization of the new facilities.
19. Toronto Hydro shall be entitled to retain and use the Alternative Bid Expansion Deposit to complete, repairing or bring up to standard the facilities constructed by the Customer, including Toronto Hydro's costs to ensure that the expansion is completed to the proper design, technical standards and specifications, using approved materials and that the facilities operate properly when energized.
20. Toronto Hydro shall return to the Customer the unapplied portion of the Alternative Bid Expansion Deposit, if any, at the end of the two-year warranty period.
21. Upon receipt of notice from the Customer that it intends to hire an alternative bid contractor, Toronto Hydro will provide an Alternative Bid Agreement.

Contestable Work shall mean the following:

Note:

- All Customer-supplied materials must be submitted to Toronto Hydro for approval prior to installation and meet Toronto Hydro Distribution Construction Standards;
- All equipment and underground plant installed must be inspected and approved prior to connection to the Toronto Hydro distribution system;
- Customer is responsible for applying for and obtaining any necessary City road cut permits.

Description of Work to Be Completed by the Customer:

- Supply & install:
 - All necessary duct structures, cable chambers, tap boxes, splice vaults, submersible transformer vaults, switchgear foundations on Harrison Garden extension and Oakburn Crescent to Avondale Avenue cable riser poles;
 - All primary cables complete with terminations thereof, except final connection to the Toronto Hydro distribution system;
 - All secondary cables complete with terminations thereof, except final connection to the Toronto Hydro distribution system;
 - All switchgears, submersible transformers;
 - All cable risers completed to the installation of the first section of U-Guard on the termination poles.

Description of Work to Be Completed by Toronto Hydro:

- All necessary engineering design and inspections and material approvals;
- Primary cable termination connections to the existing Toronto Hydro distribution system on Harrison Garden Blvd;
- The necessary switching and outage arrangements to allow connection to existing distribution system.

Toronto Hydro's Additional Costs for Alternative Bid Work	\$ 9,800.00
GST (5%)	<u>\$ 490.00</u>
TOTAL ADDITIONAL COSTS FOR ALTERNATIVE BID WORK, GST	\$ 10,290.00
 ALTERNATIVE BID EXPANSION DEPOSIT	 \$126,850.27

**SCHEDULE F
GENERAL TERMS AND CONDITIONS
of OFFER TO CONNECT**

1. ASSIGNMENT

- 1.1 Neither party may assign this Offer to Connect without the prior written consent of the other party, such consent not to be unreasonably withheld.

2. DEMARCATION POINTS

- 2.1 The ownership and operational demarcation points of the Project shall be identified as such by Toronto Hydro on the as-constructed drawings.
- 2.2 In accordance with Toronto Hydro's Conditions of Service, the Customer is responsible for maintaining, repairing and replacing, in a safe condition satisfactory to Toronto Hydro, all the Customer's civil infrastructure on private property that is deemed required by Toronto Hydro to house Toronto Hydro's Connection Assets, including but not limited to poles, underground conduits, cable chambers, cable pull rooms, transformer rooms, transformer vaults and transformer pads.

3. DISPUTE RESOLUTION

- 3.1 Any controversy between the parties arising under this Offer to Connect not resolved by discussions between the parties shall be determined by an arbitration tribunal convened pursuant to a notice of submission given either by Toronto Hydro or the Customer.
- 3.2 The notice shall name one arbitrator.
- 3.3 The party receiving the notice shall, within 10 days of notice to the other, name the second arbitrator or, if it fails to do so, the party giving the notice of submission shall name the second arbitrator.
- 3.4 The two arbitrators appointed shall name the third arbitrator within 10 days, or if they fail to do so within that time period, either party may make application to the applicable court for appointment of the third arbitrator.
- 3.5 Any arbitrator selected to act under this Offer to Connect shall be qualified by education, training and experience to pass on the particular question in dispute and shall have no connection to either of the parties other than acting in previous arbitrations.
- 3.6 The arbitration shall be conducted in accordance with the provisions of *The Arbitration Act, 1991 S.O. c-17*, as amended.
- 3.7 The decisions of the arbitration tribunal shall be made in writing and shall be final and binding on the parties as to the questions submitted and the parties shall have no right of appeal therefrom.

4. EASEMENTS

- 4.1 Upon request by Toronto Hydro, the Customer shall, at its own expense, execute, register and provide a solicitor's opinion on title in a form acceptable to Toronto Hydro, within the time period specified by Toronto Hydro, and subject only to those encumbrances permitted in writing by Toronto Hydro, such easement agreements as Toronto Hydro may require for the installation and continued existence of any electrical or telecommunication plants or access to same for the life of such plant or as otherwise required to perform its responsibility as a distribution company.
- 4.2 The customer acknowledges that in order for an easement to be registered, it shall be required, at its expense, to arrange for and register any necessary documentation required by the appropriate Land Registry

Office, including a Reference Plan, prepared by an Ontario Land Surveyor, describing the extent of the lands required for the easement.

5. FORCE MAJEURE

- 5.1 Force Majeure means any act, event, cause or condition that is beyond Toronto Hydro's reasonable control, including wind, ice, lightning or other storms, earthquakes, landslides, floods, washouts, fires, explosions, contamination, breakage of equipment or machinery, delays in transportation, strikes, lockouts or other labour disturbances, civil disobedience or disturbances, war, acts of sabotage, blockades, insurrections, vandals, riots, epidemics, loss of any relevant license or a declaration of force majeure by Hydro One Networks Inc., or any successor, under any agreement which Hydro One Networks Inc., or any successor, has with Toronto Hydro in connection with any work to be performed by Toronto Hydro under this Offer to Connect.
- 5.2 If by reason of Force Majeure, Toronto Hydro is unable, wholly or partially, to perform or comply with any or all of its obligations under, this Offer to Connect, it shall be relieved of such obligations, and any liability (including liability for any injury, damage or loss to the Customer caused by such event of Force Majeure) for failing to perform or comply with such obligations, during the continuance of Force Majeure.

6. LIMITATION OF LIABILITY

- 6.1 Toronto Hydro shall not be responsible for the acts or omissions of the Customer or its employees, contractors, subcontractors or agent.
- 6.2 Neither Toronto Hydro nor any of its employees, agents, officers, directors or other representatives ("Representatives") shall be liable for any loss, injury or damage to persons or property caused in whole or in part by negligence or fault of the Customer, or any of the Customer's Representatives, contractors or subcontractors.
- 6.3 Notwithstanding any other provision in this Offer to Connect, or any applicable statutory provision Toronto Hydro and its Representatives shall only be liable for any damages which arise directly out of the wilful misconduct or negligence of Toronto Hydro or its Representatives.
- 6.4 Neither Toronto Hydro nor any of its Representatives shall be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption losses, loss of contract or loss of goodwill, or for any indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, arising from any breach of this Offer to Connect, fundamental or otherwise, or from any tortious acts, including the negligence or wilful misconduct of it or its Representatives, however arising.
- 6.5 No action arising out of this Offer to Connect, regardless of the form thereof, may be brought by either party more than two (2) years following the date the cause of action arose, provided however that, subject to any applicable law, Toronto Hydro may bring an action for non-payment of amounts, or non-delivery of Expansion Deposits, required to be paid or delivered by the Customer under this Offer to Connect at any time.

- 6.6 The Customer shall indemnify and save harmless Toronto Hydro and its Representatives from any action, claim, penalty, damages, losses, judgements, settlements, costs and expenses or other remedy brought by any party or governmental authority, arising out of or resulting from any negligent act or failure to act or any willful misconduct by the Customer or any of its Representatives.
- 6.7 All of the provisions of Sections 6.1, 6.2, 6.3, 6.4, 6.5 and 6.6 shall survive the termination of this Offer to Connect.
- 7. NOTICE**
- 7.1 Any notice to be given under this Offer to Connect shall be in writing and delivered by prepaid registered mail, hand, courier or facsimile to the contact for the parties as set forth in the Offer to Connect.
- 7.2 Delivery by facsimile shall be deemed received on the day following transmittal provided the facsimile is received as confirmed by the issuance of a confirmation receipt at the point of transmission.
- 7.3 Delivery by hand or courier shall be deemed received on the date delivered.
- 7.4 Delivery by prepaid registered mail shall be deemed received on the 5th business day after mailing.
- 7.5 Either party may change its address for notice by providing written notice of that change to the other party.
- 8. REVISED PLANS**
- 8.1 If the Customer submits revised plans or requires additional design work, Toronto Hydro may provide, at cost, a new offer based on the revised plans or the additional design work.
- 8.2 If the Plans are revised at any time, after acceptance of this Offer to Connect shall be withdrawn or terminated immediately, despite any acceptance by the Customer. A new Offer to Connect will only be provided to the Customer upon payment in the amount of \$3,500.00 that must be paid prior to the new Offer to Connect being provided to the Customer.
- 9. SECURITY INTEREST**
- 9.1 As security for its obligation under this Offer to Connect, the Customer grants to Toronto Hydro a present and continuing security interest in, and lien on (and right of set-off against), and assignment of all money, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, delivered as an Expansion Deposit or otherwise pursuant to the terms of this Offer to Connect, or for the benefit of Toronto Hydro.
- 9.2 The Customer agrees to take such action as Toronto Hydro reasonably requires in order to perfect Toronto Hydro's first-priority security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.
- 9.3 Toronto Hydro shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Customer's obligations under this Offer to Connect (Customer remaining liable for any amounts owing to Toronto Hydro after such application), subject

to Toronto Hydro's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10. TAXES

- 10.1 Unless specified, none of the amounts payable or deliverable under the Offer to Connect include goods and services taxes or any other taxes that may be payable.
- 10.2 The Customer shall pay all such taxes in accordance with applicable laws.

11. TERMINATION

- 11.1 Each of the following shall constitute an event of default ("Event of Default"):

- (i) the Customer fails to make any payment at the time specified for payment in this Offer to Connect and such failure has not been remedied within 4 days notice of such failure;
- (ii) the Customer fails to deliver any Expansion Deposit, including a renewal, or additional Expansion Deposit within the time period specified for delivery in this Offer to Connect;
- (iii) the Customer fails to execute and deliver any agreement, or deliver any other document, within the time period specified for execution and/or delivery;
- (iv) the Customer fails to commence the Expansion Work within 1 year from the date of this Offer to Connect;
- (v) the Customer cancels the Project for any reason;
- (vi) the Customer fails to comply with any other covenant or obligation in this Offer to Connect and such failure has not been remedied (where it is possible to remedy such failure) within 15 days of the initial failure to perform;
- (vii) a resolution has passed, or documents filed at an office of public record, for the merger, amalgamation, dissolution, termination of existence, liquidation or winding-up of the Customer, unless the prior consent of Toronto Hydro has been obtained;
- (viii) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Customer or any of its property is appointed by any government authority, and such receiver, manager, receiver-manager, liquidator, monitor or trustee is not discharged within 30 days of appointment; or, if by decree of any government authority, the Customer is adjudicated bankrupt or insolvent, or any substantial part of its property is taken, and such decree is not discharged within 30 days after the entry thereof; or, if a petition to declare bankruptcy or to reorganize such party pursuant to any applicable law is filed against the Customer and is not dismissed within 30 days of such filing;
- (ix) the Customer files, or consents to the filing of, a petition in bankruptcy or seeks, or consents to, an order or other protection under any provision of any legislation relating to insolvency or bankruptcy ("Insolvency Legislation"); or files, or consents to the filing of, a petition, application,

- answer or consent seeking relief or assistance in respect of itself under provision of any Insolvency Legislation; or files, consents to the filing of, an answer admitting the material allegations of a petition filed against it in any proceeding described herein; or makes an assignment for the benefit of its creditors; or admits in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, or liquidator over any, or all, of its property.
- 11.2 Upon the occurrence of an Event of Default, Toronto Hydro may, at its sole option, do any one or more of the following:
- (i) exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;
 - (ii) exercise its rights of set-off against any and all property of the Customer in the possession of Toronto Hydro;
 - (iii) declare the full amounts of the Expansion Fees and OM&A Costs that are unpaid and unrecovered as due and owing ("Accelerated Amounts");
 - (iv) draw on any cash, or draw under any letter of credit, then held by or for the benefit of Toronto Hydro as an Expansion Deposit or Capital Contribution or otherwise, free from any claim or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer, to cover all costs incurred on, or prior to, the date of termination, including costs for materials ordered for the expansion, storage costs and facilities removal costs and any amounts owing under this Offer to Connect, including the Accelerated Amounts; and/or
 - (v) terminate this Offer to Connect, provided that, any termination shall not affect any obligations incurred prior to the effective date of termination or any other rights that Toronto Hydro may have arising out of any rights or obligations that are expressed to survive termination of this Offer to Connect.
12. **TITLE AND RISK OF LOSS**
- 12.1 Notwithstanding that Toronto Hydro may install equipment and materials under this Offer to Connect to which title is intended to pass to the Customer, title to such equipment or materials shall be transferred to the Customer, and risk of loss shall be assumed by the Customer, upon delivery to the Property.
- 12.2 Toronto Hydro shall be entitled to receive reasonable compensation for storing any materials or equipment not delivered to the Customer due to a delay caused by the Customer and such equipment or materials shall be held at the Customer's risk.
13. **WARRANTIES**
- 13.1 Toronto Hydro warrants that the services it provides are in accordance with Good Utility Practice.
- 13.2 Except as expressly set forth in this Offer to Connect, Toronto Hydro provides no warranties, for fitness for purpose or otherwise, and whether statutory or otherwise, to the Customer.
14. **MISCELLANEOUS**
- 14.1 This Offer to Connect, including the Schedules attached, shall constitute the entire agreement between the parties, and there are no other agreements or understandings, either written or oral, to conflict with, alter or enlarge this Offer to Connect unless agreed to in writing between the parties subsequent to the effective date of this Offer to Connect.
- 14.2 Failure or delay by Toronto Hydro in enforcing any right under, or provision of this Offer to Connect shall not be deemed a waiver of such provision or right with respect to the instant, or any previous, or subsequent, breach.
- 14.3 This Offer to Connect shall be governed by the laws of the Province of Ontario and the laws of Canada as applicable.
- 14.4 Toronto Hydro shall be entitled to access at all reasonable times to any of the Customer's properties to perform the services in this Offer to Connect.
- 14.5 Interest on unpaid amounts shall bear interest at the rate of 1.5 percent calculated and compounded monthly (19.56 percent per annum) at and from the due date up to and including the date of payment in full of such amount, together with all interest accrued to the date of payment.
- 14.6 Toronto Hydro and the Customer agree to execute and deliver such further documents as may be required for either party to fulfill its obligations and enforce its rights under this Offer to Connect.
- 14.7 If any provision of this Offer to Connect is declared illegal, invalid or unenforceable for any reason whatsoever, to the extent permitted by law, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of any of the other provisions.
- 14.8 This Offer to Connect and the obligations of the parties under it are subject to all applicable present and future laws, rules, regulations and orders of any regulatory or legislative body or other duly constituted authority having jurisdiction over Toronto Hydro or the Customer.
- 14.9 Time shall be of the essence.
- 14.10 If there is a conflict between this Offer to Connect and Toronto Hydro's Conditions of Service, this Offer to Connect shall govern.

	A	B	C	D	E	F	G	H	I	J	K
1	REQUEST FOR ECONOMIC EVALUATION (NPV CALCULATION)										
2	January 23, 2007 Version										
3											
4	Important: Enter Data in Yellow Boxes only, including zero values										
5											
6											
7	Requested by: DAN STANOEY					Date: nov 20 2006					
8											
9	Tel. Ext: 27818										
10											
11	Supervisor Approval: Dave Graham										
12											
13	Project Information:										
14	Address: AVONSHIRE COMMUNITY - PHASE 1					WFO Number		158422			
15											
16	Service Type		(day w. / Res)		Commercial		Industrial				
17											
18											
19											
20	Transformer Size		KVA		Incremental Load		KVA		Total Load		KVA
21											
22											
23	Customer Class					Expected In-Service Date					
24											
25	Type of Account Meter										No. of Meters Installed
26	Monthly demand > 1000 kW and up to 5000 kW										792
27											
28											
29											
30											
31											
32											
33											
34											
35											
36											
37	EXPANSION PEAK - ENHANCEMENT COSTS										
38											
39											
40	OH and U/G		[900]		X		[260.00]		= [234,000.00]		
41											
42											
43											
44	EXPANSION PEAK - ENHANCEMENT COSTS										
45											
46	NETWORK VALU COST										
47											
48	IMPARTED EXPANSION COST										
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62											
63											
64											
65	Customer Connection Forecast - Number of Installed Meter										
66											
67											
68											
69											
70											
71											
72											
73	Total Customer Monthly Peak Demand - kva - (Class 3, 4 and/or 5)										
74											
75											
76											
77											
78											
79											
80											
81	Notes:										
82											

FORNARD HYDRO-ELECTRIC SYSTEM CAPITAL EXPENDITURE BUDGETING MODEL

A. MODEL PARAMETER ASSUMPTIONS

Item	Value
Current Year	2000
Income Tax Rate	34.15%
LCT tax rate	0.15%
PCT tax rate	0.50%
Inflation	0.00%
WACC	1.50%

B. ASSET CLASSES

Description	Value
1 Dist. System Assets (class 1)	12.5
2 Buildings (class 1)	1.0
3 Computer Eq. (class 10)	1.0
4 Applications Software (class 12)	1.0
5 Other Equipment (class 9)	1.0

C. CUSTOMER CLASSES

Description	Value
1 Residential	1.0
2 General Service (< 50 kW)	1.0
3 General Service (50 - 999 kW)	1.0
4 General Service (1000 - 4999 kW)	1.0
5 Large User (5000+ kW)	1.0

D. CUSTOMER RATES

Customer Class	Value
1 Residential	14.14
2 General Service (< 50 kW)	1.0
3 General Service (50 - 999 kW)	1.0
4 General Service (1000 - 4999 kW)	1.0
5 Large User (5000+ kW)	1.0

E. AVERAGE CUSTOMER DEMAND

Customer Class	Value
1 Residential	16.970
2 General Service (< 50 kW)	1.0
3 General Service (50 - 999 kW)	1.0
4 General Service (1000 - 4999 kW)	1.0
5 Large User (5000+ kW)	1.0

0

% Engineering Admin. Redress	1.0
Redress Item	1.0
Engineering Admin	1.0

TAB 5

METROGATE INC.
4800 DUFFERIN STREET
TORONTO, ONTARIO
M3H 5S9

March 10, 2009

Toronto Hydro-Electric System Limited
14 Carlton Street
Asset Management
3rd Floor, 500 Commissioner Street
Toronto, ON M4M 3N7

Attention: Jim Trgachef, Supervisor

Dear Sir:

Re: Metrogate Inc. development of Solaris at Metrogate, Phase I and II, Ventus at Metrogate, Phases I and II, and Metrogate Townhouses as legally described in PIN's 06164-0466 (LT), 06164-0469 (LT), 06164-0470 (LT), and 06164-0473 (LT) (Metrogate)
Number of Units: 1512 high-rise residential unit and 74 townhouses

You will recall that you hosted a meeting last fall with representatives of Deltera Inc. at which time the discussion turned to the metering of the planned condominium projects which Deltera and related companies are and will be building in Toronto. At this meeting, you advised that effective February 28, 2008, Toronto Hydro was the only entity that had the right to own and supply meters for any of our projects and that no other options for metering were available. As a result of this, Metrogate Inc.'s request for an offer to connect in respect of the above noted building did not contemplate this building being suite metered by any entity other than Toronto Hydro and the offer to connect received contemplates Toronto Hydro installing individual suite meters.

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, 1998* to choose to have this project smart sub-metered by a licensed sub-metering company. Metrogate Inc. is desirous of considering the sub-metered option and would have requested an offer to connect which contemplated the above project being smart sub-metered but for the information provided at the meeting at your offices last fall.

We therefore require that Toronto Hydro provide a further offer to connect which contemplates the above project being smart sub-metered by a licensed sub-metering company. This offer should specifically contemplate that Toronto Hydro will install a bulk meter and Metrogate Inc.'s intention to smart sub-meter the units at the project downstream of the bulk meter.

I would appreciate confirmation that an appropriate Offer to Connect will be prepared and forwarded to Metrogate Inc. within the next two weeks. Given your familiarity already with the project, and the fact that construction is underway we trust that you will make every effort to meet this timeframe.

Yours very truly,
METROGATE INC.
Per:


Lou Tersigni
Project Manager

TAB 6

February 2, 2009

Metrogate Inc.
4800 Dufferin Street
Toronto, Ontario M3H 5S9



toronto hydro
electric system

Attention: Lou Tersigni

Dear Sir:

Re: Metrogate Inc. development of Solaris at Metrogate, Phase I and II,
Ventus at Metrogate, Phases I and II, and
Metrogate Townhouses
as legally described in PIN's 06164-0466 (LT), 06164-0469 (LT), 06164-0470 (LT), 06164-0472 (LT),
and 06164-0473 (LT) ("Property")
1512 high-rise residential units (1512 Toronto Hydro suite meters)
74 townhouses
Toronto Hydro Customer Class 4
Toronto Hydro Project No. P0016652 Work Order No. 170242 ("Project")

Toronto Hydro-Electric System Limited ("Toronto Hydro") acknowledges receipt of Metrogate Inc.'s ("Customer") written request for connection of the Project to the Toronto Hydro main distribution system.

The Customer has represented to Toronto Hydro that 1586 residential units will be constructed and connected to the Toronto Hydro main distribution system and the estimated increased demand load attributable to the Project will be 3,100 kW ("Estimated Incremental Demand").

In order to connect the Project, an expansion to the Toronto Hydro main distribution system will be needed.

Based on the plans dated April 1, 2008 ("Plans") this document, including all Schedules attached, is Toronto Hydro's firm Offer to Connect ("Offer to Connect") as required by the Distribution System Code ("Distribution System Code") established by the Ontario Energy Board ("OEB").

In addition to the obligations set forth in this Offer to Connect, the Customer shall be bound by and required to comply with all provisions of the Conditions of Service filed by Toronto Hydro with the OEB. A copy of the Conditions of Service can be obtained at www.torontohydro.com.

Terms used in this Offer to Connect shall have the meaning ascribed thereto in the Distribution System Code and the Conditions of Service unless otherwise defined herein.

The following Schedules attached hereto form a part of this Offer to Connect:

- Schedule A – Connection Work and Fees;
- Schedule B – Expansion Work and Fees;
- Schedule C – Capital Contribution Requirements and Economic Evaluation;
- Schedule D – Expansion Deposit;
- Schedule E – Alternative Bid Process and Contestable Work;
- Schedule F – General Terms and Conditions.

A Capital Contribution, as described in Schedule C, will not be required from the Customer.

An Expansion Deposit, as described in Schedule D, will be required from the Customer.

toronto hydro-electric system limited

This Offer to Connect includes Contestable Work for which the Customer may obtain an alternative bid as described in Schedule E.

Based on the Plans and information provided to Toronto Hydro, as of the date of this Offer to Connect, an easement will be required to connect the Project. General easement requirements are set out under the heading "Easements" in Schedule F, General Terms and Conditions.

If the terms and conditions of this Offer to Connect are acceptable to the Customer, a duly authorized officer of the Customer shall sign the duplicate copy and return it to Toronto Hydro within 60 days of the date set forth above. If a signed copy is not returned to Toronto Hydro within that time period, Toronto Hydro reserves the right to revoke this Offer to Connect without further notice to the Customer. The Customer is advised that Toronto Hydro requires a minimum of 24 weeks, if not more ("lead time") to complete the Project, after receiving the signed Offer to Connect from the Customer, and, if necessary the Customer should make arrangements to return the signed Offer to Connect earlier, to accommodate the required lead time.

If the expansion work for this Project has not commenced within one (1) year from the date set forth above, Toronto Hydro has the right to terminate this Offer to Connect in accordance with its rights of termination as set out herein.

Any notice, communication, inquiry and payment regarding this Offer to Connect shall be directed as follows:

To: Toronto Hydro-Electric System Limited
Asset Management - 3rd Floor, 500 Commissioners Street
Toronto, Ontario M4M 3N7
Attention: Jim Trgachef, Supervisor
Standards and Policy Planning
Telephone (416) 542-2514, Facsimile: (416) 542-2731

To: The Customer at the address set forth below:
Metrogate Inc.
4800 Dufferin Street
Toronto, Ontario M3H 5S9
Attention: Lou Tersigni
Telephone: (416) 736-2545, Facsimile: (416) 661-8923

All payments and security as may be required hereunder shall be due and payable, or deliverable, upon acceptance of this Offer to Connect by the Customer.

Please sign in the appropriate place below and return one signed copy, and all payments and security as may be required, to the address indicated above.

Yours truly,

Toronto Hydro-Electric System Limited

Per: 

Name: Anthony Haines,

Title: President

I have authority to bind the Corporation.

Metrogate Inc. acknowledges its understanding of, accepts, agrees to comply with, and be bound by, all of the terms and conditions of this Offer to Connect, which include the provisions set forth above and all of the Schedules attached. The Customer acknowledges that by accepting this Offer to Connect a binding agreement is created and, upon signing, this Offer to Connect constitutes a legally valid and binding obligation of the Customer, enforceable in accordance with its terms.

The Customer confirms that it will not be obtaining alternative bids for the Contestable Work described in Schedule E.

Metrogate Inc.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

OR

Metrogate Inc. confirms it is not accepting Toronto Hydro's Offer to Connect and it will be proceeding by way of an alternative bid process for the Contestable Work, as described in Schedule E.

Metrogate Inc.

Per: _____ Date: _____

Name:

Title:

I have authority to bind the Corporation.

Offer to Connect Metrogate Inc, February 2, 2009

SCHEDULE A **CONNECTION WORK and FEES**

1. Connection Assets are the assets between the point of connection to the Toronto Hydro main distribution system and the ownership demarcation point as defined in Table 1.3 of Toronto Hydro's Conditions of Service.
2. The Connection Work and Connection Fees to supply and install the Connection Assets for the Project are described below.
3. Toronto Hydro shall recover costs associated with the installation of Connection Assets through:
 - (a) Basic Connection Fees which are part of the Economic Evaluation; and
 - (b) Variable Connection Fees collected directly from the Customer. The variable Connection Fees arise from the Variable Connection Work and are in addition to the Basic Connection Fees.
4. The Variable Connection Fees are payable by the Customer to Toronto Hydro pursuant to this Offer to Connect upon acceptance of this Offer to Connect by the Customer, or, if the Customer pursues an alternative bid process described in Schedule E, to the Customer's qualified contractor.

Connection Work shall mean the following:

- All necessary engineering design, drawings and inspections;
- Supply & install:
 - U/G road crossing and primary cable.
- Supply:
 - All switching and isolations;
 - All primary connections and terminations in transformer and to the underground primary distribution system;
 - All transformation, switchgear and termination as required.

NOTE: Customer is responsible for:

- Trenching, supplying and installing a 3Wx2H concrete encased duct structure on private Property from street line to transformer building vaults.

Connection Fees:

- a) A Basic Connection Fee of \$1,310.00 per commercial meter connection and \$850.00 per residential meter connection has been included in Toronto Hydro's Economic Evaluation.

b) Variable Connection Fees	\$76,154.01
GST 5%	\$ 3,807.70
TOTAL CONNECTION FEES, GST	\$79,961.71
Less Deposit and GST received	- \$ 0
BALANCE OUTSTANDING	\$79,961.71

The Connection Fees are based on the Connection Work being done during non-winter conditions. If the Customer requires the Connection Work to be done during winter conditions that would result in additional costs, Toronto Hydro will advise the Customer of the estimated additional costs and if the Customer provides a written request to Toronto Hydro to proceed, a Project Invoice will be issued and payment must be received by Toronto Hydro prior to the commencement of any of the applicable work.

SCHEDULE B EXPANSION WORK AND FEES

1. The Uncontestable Expansion Work and Contestable Expansion Work that must be performed to connect the Project to the Toronto Hydro main distribution system, and corresponding Fees and Total Expansion Fees ("Total Expansion Fees") are described below.
2. The Customer will also be responsible for the payment of the operating, maintenance and administration costs ("OM&A Costs") of the Project, including applicable taxes. The OM&A Costs are included in the Economic Evaluation.
3. The Expansion Fees and OM&A Costs are recovered by Toronto Hydro by way of Capital Contribution if applicable, as described in Schedule C and the increased distribution revenues attributable to the Project, which are received by Toronto Hydro ("Incremental Revenues").

Uncontestable Expansion Work shall mean the following:

- All necessary engineering design, drawings and inspections;
- Supply & install:
 - Primary terminations and connections to the existing Toronto Hydro distribution system;
 - Reconfiguration of distribution and supply to the existing hotel;
 - The necessary switching and outage arrangements to allow connections to existing Toronto Hydro distribution system.

Uncontestable Expansion Fees:

Enhancement Costs (3,100 x \$260 per kW)	\$ 806,000.00
Materials	\$ 40,800.00
Labour (engineering design, inspections)	\$ 43,800.00
Equipment	\$ 3,800.00
Basic Connection Charge (74 x \$850.00 and 11x \$1,310.00 per meter connection)	\$ 77,310.00
Overhead (including administration)	<u>\$ 104,070.14</u>
TOTAL UNCONTESTABLE EXPANSION FEES	\$1,075,780.14

Contestable Expansion Work shall mean the following:

- Supply & install:
 - All necessary duct structures, cable chambers, tap boxes, splice vaults, submersible transformer vaults, switchgear foundations on Village Green Square, Street 'A', Street 'B', Street 'C' and an extension to existing Toronto Hydro distribution system on Village Green Square.

Contestable Expansion Fees:

Materials	\$ 407,657.24
Labour (construction)	\$ 213,180.32
Equipment	\$ 29,568.46
Overhead (including administration)	<u>\$ 69,658.48</u>
TOTAL CONTESTABLE EXPANSION FEES	\$ 720,064.50
TOTAL UNCONTESTABLE EXPANSION FEES	<u>\$1,075,780.14</u>
TOTAL EXPANSION FEES (CONTESTABLE AND UNCONTESTABLE)	\$1,795,844.64
GST (5%)	<u>\$ 89,792.23</u>
TOTAL EXPANSION FEES, GST	\$1,885,636.87

The Expansion Fees are based on the Expansion Work being done during non-winter conditions. If the Customer requires the Expansion Work to be done during winter conditions that would result in additional costs, Toronto Hydro will advise the Customer of the estimated additional costs and if the Customer provides a written request to Toronto Hydro to proceed, a Project Invoice will be issued and payment must be received by Toronto Hydro prior to the commencement of any applicable work.

SCHEDULE C
CAPITAL CONTRIBUTION REQUIREMENTS and ECONOMIC EVALUATION

1. The Customer acknowledges that it has represented to Toronto Hydro that the estimated increased demand load attributable to the Project will be 3,100 kW ("Estimated Incremental Demand") and that 1586 residential units will be connected to the Toronto Hydro main distribution system.
1. To determine the amount of Capital Contribution that is required from the Customer for this Project, Toronto Hydro has performed, as described in Appendix B of the Distribution System Code, an economic evaluation ("Initial Economic Evaluation"). A copy of the Initial Economic Evaluation, including the calculation used to determine the amount of the Capital Contribution to be paid by the Customer, including all of the assumptions and inputs used to produce the Initial Economic Evaluation, is included with this Offer to Connect.
3. As a result of Toronto Hydro's Initial Economic Evaluation of the Project, the Customer will not be required to pay a Capital Contribution.

SCHEDULE D EXPANSION DEPOSIT

1. An Expansion Deposit is intended to ensure that Toronto Hydro is held harmless in respect of the Expansion Fees and OM&A Costs by securing payment of the Total Expansion Fees in the event the Estimated Incremental Demand does not materialize. The Expansion Deposit shall be in the form of cash, or an irrevocable commercial letter of credit issued by a Schedule 1 bank as defined in the Bank Act, or a surety bond. The form of security must expressly provide for its use to cover the events for which it is held as a deposit. Any portion of the Expansion Deposit held as cash, which is returned to the Customer, shall include interest on the returned amount from the date of receipt of the full amount of the Expansion Deposit, at the Prime Business Rate set by the Bank of Canada less two (2) percent.
2. The Customer is required to post an Expansion Deposit, upon acceptance of this Offer to Connect, for the difference between the actual Expansion Fees and GST and the amount of the Capital Contribution and GST paid by the Customer, in accordance with Toronto Hydro's Initial Economic Evaluation of the Project.
3. This Expansion Deposit is in addition to any other charges that may be payable to Toronto Hydro under this Offer to Connect, or the Conditions of Service, or otherwise.
4. The amount of the Expansion Deposit is set out below.
5. After the facilities are energized, the Expansion Deposit shall be reduced, at the end of each 365-day period, by an amount calculated by multiplying the original Expansion Deposit by a percentage derived by dividing the actual demand materialized in that 365-day period, by the Estimated Incremental Demand contemplated in this Offer to Connect. For information about reduction in the amount of the Expansion Deposit after each 365 day period, please contact Carrie Matthew at (416) 542-3100 ext. 32076.
6. If after five (5) years from the energization date of the facilities, the Estimated Incremental Demand contemplated by this Offer to Connect has not materialized, Toronto Hydro shall retain any cash held as an Expansion Deposit, or be entitled to realize on any letter of credit or bond held as an Expansion Deposit and retain any cash resulting therefrom, with no obligation to return any portion of such monies to the Customer at any time.

EXPANSION DEPOSIT:

TOTAL EXPANSION FEES AND GST	\$1,885,636.87
LESS CAPITAL CONTRIBUTION AND GST	-\$ 0
EXPANSION DEPOSIT	\$1,885,636.87

SCHEDULE E ALTERNATIVE BID PROCESS AND CONTESTABLE WORK

1. Toronto Hydro advises the Customer that part of the work that will be required for the expansion and connection to the existing distribution facilities includes work for which the Customer may obtain an alternative bid i.e. work that would not involve work with existing Toronto Hydro assets. The work for which the Customer may obtain alternative bid, "Contestable Work" is described below.
2. The Customer must use a contractor for the Contestable Work qualified by Toronto Hydro in accordance with its Conditions of Service. To qualify, contractors shall submit a "Contractor Qualification Application" and meet the requirements posted at:
http://www.torontohydro.com/electricsystem/customer_care/cond_of_services/index.cfm
at least 30 business days prior to their selection by the Customer to undertake Contestable Work. The Customer shall not be entitled to start performance of the Contestable Work until the contractor has completed its qualification by Toronto Hydro and has been qualified for no less than 30 business days.
3. Toronto Hydro does not make any representation or warranty regarding any contractor selected by the Customer to do any work regardless of whether the contractor has been qualified by Toronto Hydro or not and shall have no liability to the Customer in respect of such work.
4. If the Customer decides to hire a qualified contractor to perform the Contestable Work, the Customer will be required to select, hire and pay the contractor's costs for such work and to assume full responsibility for the construction of all of the Contestable Work.
5. The Customer shall ensure that the Contestable Work is done in accordance with Toronto Hydro's design and technical standards and specifications.
6. The Customer and his qualified contractor shall only use materials that meet the same specifications as Toronto Hydro approved materials (i.e. same manufacturers and same part numbers). Once the Customer has hired a qualified contractor, the Customer may request and obtain from Toronto Hydro the listing of approved materials that may be required for the Contestable Work.
7. The Customer will be required to pay for administering the contract with the qualified contractor, or if agreed by Toronto Hydro, pay Toronto Hydro a fee for performing this activity on its behalf. Upon request if Toronto Hydro is agreeable to performing such activity, Toronto Hydro will advise the Customer of the amount of the fee. Administering the contract includes, among other things, acquiring all permissions, permits and easements.
8. Toronto Hydro shall have the right to inspect and approve all aspects of the facilities constructed by the qualified contractor as part of its system commissioning activities, prior to connecting the expanded facilities to the Toronto Hydro main distribution system. If all of Toronto Hydro's requirements for the Contestable Work, including but not limited to, those set out in Sections 5, 6, and 7 above, have not been completed satisfactorily to Toronto Hydro, acting reasonably, the Project will not be energized, until the Contestable Work is in compliance with all of Toronto Hydro's requirements.
9. If the Customer decides to pursue an alternative bid for the Contestable Work, Toronto Hydro may charge the Customer costs, including, but not limited to, the following, for:
 - (a) additional design, engineering or installation of facilities required to complete the Project that are required in addition to the original Offer to Connect; and,
 - (b) inspection or approval of the work performed by the contractor hired by the Customer; and
 - (c) making the final connection of the new facilities to the Toronto Hydro distribution system. ("Additional Costs for Alternative Bid Work").

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10. If the Customer decides to hire a qualified contractor to perform the Contestable Work, the Customer must:
 1. Sign an Alternative Bid Agreement;
 2. Hire a qualified contractor;
 3. Pay to Toronto Hydro, the firm amount of Toronto Hydro's Additional Costs for Alternative Bid Work, as set out below;
 4. Provide the Alternative Bid Expansion Deposit as set out below.
 11. After the Customer has performed the Contestable Work and Toronto Hydro has inspected and approved the constructed facilities, the Customer shall transfer the expansion facilities that were constructed under the alternative bid option to Toronto Hydro and Toronto Hydro shall pay to the Customer, a transfer price, ("Transfer Price") to be determined, as hereinafter set out.
 12. The Transfer Price for the Contestable Work shall be the lower of the Customer's Costs or the amount set out in this Offer to Connect of the Contestable Work. The Customer's Costs shall mean:
 - (a) the costs the Customer paid to have the Contestable Work performed, excluding the Variable Connection Work, as provided by evidence satisfactory to Toronto Hydro;
 - (b) the Additional Costs for Alternative Bid Work charged by Toronto Hydro.Toronto Hydro shall be satisfied that all Customer's Costs shall have been properly incurred.
 13. If the Customer does not provide the calculation setting out the Customer's Costs to Toronto Hydro within 30 days of all new facilities being energized, then the amount of the Transfer Price shall be the amount set out in this Offer to Connect for the Contestable Work.
 14. Toronto Hydro shall carry out a final economic evaluation after the facilities are energized ("Final Economic Evaluation"). The Final Economic Evaluation shall be based on the amounts used in this Offer to Connect for costs and forecasted revenues, and the amount of the Transfer Price to be paid by Toronto Hydro to the Customer for the Contestable Work, where applicable. A copy of the Final Economic Evaluation shall be provided to the Customer.
 15. Any amount payable by the Customer to Toronto Hydro, may be deducted from the Transfer Price owing to the Customer by Toronto Hydro.
 16. If the Customer pursues an Alternative Bid, the Customer shall post an Alternative Bid Expansion Deposit in the amount of 10% of the Expansion Deposit as set out in Schedule D.
 17. Toronto Hydro will retain the Alternative Bid Expansion Deposit for a warranty period of up to two years. The warranty begins at the end of the Realization Period, defined below.
 18. The Realization Period for a Project ends, upon the first to occur of:
 - (i) the materialization of the last forecasted connection in the expansion project, or
 - (ii) Five (5) years after energization of the new facilities.
 19. Toronto Hydro shall be entitled to retain and use the Alternative Bid Expansion Deposit to complete, repairing or bring up to standard the facilities constructed by the Customer, including Toronto Hydro's costs to ensure that the expansion is completed to the proper design, technical standards and specifications, using approved materials and that the facilities operate properly when energized.
 20. Toronto Hydro shall return to the Customer the unapplied portion of the Alternative Bid Expansion Deposit, if any, at the end of the two-year warranty period.
 21. Upon receipt of notice from the Customer that it intends to hire an alternative bid contractor, Toronto Hydro will provide an Alternative Bid Agreement.

Contestable Work shall mean the following:

Note:

- All Customer-supplied materials must be submitted to Toronto Hydro for approval prior to installation and meet Toronto Hydro Distribution Construction Standards;
- All equipment and underground plant installed must be inspected and approved prior to connection to the Toronto Hydro distribution system;
- Customer is responsible for applying for and obtaining any necessary City road cut permits.

Description of Work to be Completed by the Customer:

- Supply & install:
 - All necessary duct structures, cable chambers, tap boxes, splice vaults, submersible transformer vaults, switchgear foundations on Village Green Square, Street 'A', Street 'B', Street 'C' and an extension to existing Toronto Hydro distribution system in Village Green Square;
 - All primary cables complete with terminations thereof, except final connection to the Toronto Hydro distribution system;
 - All secondary cables complete with terminations thereof, except final connection to the Toronto Hydro distribution system;
 - All switchgears, submersible transformers;
 - All cable risers completed to the installation of the first section of U-Guard on the termination poles.

Description of Work to Be Completed by Toronto Hydro:

- All necessary engineering design and inspections and material approvals;
- Connections to existing Toronto Hydro distribution system;
- Primary cable termination connections to the existing Toronto Hydro distribution system on Sufferance Road;
- The necessary switching and outage arrangements to allow connection to existing distribution system.

Toronto Hydro's Additional Costs for Alternative Bid Work	\$ 10,750.00
GST (5%)	<u>\$ 537.50</u>
TOTAL ADDITIONAL COSTS FOR ALTERNATIVE BID WORK, GST	\$ 11,287.50
 ALTERNATIVE BID EXPANSION DEPOSIT	 \$188,563.68

**SCHEDULE F
GENERAL TERMS AND CONDITIONS
of OFFER TO CONNECT**

1. ASSIGNMENT

- 1.1** Neither party may assign this Offer to Connect without the prior written consent of the other party, such consent not to be unreasonably withheld.

2. DEMARCATION POINTS

- 2.1** The ownership and operational demarcation points of the Project shall be identified as such by Toronto Hydro on the as-constructed drawings.
- 2.2** In accordance with Toronto Hydro's Conditions of Service, the Customer is responsible for maintaining, repairing and replacing, in a safe condition satisfactory to Toronto Hydro, all the Customer's civil infrastructure on private property that is deemed required by Toronto Hydro to house Toronto Hydro's Connection Assets, including but not limited to poles, underground conduits, cable chambers, cable pull rooms, transformer rooms, transformer vaults and transformer pads.

3. DISPUTE RESOLUTION

- 3.1** Any controversy between the parties arising under this Offer to Connect not resolved by discussions between the parties shall be determined by an arbitration tribunal convened pursuant to a notice of submission given either by Toronto Hydro or the Customer.
- 3.2** The notice shall name one arbitrator.
- 3.3** The party receiving the notice shall, within 10 days of notice to the other, name the second arbitrator or, if it fails to do so, the party giving the notice of submission shall name the second arbitrator.
- 3.4** The two arbitrators appointed shall name the third arbitrator within 10 days, or if they fail to do so within that time period, either party may make application to the applicable court for appointment of the third arbitrator.
- 3.5** Any arbitrator selected to act under this Offer to Connect shall be qualified by education, training and experience to pass on the particular question in dispute and shall have no connection to either of the parties other than acting in previous arbitrations.
- 3.6** The arbitration shall be conducted in accordance with the provisions of *The Arbitration Act, 1991 S.O. c-17*, as amended.
- 3.7** The decisions of the arbitration tribunal shall be made in writing and shall be final and binding on the parties as to the questions submitted and the parties shall have no right of appeal therefrom.

4. EASEMENTS

- 4.1** Upon request by Toronto Hydro, the Customer shall, at its own expense, execute, register and provide a solicitor's opinion on title in a form acceptable to Toronto Hydro, within the time period specified by Toronto Hydro, and subject only to those encumbrances permitted in writing by Toronto Hydro, such easement agreements as Toronto Hydro may require for the installation and continued existence of any electrical or telecommunication plants or access to same for the life of such plant or as otherwise required to perform its responsibility as a distribution company.
- 4.2** The customer acknowledges that in order for an easement to be registered, it shall be required, at its expense, to arrange for and register any necessary

documentation required by the appropriate Land Registry Office, including a Reference Plan, prepared by an Ontario Land Surveyor, describing the extent of the lands required for the easement.

5. FORCE MAJEURE

- 5.1** Force Majeure means any act, event, cause or condition that is beyond Toronto Hydro's reasonable control, including wind, ice, lightning or other storms, earthquakes, landslides, floods, washouts, fires, explosions, contamination, breakage of equipment or machinery, delays in transportation, strikes, lockouts or other labour disturbances, civil disobedience or disturbances, war, acts of sabotage, blockades, insurrections, vandals, riots, epidemics, loss of any relevant license or a declaration of force majeure by Hydro One Networks Inc., or any successor, under any agreement which Hydro One Networks Inc., or any successor, has with Toronto Hydro in connection with any work to be performed by Toronto Hydro under this Offer to Connect.
- 5.2** If by reason of Force Majeure, Toronto Hydro is unable, wholly or partially, to perform or comply with any or all of its obligations under, this Offer to Connect, it shall be relieved of such obligations, and any liability (including liability for any injury, damage or loss to the Customer caused by such event of Force Majeure) for failing to perform or comply with such obligations, during the continuance of Force Majeure.

6. LIMITATION OF LIABILITY

- 6.1** Toronto Hydro shall not be responsible for the acts or omissions of the Customer or its employees, contractors, subcontractors or agent.
- 6.2** Neither Toronto Hydro nor any of its employees, agents, officers, directors or other representatives ("Representatives") shall be liable for any loss, injury or damage to persons or property caused in whole or in part by negligence or fault of the Customer, or any of the Customer's Representatives, contractors or subcontractors.
- 6.3** Notwithstanding any other provision in this Offer to Connect, or any applicable statutory provision Toronto Hydro and its Representatives shall only be liable for any damages which arise directly out of the wilful misconduct or negligence of Toronto Hydro or its Representatives.
- 6.4** Neither Toronto Hydro nor any of its Representatives shall be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption losses, loss of contract or loss of goodwill, or for any indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, arising from any breach of this Offer to Connect, fundamental or otherwise, or from any tortious acts, including the negligence or wilful misconduct of it or its Representatives, however arising.
- 6.5** No action arising out of this Offer to Connect, regardless of the form thereof, may be brought by either party more than two (2) years following the date the cause of action arose, provided however that, subject to any applicable law, Toronto Hydro may bring an action for non-payment of amounts, or non-delivery of Expansion

- Deposits, required to be paid or delivered by the Customer under this Offer to Connect at any time.
- 6.6 The Customer shall indemnify and save harmless Toronto Hydro and its Representatives from any action, claim, penalty, damages, losses, judgements, settlements, costs and expenses or other remedy brought by any party or governmental authority, arising out of or resulting from any negligent act or failure to act or any willful misconduct by the Customer or any of its Representatives.
- 6.7 All of the provisions of Sections 6.1, 6.2, 6.3, 6.4, 6.5 and 6.6 shall survive the termination of this Offer to Connect.
7. NOTICE
- 7.1 Any notice to be given under this Offer to Connect shall be in writing and delivered by prepaid registered mail, hand, courier or facsimile to the contact for the parties as set forth in the Offer to Connect.
- 7.2 Delivery by facsimile shall be deemed received on the day following transmittal provided the facsimile is received as confirmed by the issuance of a confirmation receipt at the point of transmission.
- 7.3 Delivery by hand or courier shall be deemed received on the date delivered.
- 7.4 Delivery by prepaid registered mail shall be deemed received on the 5th business day after mailing.
- 7.5 Either party may change its address for notice by providing written notice of that change to the other party.
8. REVISED PLANS
- 8.1 If the Customer submits revised plans or requires additional design work, Toronto Hydro may provide, at cost, a new offer based on the revised plans or the additional design work.
- 8.2 If the Plans are revised at any time, after acceptance of this Offer to Connect shall be withdrawn or terminated immediately, despite any acceptance by the Customer. A new Offer to Connect will only be provided to the Customer upon payment in the amount of \$3,500.00 that must be paid prior to the new Offer to Connect being provided to the Customer.
9. SECURITY INTEREST
- 9.1 As security for its obligation under this Offer to Connect, the Customer grants to Toronto Hydro a present and continuing security interest in, and lien on (and right of set-off against), and assignment of all money, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, delivered as an Expansion Deposit or otherwise pursuant to the terms of this Offer to Connect, or for the benefit of Toronto Hydro.
- 9.2 The Customer agrees to take such action as Toronto Hydro reasonably requires in order to perfect Toronto Hydro's first-priority security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.
- 9.3 Toronto Hydro shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Customer's obligations under this Offer to

Connect (Customer remaining liable for any amounts owing to Toronto Hydro after such application), subject to Toronto Hydro's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10. TAXES

- 10.1 Unless specified, none of the amounts payable or deliverable under the Offer to Connect include goods and services taxes or any other taxes that may be payable.
- 10.2 The Customer shall pay all such taxes in accordance with applicable laws.

11. TERMINATION

- 11.1 Each of the following shall constitute an event of default ("Event of Default"):
- (i) the Customer fails to make any payment at the time specified for payment in this Offer to Connect and such failure has not been remedied within 4 days notice of such failure;
 - (ii) the Customer fails to deliver any Expansion Deposit, including a renewal, or additional Expansion Deposit within the time period specified for delivery in this Offer to Connect;
 - (iii) the Customer fails to execute and deliver any agreement, or deliver any other document, within the time period specified for execution and/or delivery;
 - (iv) the Customer fails to commence the Expansion Work within 1 year from the date of this Offer to Connect;
 - (v) the Customer cancels the Project for any reason;
 - (vi) the Customer fails to comply with any other covenant or obligation in this Offer to Connect and such failure has not been remedied (where it is possible to remedy such failure) within 15 days of the initial failure to perform;
 - (vii) a resolution has passed, or documents filed at an office of public record, for the merger, amalgamation, dissolution, termination of existence, liquidation or winding-up of the Customer, unless the prior consent of Toronto Hydro has been obtained;
 - (viii) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Customer or any of its property is appointed by any government authority, and such receiver, manager, receiver-manager, liquidator, monitor or trustee is not discharged within 30 days of appointment; or, if by decree of any government authority, the Customer is adjudicated bankrupt or insolvent, or any substantial part of its property is taken, and such decree is not discharged within 30 days after the entry thereof; or, if a petition to declare bankruptcy or to reorganize such party pursuant to any applicable law is filed against the Customer and is not dismissed within 30 days of such filing;
 - (ix) the Customer files, or consents to the filing of, a petition in bankruptcy or seeks, or consents to, an order or other protection under any provision of any legislation relating to insolvency or

bankruptcy ("Insolvency Legislation"); or files, or consents to the filing of, a petition, application, answer or consent seeking relief or assistance in respect of itself under provision of any Insolvency Legislation; or files, consents to the filing of, an answer admitting the material allegations of a petition filed against it in any proceeding described herein; or makes an assignment for the benefit of its creditors; or admits in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, or liquidator over any, or all, of its property.

- 11.2 Upon the occurrence of an Event of Default, Toronto Hydro may, at its sole option, do any one or more of the following:
- (i) exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;
 - (ii) exercise its rights of set-off against any and all property of the Customer in the possession of Toronto Hydro;
 - (iii) declare the full amounts of the Expansion Fees and OM&A Costs that are unpaid and unrecovered as due and owing ("Accelerated Amounts");
 - (iv) draw on any cash, or draw under any letter of credit, then held by or for the benefit of Toronto Hydro as an Expansion Deposit or Capital Contribution or otherwise, free from any claim or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer, to cover all costs incurred on, or prior to, the date of termination, including costs for materials ordered for the expansion, storage costs and facilities removal costs and any amounts owing under this Offer to Connect, including the Accelerated Amounts; and/or
 - (v) terminate this Offer to Connect, provided that, any termination shall not affect any obligations incurred prior to the effective date of termination or any other rights that Toronto Hydro may have arising out of any rights or obligations that are expressed to survive termination of this Offer to Connect.

12. TITLE AND RISK OF LOSS

- 12.1 Notwithstanding that Toronto Hydro may install equipment and materials under this Offer to Connect to which title is intended to pass to the Customer, title to such equipment or materials shall be transferred to the Customer, and risk of loss shall be assumed by the Customer, upon delivery to the Property.
- 12.2 Toronto Hydro shall be entitled to receive reasonable compensation for storing any materials or equipment not delivered to the Customer due to a delay caused by the

Customer and such equipment or materials shall be held at the Customer's risk.

13. WARRANTIES

- 13.1 Toronto Hydro warrants that the services it provides are in accordance with Good Utility Practice.
- 13.2 Except as expressly set forth in this Offer to Connect, Toronto Hydro provides no warranties, for fitness for purpose or otherwise, and whether statutory or otherwise, to the Customer.

14. MISCELLANEOUS

- 14.1 This Offer to Connect, including the Schedules attached, shall constitute the entire agreement between the parties, and there are no other agreements or understandings, either written or oral, to conflict with, alter or enlarge this Offer to Connect unless agreed to in writing between the parties subsequent to the effective date of this Offer to Connect.
- 14.2 Failure or delay by Toronto Hydro in enforcing any right under, or provision of this Offer to Connect shall not be deemed a waiver of such provision or right with respect to the instant, or any previous, or subsequent, breach.
- 14.3 This Offer to Connect shall be governed by the laws of the Province of Ontario and the laws of Canada as applicable.
- 14.4 Toronto Hydro shall be entitled to access at all reasonable times to any of the Customer's properties to perform the services in this Offer to Connect.
- 14.5 Interest on unpaid amounts shall bear interest at the rate of 1.5 percent calculated and compounded monthly (19.56 percent per annum) at and from the due date up to and including the date of payment in full of such amount, together with all interest accrued to the date of payment.
- 14.6 Toronto Hydro and the Customer agree to execute and deliver such further documents as may be required for either party to fulfill its obligations and enforce its rights under this Offer to Connect.
- 14.7 If any provision of this Offer to Connect is declared illegal, invalid or unenforceable for any reason whatsoever, to the extent permitted by law, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of any of the other provisions.
- 14.8 This Offer to Connect and the obligations of the parties under it are subject to all applicable present and future laws, rules, regulations and orders of any regulatory or legislative body or other duly constituted authority having jurisdiction over Toronto Hydro or the Customer.
- 14.9 Time shall be of the essence.
- 14.10 If there is a conflict between this Offer to Connect and Toronto Hydro's Conditions of Service, this Offer to Connect shall govern.

	A	B	C	D	E	F	G	H	I	J	K
1	REQUEST FOR ECONOMIC EVALUATION (NPV CALCULATION)										
2	January 23, 2007 Version										
3											
4	Important: Enter Data in Yellow Boxes only, including zero values										
5											
6											
7	Requested by:	DAN STANOEY					Date:	November 1, 2008			
8											
9	Tel. Ext:	418-542-7818									
10											
11	Supervisor Approval:	Dave Graham									
12											
13	Project Information:										
14	Address	METROGATE DEVELOPMENTS					WO Number	170242			
15											
16	Service Type as applicable	(key 'n',	Res		✓	Commercial				Industrial	
17											
18	3,100 KW Power Factor: 98%										
19											
20	Transformer Size	3,100 KVA	Incremental Load	3,100 KVA	Total Load	3,100 KVA					
21											
22	Customer Class	4	Expected In-Service Date					Oct-10			
23											
24	Type of Account Meter	Monthly demand > 1000 KW and up to 5000 KW					No. of Meters Installed	1597			
25											
26											
27											
28											
29											
30											
31	EXPANSION FEES / ENHANCEMENT COSTS										
32											
33											
34											
35											
36											
37											
38											
39											
40	OH and U/G	3,100	X	\$280.00	=	\$808,000.00					
41											
42											
43											
44	Enhancements Costs = \$808,000.00										
45											
46											
47	NETWORK VAULT COST SHARING = \$										
48											
49	IMPARTED EXPANSION COST = \$808,000.00										
50											
51											
52											
53											
54											
55											
56											
57											
58											
59											
60											
61											
62											
63											
64											
65	Customer Connection Forecast - Number of Installed Meter										
66											
67	Residential	934	0	324	324	0	1,582				
68	General Service (< 50 KW)	4	0	2	2	0	8				
69	General Service (50 - 999 KW)						0				
70	General Service (1000 - 4999 KW)						0				
71	Large User (5000+ KW)						0				
72											
73	Total Customer Monthly Peak Demand - kva - (Class 3, 4 and/or 5)										
74											
75	Residential						Control				
76	General Service (< 50 KW)										
77	General Service (50 - 999 KW)										
78	General Service (1000 - 4999 KW)										
79	Large User (5000+ KW)										
80											
81	Notes:										
82											

A. MODEL PARAMETER BASE ASSUMPTIONS

Item	Value
Current Year	2008
Income Tax Rate	38.12%
LCT tax rate	0.13%
PCT tax rate	0.30%
Inflation	0.00%
WACC	5.50%

B. ASSET CLASSES

Description	Value
Dist. System Assets (class 1)	125
Buildings (class 1)	50
Computer Eqt. (class 10)	4
Applications Software (class 12)	5
Office Equipment (class 8)	10

C. CUSTOMER CLASSES

Description	Value
Residential	1
General Service (< 50 kW)	2
General Service (50 - 999 kW)	3
General Service (1000 - 4999 kW)	4
Large User (5000+ kW)	5

D. CUSTOMER RATES

Customer Class	Residential	General Service (< 50 kW)	General Service (50 - 999 kW)	General Service (1000 - 4999 kW)	Large User (5000+ kW)
1	149.18	205	4.87	0.0000	33.004
2	0.0154	0.0184	0.0000	0.0000	0.0000
3	13.54	4.15	0.0000	0.0000	0.0000
4	17.3%	20.1%	0.0000	0.0000	0.0000
5	66.500	66.500	66.500	66.500	66.500

E. AVERAGE CUSTOMER DEMAND

Customer Class	Value
Residential	18,870
General Service (< 50 kW)	37,038
General Service (50 - 999 kW)	
General Service (1000 - 4999 kW)	
Large User (5000+ kW)	

G.

% Engineering Admin Reclass	
Reclassified from	
Engineering Admin	10.7%

TAB 7

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998 S.O. 1998, c. 15 (Schedule B) (the "**OEB Act**");

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance against Toronto Hydro-Electric System Limited ("**THESL**")

AFFIDAVIT OF KRISTYN ANNIS
(sworn December 8, 2009)

I, KRISTYN ANNIS, of the City of Toronto, Province of Ontario MAKE OATH AND SAY:

1. I am an associate at the law firm of McCarthy Tétrault LLP, counsel for THESL in this proceeding. I have personal knowledge of the matters herein disposed, except where stated to be based on information and belief, and where so stated, I believe the same to be true.
2. I am informed by George Vegh, defence counsel to THESL, that on November 30, 2009 Colin McLorg, Manager, Regulatory Policy and Relations at THESL, sent the letter (the "**THESL Letter**") attached hereto as Exhibit 'A', to Mr. Guiseppe Bello, Project Manager of Residences of Avonshire Inc.
3. I am informed by George Vegh that he provided Glen Zacher, Compliance Counsel in these proceedings, with a copy of the THESL Letter on November 30, 2009.
4. I am further informed by George Vegh that on December 4, 2009, Mr. Zacher advised that he had reviewed the THESL Letter and that in his view this letter is not compliant with the enforceable provisions of the Notice of Intention to Make an Order for Compliance against THESL.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario on
December 8, 2009.


Commissioner for taking Affidavits


KRISTYN S. ANNIS

EXHIBIT 'A'

Colin J. McLorg
14 Carlton St.
Toronto, Ontario
M5B 1K5

Telephone: 416-542-2513
Facsimile: 416-542-2776
cmclorg@torontohydro.com



2009 November 27

Mr. Giuseppe Bello
Project Manager
Residences of Avonshire Inc
4800 Dufferin Street
Toronto, ON M3H 5S9

12-Encl

Dear Mr. Bello:

RE: Metering and Offers to Connect for 'Avonshire' Projects

This is further to my letter to you of April 22, 2009. That letter was in response to your request of March 6, 2009 that Toronto Hydro Electricity-System Limited ("THESL") provide the Residences of Avonshire Inc. ("Avonshire") with a revised offer to connect ("OTC") which would provide for a configuration allowing sub-metering by a licenced smart sub-meterer. As noted in your March 6 letter, Avonshire's initial request for an OTC did not contemplate the project being sub-metered by a licenced sub-meterer. THESL provided an OTC on the terms requested, i.e., with suite metering by THESL.

THESL has reviewed its position concerning your project. As noted in my letter of April 22, 2009, THESL's Conditions of Service concerning metering in multi-unit residential buildings changed effective February 29, 2008. Although THESL's Offer to Connect was not executed by you until substantially after February 29, 2008, the plans provided to THESL that formed the basis for the connection request and the original OTC for Avonshire were dated January 28, 2008.

As a result, this is to advise you that if Avonshire still seeks sub-metering by a licenced sub-meterer, THESL is now prepared to provide Avonshire with an amended OTC reflecting that configuration, subject to Avonshire's compliance with all technical and legal requirements including those set out below. Please also note that your original request for an offer to connect was predicated on a THESL suite metering configuration, which had an impact on the calculation of the Capital Contribution associated with the project. As a result, the financial terms of any

revised OTC may change, and, in particular, the new calculation of the capital contribution may result in an additional contribution becoming owed to THESL.

One legal requirement with respect to smart sub-metering is set out in Regulation 161/99, s. 4.0.1. That section provides that 'exempt distributors' (such as Avonshire and its agents and contractors (including sub-meterers)) who are exempted from Ontario Energy Board ("OEB") licencing and rate making requirements cannot profit on distribution services. The OEB has addressed this as follows:¹

"A key qualification for Exempt Distributors [including condominium developers and condominiums] is that they must distribute electricity for a price no greater than that required to recover all reasonable costs. This means that the distribution of electricity cannot be undertaken by an Exempt Distributor for profit.

It is worth noting that electricity charges are comprised of two basic components: a charge intended to recover distribution delivery costs on the one hand, and a charge intended to recover the costs of the electricity commodity on the other. The Exempt Distributor, that is the landlord, must pass each of these components through to the consumer, that is, the tenant, at a rate that is no greater than the reasonable costs charged to the Exempt Distributor by the licensed distributor through the bulk meter.

It follows that in installing and administering smart sub-meters, the fundamental rule governing the activity for the landlord is that the landlord may not impose any costs associated with the smart sub-metering activity that violate the primary rule governing his status, which is that the price charged for the distribution of electricity can be no greater than that required to recover all reasonable costs associated with the distribution of electricity to the building, as recorded by the bulk meter. There is no room in this equation for royalties payable to the landlord or for any other charge beyond a demonstrably reasonable set of costs associated with the smart sub-metering activity." (emphasis added)

To ensure compliance with law, THESL will provide to Avonshire, if requested, an amended OTC, conditional upon written confirmation by Avonshire that:

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;

¹ Ontario Energy Board Decision and Order, August 13, 2009 (EB-2009-011.1) at pp. 10-11.

- 69
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.

To verify compliance with these conditions, THESL will require the Avonshire to provide all documentation with smart sub-meterers so that it can confirm compliance with this legal obligation.

If Avonshire seeks an amended OTC based on the conditions herein, please provide an executed copy of this document to me by December 14, 2009. If Avonshire requests an amended OTC it may be necessary for Avonshire to communicate with THESL staff to address technical requirements. If an executed copy is not received by December 14, 2009, THESL will proceed on the basis that Avonshire will maintain its current arrangement to be suite metered by THESL.

Yours truly,



Colin McLorg

Manager, Regulatory Policy and Relations

416-542-2513

cmclorg@torontohydro.com

I CONFIRM THAT THE RESIDENCES OF AVONSHIRE INC REQUESTS AN AMENDED OFFER TO CONNECT UNDER THE TERMS AND CONDITIONS SET OUT HEREIN.

Giuseppi Bello

DATE