

Dennis M. O'Leary
Direct: 416.865.4711
E-mail: doleary@airdberlis.com

December 9, 2009

Via Email and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Board No. EB-2009-0139
Toronto Hydro-Electric System Limited ("THESL")
2010 Rates Proceeding**

We are counsel to the Smart Sub-Metering Working Group ("**SSMWG**"), an intervenor in the above-noted proceeding.

Procedural Order No. 1 requires Board Staff and intervenors who wish to file evidence to do so on or before Thursday, December 10, 2009.

The SSMWG has retained Mr. Philip Q. Hanser, of The Brattle Group, for purposes of preparing evidence in respect of the SSMWG's concerns about THESL's Suite Meter Program. Unfortunately, Mr. Hanser was engaged in a three-week trial in San Diego, which was immediately followed by a family commitment in London, England. Mr. Hanser only returned late last week and was required to attend in Montreal for purposes of a Hydro-Québec proceeding before the Régis de l'énergie. He has only become available to review THESL's interrogatory responses and to prepare evidence commencing late yesterday.

It will therefore not be possible for the SSMWG to meet the filing deadline of December 10, 2009 for its evidence.

I have raised this matter with counsel for THESL, Mr. Mark Rodger. Mr. Rodger advises that THESL is not opposed to the Board granting a brief extension to the SSMWG such that its evidence be filed on or before Tuesday, December 15, 2009.

Understandably, THESL will need additional time to prepare its interrogatories to the SSMWG. In this regard, THESL and the SSMWG jointly propose that THESL serve and file its interrogatories to the SSMWG on or before Monday, December 28, 2009, and that the SSMWG respond to the interrogatories on or before Monday, January 4, 2010. Neither THESL nor the SSMWG are requesting any change to the hearing date proposed by the Board in its Procedural Order.

December 9, 2009

Page 2

Finally, there is a further reason for the requested extension. The Government of Ontario, today, released the long-anticipated draft *Energy Consumer Protection Act, 2009* (Bill 235). Sections of Bill 235 may have a bearing on the issues that the SSMWG may raise in this proceeding. The additional time will allow both the SSMWG and THESL to consider the ramifications of the Bill and to seek appropriate instructions.

Yours very truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to be 'D. O'Leary', with a stylized flourish at the end.

Dennis M. O'Leary

DMO/ct

cc Applicant and Intervenors EB-2009-0139

6086751.1