

# STIKEMAN ELLIOTT

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**BY EMAIL AND COURIER**

December 10, 2009  
File No.: 100519.1011

Ms. Kirsten Walli  
Ontario Energy Board  
Yonge-Eglinton Centre  
P.O. Box 2319, Suite 2700  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms. Walli:

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

We acknowledge receipt of Mr. Vegh's letter dated December 8 enclosing THESL's motion to compel answers to interrogatories.

We agree that it would be efficient and appropriate to have this motion heard in writing.

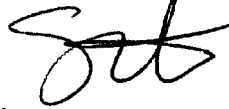
We disagree that Compliance Counsel is precluded from filing materials in response to THESL's motion. THESL is correct that Rule 29.02 requires that a party who refuses to answer an interrogatory to set out the grounds for refusal and we have done so. That rule does not, however, preclude a party from responding to a motion to compel answers that have been refused; and it would be patently unfair and contrary to basic due process if that was the case. We are aware of no authority for denying a party (who refused to answer interrogatories, or questions on discovery, or to produce a requested document, etc.) from responding to a motion to compel that information.

The interrogatories that are the subject of THESL's motion seek information from Avonshire or Metrogate that is not in the possession of Compliance Counsel. Avonshire and/or Metrogate may have an interest in responding to THESL's motion.

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Lastly, we object to certain evidence filed by THESL in support of its motion. We are attempting to address this issue directly with Mr. Vegh. If this issue cannot be resolved, we will address it as part of our response to THESL's motion.

Yours truly,



for: Glenn Zacher

/sc

cc: George Vegh, *Counsel to THESL*  
Maureen Helt, *OEB*  
Patrick Duffy  
Dennis O'Leary, *Counsel to SSMWG*  
Guru Kalyanrama, *Counsel to EDA*  
Michael Millar