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

# PRE-FILED EVIDENCE OF TORONTO HYDRO ELECTRIC SYSTEM LIMITED

# BOOK 1

December 14, 2009

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# Pre-Filed Evidence of Toronto Hydro Electric System

## EB-2009-0308

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TAB A

# WRITTEN DIRECT EVIDENCE OF COLIN J. McLORG AND CHRISTOPHER TYRRELL

- Q. 1. Please state your names and positions.
  - A. 1. (C. McLorg) My name is Colin McLorg. I am the Manager, Regulatory Policy and Relations in the Finance Division of THESL. In that position I am, among other things, responsible for matters of regulatory policy generally, including policy-related compliance matters.
    - (C. Tyrrell) My name is Chris Tyrrell. As of January 1, 2009, I will be the Chief Conservation Officer for THESL. In that position I will be, among other things, responsible for THESL's conservation programs and other programs related to the *Green Energy Act*.
- Q. 2. What is the purpose of this evidence?
  - A. 2. (C. McLorg). My evidence consists of four parts.

First, it provides a general outline of THESL's suite metering policies with respect to condominiums. This will include a discussion of what configurations are offered by THESL and under what circumstances. It will also include data on the market share of smart submetering opportunities that are impacted by THESL's suite metering policy as it relates to new condominiums.

Second, it outlines the specific circumstances and context for the offers to connect that were provided to Avonshire Inc. ("Avonshire") and Metrogate Inc. ("Metrogate").

Third, it addresses in detail how THESL's policy respecting suite metering of new condominiums does not violate any of the enforceable provisions as alleged in the Notice of Intention to Make an Order for Compliance (the "Notice").

Fourth, it addresses the basis for THESL's concerns that condominium developers and their agents/contractors (sub-meterers) may be marking up distribution services in a manner that is inconsistent with their entitlement for an exemption from regulation by the Ontario Energy Board ("OEB" or the "Board") in accordance with Regulation 442/07. This will also address why THESL's suite metering configuration is an effective way to address this issue in accordance with s. 3.1.1 (a) of the Distribution System Code ("DSC").

(C. Tyrrell) My evidence will address how THESL's policy with respect to suite metering of new condominiums furthers the development of conservation, smart grid implementation, and the integration of renewable power.

### THESL's Suite Metering Policies for New Condominiums

- Q. 3. Mr. McLorg, please outline how THESL's metering policies address condominium buildings.
  - A. 3. (C. McLorg) THESL divides the stock of condominium buildings in Toronto into two classes: 'new' and 'existing'. 'New' condominiums are those for which written requests for connection and corresponding plans were submitted to THESL by developers on or after February 29, 2008. Many new condominiums are still under construction, or if now occupied, are not yet the subjects of declarations. In this circumstance, condominium boards of directors are not established. Communication with respect to new condominiums (prior to the establishment of a board of directors) is with a condominium developer.

Existing condominiums are all other condominiums in Toronto that are not 'new'. Existing condominiums presently form the great majority of the condominium housing stock in Toronto. As time elapses, a growing proportion of new condominiums will become occupied and registered.

In existing condominiums, individual condominium units may be either directly smart metered by THESL or they may be bulk metered. At the option of condominium boards, bulk metered condominiums may have further sub-metering behind the bulk meter.

If existing condominiums were already unit-metered or suite-metered by THESL using conventional meters, those conventional meters either were or will be replaced with smart meters. In that case, each unit was and will remain a direct customer of THESL.

If existing condominiums have bulk meters, the boards of directors may request that THESL install smart metering for each unit, or they may arrange for sub-metering for each unit. In the former circumstance, the condominium ceases to be metered and billed as a single customer and is converted to a collection of individual accounts of THESL (one of which is the residual common areas account, still in the name of the condominium corporation). In the circumstance where an existing condominium chooses to maintain its bulk meter with THESL and sub-meter its individual units, the condominium continues to be metered and billed by THESL as a single customer and the sub meters are billed by the sub-meter service provider as an agent or sub-contractor of the Condominium board.

Most existing condominiums are bulk metered by THESL, by means of an interval meter or a demand meter. Behind the bulk meter, there may or may not exist further submetering. THESL is not a licensed sub-meterer and does not provide sub-metering services. However, for existing condominiums THESL will install (if not already present) an interval meter upon the request of the condominium board of directors.

With respect to new condominiums, THESL's policy is to connect each unit (including residential, commercial, and common area units) as an individual direct customer of THESL by installing suite meters. Because at this stage of development new condominiums do not yet have boards of directors, all communications are with condominium developers.

THESL provides two options to condominium developers with respect to the connection of new condominiums: (i) THESL will provide smart metering for each unit at no charge to the developer; or; (ii) the developer may choose to pursue an alternative bid for the provision and installation of the smart meters. In the latter case, the developer gets a credit for the costs of installation by a third party. These options are set out in THESL's Conditions of Service ("CoS").

In either case, and apart from the provision and installation of the metering, each individual unit becomes a direct customer of THESL.

- Q. 4. Can you confirm that THESL has provided or is in the process of providing smart meters to condominium developers and to registered condominiums when it has been requested to do so?
  - A. 4. Yes, it has or will in every case.
- Q. 5. Does THESL offer bulk metering to condominium developers with respect to buildings that do not have a board of directors?
  - A. 5. For new condominiums, it is THESL's policy not to provide bulk-metered connections as an end-state configuration to condominium developers. New condominiums must have individual suite metering, whether provided by THESL or by way of alternative bid arrangements.
- Q. 6. Before asking you to address the reasons for THESL's policy, it would be helpful to understand the impact of that policy with respect to sub-metering opportunities for smart sub-meterers. The OEB Compliance Team has expressed the view that "THESL's policy will

almost certainly eliminate the practical business opportunities for smart sub-meter providers." Can you please comment on that statement?

Mr. McLorg: I do not understand the basis for that statement. This view was never shared with THESL. THESL posed an interrogatory to the Compliance Team requesting it to provide all materials that it prepared and or relied upon in investigating the impact of THESL's position on the competitive sub-metering industry in Ontario. No materials or information were provided to substantiate this position.<sup>2</sup>

Compliance Staff's assertion fails to take into account that, even where THESL provides suite metering to all new condominiums in accordance with its policy, there are considerable sub-metering business opportunities available for sub-meter providers. These include sub-metering of existing condominiums, apartment buildings, municipal and commercial space as well as industrial process. In fact, sub-metering for new condominiums is a small portion of the sub-metering opportunities for licensed submeterers.

According to Canada Mortgage and Housing data, as of 2006, there were approximately 204,000 existing condominiums units in Toronto, with a further 27,000 units started from January 2007 to June 2009<sup>4</sup>. In addition, in 2006 there were approximately 476,000 apartment units in Toronto. 5 All existing condominiums and rental apartment buildings may be sub-metered by OEB licensed sub-meterers, for a total market of approximately 707,000 units.

THESL's suite metering policy applies only to new condominiums. From January 2007 to June 2009 there have been approximately 900 units started per month on average.6 From March 2008 (the effective date for Toronto Hydro's existing Conditions of Service) to June 2009 there have been approximately 18,900 units started. As a result, the number of new condominiums represents a small portion (less than 3%) of residential sum metering business opportunities for sub-meterers in the city of Toronto.

Mr. Tyrrell: As noted, there are other significant sub metering business opportunities in the non-multi residential sectors including the municipal, institutional, commercial, office

<sup>&</sup>lt;sup>1</sup> Compliance Staff Briefing Note, May 1, 2009, p. 10: Tab 1.

<sup>&</sup>lt;sup>2</sup> Compliance Counsel's Responses to Interrogatories, IR 2 (vi) (a): Tab 2.

<sup>3</sup> CANADIAN HOUSING OBSERVER Occupied Housing Stock by Structure Type and Tenure, Toronto, 1991–2006 (dwelling units): Housing Data Materials Book, Tab 1.

<sup>&</sup>lt;sup>4</sup> Compilation of figures from CMHC Housing Now monthly reports: Housing Data Materials Book, Tab 2.

<sup>&</sup>lt;sup>5</sup> CANADIAN HOUSING OBSERVER Occupied Housing Stock by Structure Type and Tenure, Toronto, 1991–2006 (dwelling units): (Housing Data Materials Book, Tab 1.

<sup>6</sup> Compilation of figures from CMHC Housing Now monthly reports: Housing Data Materials Book, Tab 2.

<sup>&</sup>lt;sup>7</sup> Compilation of figures from CMHC Housing Now monthly reports: Housing Data Materials Book, Tab 2.

and the industrial sector. In many multi use facilities like retail malls, municipal and office towers where space is rented, energy is typically recovered through a gross lease agreement. These facilities are typically bulk metered and historical energy consumption is used to establish the renter's proportionate share of the energy cost which is factored into the gross lease rate. From a competitive lease perspective, there is a growing interest among property managers for sub metering to minimize or eliminate energy costs from lease rates and transfer to the tenant the responsibility to manage much of their own energy use and cost. Property managers and tenants view sub metering as a method to help overcome a very common CDM investment disincentive that is created by a gross lease structure. Once tenant space is sub metered and tenants become responsible for paying their own energy cost, they have much greater motivation to invest in CDM and renewable energy.

Further, in many production or service related sectors, sub metering has become an essential tool to support Activity-Based Costing (ABC) analysis. Many facility owners, property managers and industrial customers install and monitor sub metering to accurately identify and attribute costs to the appropriate cost account and establish cost recovery pricing such as production costing, transfer or recovery pricing and service cost billing to name a few. In most cases, these sub meter activities require revenue grade smart meters consistent with utility standards and verification certification.

Lastly, there are existing, newly constructed and planned campus style multi facility development projects in Toronto that are prime business opportunities for sub meter providers. For each of these projects, THESL is responsible up to the interconnection point and primary meter. Downstream of the primary meter is privately owned and operated distributions infrastructure which connect multiple facility loads. Each of these electrical loads commonly require sub metering and billing services and represents a good business opportunity for sub metering service providers.

## Avonshire and Metrogate

- Q. 7. This proceeding addresses THESL's offer to connect with respect to two condominium developers: Avonshire and Metrogate. Please outline the requests and offers made by each of them.
  - A. 7. (Mr. McLorg) Avonshire's request for connection included plans dated January 22, 2008. Metrogate's request for connection included plans dated April 1, 2008. Both

<sup>&</sup>lt;sup>8</sup> THESL Offer to Connect Avonshire, January 29, 2009: Tab 3.

Avonshire's and Metrogate's request were premised upon THESL providing suite metering services. THESL provided each of Avonshire and Metrogate with offers to connect dated January 29, 2009 and February 2, 2009, respectively. These offers included THESL's provision of suite metering, as was requested.

By letters dated March 6 and March 10, 2009, respectively, Avonshire and Metrogate requested that THESL provide them with new offers to connect. These letters stated:<sup>10</sup>

- That, in the Fall of 2008, Metrogate and Avonshire were told that "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"; and
- that Avonshire and Metrogate "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."

By letters dated April 22, 2009 to Avonshire and Metrogate<sup>11</sup>, THESL advised that it disagreed with both of these statements.

With respect to the ownership and supply of smart meters, THESL advised that its conditions of service provide for alternative bids for the installation of meters (as discussed in Q&A 3 of this evidence).

With respect to Avonshire and Metrogate's alleged "rights" under Subsection 53.17 of the *Electricity Act*, THESL indicated that Avonshire and Metrogate do not have such rights (the reasons for this are described at Q&A 12 of this evidence).

THESL also confirmed that its policy respecting suite metering of new condominiums changed on February 28, 2008: "for condominium projects commenced with Toronto Hydro on and 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)."

# Q. 8. Were electrical services to Avonshire or Metrogate ever refused?

A. 8. No. With respect to Avonshire, where construction was already underway during this exchange of correspondence, THESL continued to provide electrical services to meet ongoing construction requirements. With respect to Metrogate, which had not yet

<sup>&</sup>lt;sup>9</sup> THESL Offer to Connect Metrogate, February 2, 2009: Tab 4.

<sup>&</sup>lt;sup>10</sup> Letters from Avonshire and Metrogate to THESL, March 6 and March 10, 2009: Tab 5.

<sup>&</sup>lt;sup>11</sup> THESL letters to Avonshire and Metrogate, April 22, 2009: **Tab 6**.

commenced construction, THESL provided electrical services when they were required to commence construction.

THESL also entered into agreements with Avonshire and Metrogate to provide permanent power (i.e., post-construction), with the determination of whether THESL would provide a bulk meter configuration that contemplated the projects being smart sub-metered pending the conclusion of this proceeding.<sup>12</sup>

# Q. 9. What happened next?

A. 9. In reviewing its files, THESL concluded that, although Avonshire had demanded a sub-metering configuration on grounds with which THESL did not agree (i.e., Avonshire's alleged "right" under s. 53.17 of the *Electricity Act, 1998*), there were other grounds that could arguably support a right to that configuration. Specifically, as indicated, Avonshire's plans in support of its request for an offer to connect were dated January 28, 2008. This date was prior to the implementation of THESL's policy respecting new condominiums, which commenced in February, 2008. Upon coming to this conclusion, THESL offered to provide Avonshire an amended offer to connect provided that it complies with THESL's technical and legal requirements.<sup>13</sup> These requirements are described in greater detail in Q&A 24, below.

# Q. 10. How did Avonshire respond?

A. 10. By letter dated December 9, 2009, Avonshire refused the offer to provide an amended offer to connect.<sup>14</sup> THESL asked Avonshire an interrogatory on why it would agree to this condition. Compliance Counsel refused to answer the interrogatory.<sup>15</sup>

## Q. 11. What about Metrogate?

A. 11. Metrogate's connection request plans were dated April 1, 2008. As a result, it is a "new" condominium and subject to THESL's current suite metering policy.

# THESL's Suite Metering Policy and the Enforceable Provisions

<sup>&</sup>lt;sup>12</sup> Schedule G to Amended Offers to Connect from THESL to Avonshire and Metrogate: Tab 7

<sup>13</sup> Letter from THESL to Avonshire, November 27, 2009: Tab 8.

Letter from counsel for Avonshire to THESL, December 9, 2009: Tab 9.

<sup>&</sup>lt;sup>15</sup> Compliance Counsel's Response to Interrogatories, IR 10(viii): **Tab 2.** 

- Q. 12. Please outline THESL's position on why it is not required to provide end-state bulk-metered connections to condominium developers.
  - A. 12. (C. McLorg) THESL's position is that its suite metering policy is consistent with the enforceable provisions referred to in the Notice; is the most effective way to prevent the unlawful mark-up of distribution services; and further supports and reinforces the objectives of the OEB and of distributors such as THESL under Green Energy Act amendments to the OEB Act in relation to conservation, renewable power and facilitating the Smart Grid.

First, with respect to the enforceable provisions, THESL's policy is consistent with all legal and regulatory requirements. The Ontario Energy Board has stated that "smart metering is a part of the distribution activities that is already covered by distributors' distribution licence." Similarly, the Board stated that "smart metering is a distribution activity and the Electricity Act and Regulation 442 take together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area."

There is nothing in s. 53.17 of the Electricity Act, 1998, or the Distribution System Code which takes away from a distributor's right to install suite metering in new condominium projects. I will deal with each provision separately.

#### Electricity Act, Section 53.17

Section 53.17 of the *Electricity Act* provide as follows:

Despite the Condominium Act, 1998 and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation, in a property or class of properties prescribed by regulation at a location prescribed by regulation and for consumers or classes of consumers prescribed by regulation at or within the time prescribed by regulation.

This section imposes a requirement on distributors and other persons licensed by the Board to install a smart meter, etc. of a prescribed type in a prescribed property at a prescribed location for prescribed consumers under prescribed circumstances.

The prescription of smart meter types, properties, locations, consumers and circumstances is set out in Regulation 442/07 with respect to condominium developers as follows:

<sup>&</sup>lt;sup>16</sup> EB-2007-0772, Notice of Proposal, January 8, 2008, p.2: Tab 10.

<sup>&</sup>lt;sup>17</sup> EB-2007-0772, Notice of Proposal, June 10, 2008, p. 4: Tab 11.

Prescribed class of property

- 2. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed classes of property:...
  - 3.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.

#### Prescribed circumstances

- 3. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed circumstances....
  - 2. The installation of smart meters or smart sub-metering systems, in the case of a building that falls into a prescribed class of property described in paragraph 3 of section 2.

Installation of authorized metering technology

- 4. (1) For a class of property prescribed under section 2 and in the circumstances prescribed under section 3, a licensed distributor, or any other person licensed by the Board to do so, shall install smart meters or smart sub-metering systems of a type, class or kind,
  - (a) that are authorized by an order of the Board or by a code issued by the Board; or
  - (b) that meet any criteria or requirements that may be set by an order of the Board or by a code issued by the Board..
- (2) For licensed distributors installing smart meters in a class of property prescribed under section 2,
  - (a) unless otherwise required by the Board, the distributor is not required to comply with the requirements set out in Ontario Regulation 425/06 (Criteria and Requirements for Meters and Metering Equipment, Systems and Technology) made under the Act; and
  - (b) the distributor shall comply with the procurement requirements set out section 2 of Ontario Regulation 427/06 (Smart Meters: Discretionary Metering Activity and Procurement Principles) made under the Act..
- (3) For a person, other than a licensed distributor, who is licensed by the Board to engage in the activity prescribed by subsection 1 (2) of Ontario Regulation 443/07 (Licensing Sub-Metering Activities), made under the Ontario Energy Board Act, 1998, unless otherwise required by the Board, the person is not required to comply with the requirements set out in Ontario Regulation 425/06 made under the Act.
  - (4) In this section,

"licensed distributor" means a distributor licensed by the Board under clause 57 (a) of the Ontario Energy Board Act, 1998.

Taken together, these provisions create a right of condominium developers who are installing smart meters or smart sub-meters to have those meters meet a certain standard as prescribed by the Board. It imposes an obligation on distributors and sub-meterers, when installing smart meters or sub-meters, to install meters of a certain standard. Nowhere does s. 15.17 of the *Electricity Act* or Regulation 424/07 state that condominium developers have the right to determine whether a licensed distributor

provides smart metering. Stated another way, a distributor's installation of smart meters for condominium units does not violate any provision of s. 53.17 or Regulation 424/07.

- Q. 13. How does Compliance Staff interpret s. 53.17 of the *Electricity Act* and Regulation 424/07 to conclude that THESL is violating these enforceable provisions?
  - A. 13. I do not know. I have asked Compliance Staff several times to specify the way in which it is alleged that THESL has violated these provisions, but have never been provided an answer. In his letter to THESL dated October 22, 2008, the Chief Compliance Officer alleged that THESL's policy was "inappropriate". The letter referred to s. 53.17 (as reprinted above), and under lined the term "any other person licensed by the Board to do so shall..." No explanation or analysis was provided to support the suggestion that a condominium developer could rely on this provision to assert a right to prevent THESL from providing suite metering or that THESL was in violation of this provision by providing suite metering.
- Q. 14. Did you ask Compliance Staff to provide these particulars?
  - A. 14. Yes. The only response I received was that the Chief Compliance Officer stated: "Rather, the legislation states that new condominiums shall be metered with smart meters (if installed by a licensed distributor) or smart sub-meters (if installed by a licensed sub-metering provider." As indicated, THESL agrees with this interpretation. However, I still do not see how this section gives the right to choose these options to condominium developers or how THESL's activities violated this provision.
- Q. 15. Have the particulars of this allegation been clarified in this proceeding?
  - A. 15. No. THESL asked an interrogatory requesting Compliance Staff to identify which section of s. 53.17 provides that choice, but Compliance Counsel refused to answer.<sup>20</sup>

In addition, the Notice does not provide any specificity on how THESL's conduct violated any provision of s. 53.17 or Regulation 424/04. Instead, it says that THESL's practice violates these provisions because these provisions "contemplate a choice between smart metering and sub-metering." The Notice thus describes what the Compliance Staff believes that these enforceable provisions "contemplate", not what they actually state.

<sup>21</sup> Notice of Intention to Make an Order, paragraph 4: Tab 14.

<sup>&</sup>lt;sup>18</sup> Letter from Chief Compliance Officer to THESL, October 22, 2008: **Tab 12**.

<sup>&</sup>lt;sup>19</sup> Letter from Chief Compliance Officer to THESL, January 29, 2009: **Tab 13.** 

<sup>&</sup>lt;sup>20</sup> Compliance Counsel's Response to Interrogatories, IR 3 (iv): Tab 2.

- Q. 16. Please expand on your views respecting s. 5.1.9 of the Distribution System Code.
  - A. 16. Section 5.1.9 of the Distribution System Code ("DSC") provides as follows:
    - "When requested by either:
    - (a) the board of directors of a condominium corporation; or
    - (b) 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,

A distributor shall install smart metering that meets the functional specifications of Ontario Regulation 425/06...

Section 5.1.9 therefore imposes a mandatory requirement on distributors to install smart meters when requested to do so by a condominium or a condominium developer. THESL has never refused such a request. It therefore has not violated this provision.

- Q. 17. How does this view differ from that of Compliance Staff?
  - A. 17. The Chief Compliance Officer stated that section 5.1.9 of the DSC provides that "the person responsible for a new condominium has the ability to choose between having a licensed distributor install new smart meters or having a licensed smart submetering provider install smart sub-meters." This is a fairly dramatic rewriting of s. 5.1.9. As I advised the Chief Compliance Officer in response to this letter, "The unstated premise of your argument appears to be that the Section begins with the word 'Only', which it does not." 23
- Q. 18. Did the Compliance Staff respond to your statement that it was effectively re-writing the DSC to add the word "only"?
  - A. 18. No, but I do note that, in requesting guidance from the Board on whether to proceed with this compliance action, the Compliance Team advised the Board's Electricity Distribution Committee that, "Section 5.1.9 of the DSC itself also clarifies that a distributor must install smart metering only when requested to do so by the condominium corporation of the developer." It therefore appears that the Compliance Team's case is premised upon rewriting this enforceable provision.

Marking-up Distribution Services and s. 3.1.1 (a) of the Distribution System Code

<sup>&</sup>lt;sup>22</sup> Letter from Chief Compliance Officer to THESL, January 29, 2009: Tab 13.

<sup>&</sup>lt;sup>23</sup> Letter from THESL to OEB Chief Compliance Officer, February 9, 2009: **Tab 15.** 

<sup>&</sup>lt;sup>24</sup> Compliance Staff Briefing Note, May 1, 2009, p. 10: Tab 1 (emphasis added).

# Q. 19. Are there any other relevant regulatory provisions?

- A. 19. (C. McLorg) Yes. THESL is concerned that the practice of condominium developers in their commercial dealings with sub-meterers has resulted in condominium developers acting in a manner that does not qualify them as "exempted distributors". Specifically, THESL's information is that condominium developers have been offered payments by sub-meterers to allow them to provide sub-metering services and sub-meterers have been marking up distribution services. Both of these practices are inconsistent with the requirements for exempt distributors under 4.01 of Ontario Regulation 161/99. THESL has taken this into account in implementing its connection policy in accordance with s. 3.1.1(a) of the Distribution System Code, which provides:
  - 3.1.1 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.
- Q. 20. Please expand on the issue of issue of compliance with exemption requirements.
  - A. 20. In EB-2009-0111 (the "Discretionary Metering Decision"), the Ontario Energy Board described "The Architecture of Exempt Distribution" as follows:

"The concept of an exempt distributor is set out in section 4.01 of Ontario Regulation 161/99 — Definitions and Exemptions made under the Act. In that regulation several categories of persons are exempted from the usual requirements of electricity distribution, such as licensing and rate regulation. For the purposes of this proceeding, the Board refers to the "Exempted Distributors" as those that are exempt under section 4.0.1(1)(a)(2) and (3); that is, those that distribute electricity entirely on land on which the following types of buildings are located: (i) a residential complex as defined in the RTA [i.e., the Residential Tenancies Act]; and (ii) an industrial, commercial or office building. A key qualification for Exempt Distributors 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."

As a result, a distributor that is exempted under s. 4.0.1 of Ontario Regulation 161/99, which includes a condominium developer, cannot undertake distribution for profit. This prohibition applies to both the condominium developer and its agents and subcontractors. According to the Board, "smart sub-metering providers are in reality the agents or sub-contractors of the Exempt Distributor (e.g., the landlord). It is axiomatic

<sup>&</sup>lt;sup>25</sup> OEB Decision and Order, August 13, 2009 (EB-2009-0111) ("Discretionary Metering Decision"), at p. 10: Tab 16.

that neither agents nor sub-contractors, sometimes referred to as smart sub-metering providers, acquire any novel or additional rights or status vis-à-vis third parties, in this case tenants, by reason of their agency or contractual relationship with the landlord."<sup>26</sup>

- Q. 21. Is the prohibition on carrying out distribution services for profit a new one?
  - A. 21. No. The requirement that an exempted distributor only recover its costs (and not an OEB approved rate of return as is available for non-exempt distributors) is an explicit requirement of section 4.01 of Ontario Regulation 161/99 and the Board has articulated this description as early as the Board's March 1, 2004 Decision with Reasons in the Service Area Amendment Proceeding, where the Board stated:<sup>27</sup>

"The Board notes that section 4.0.1 of Ontario Regulation 161/99, as amended, provides an exemption from licensing for owners and operators of distribution systems in a broad range of settings including condominium buildings, residential complexes, industrial, commercial, or office buildings, and shopping malls. The exemption extends to distribution systems located entirely on land owned or leased by the distributor. For the exemption to apply, the distributor must simply recover its reasonable costs associated with the distribution, and not impose upon consumers a price which includes a profit."

- Q. 22. And how has the Board interpreted and applied this restriction?
  - A. 22. The Compliance Staff publishes quarterly activity reports which provide details as to the level of activity and an overview of matters resolved each quarter. These reports indicate that Compliance Staff has reviewed one complaint respecting the activities of exempted distributors. The fiscal Q3 2007-2008 Compliance Report stated as follows:<sup>28</sup>

"The Board received an anonymous complaint regarding the electricity billing practices of a distributor that owns and operates a distribution system that is entirely located on land owned by an unlicensed distributor, specifically a seasonal campground for recreational vehicles. An investigation found that (a) the distributor purchases the electricity as a standard supply service from a licensed distributor and retails it at a price that is no greater than the price for which it is purchased; (b) the distributor distributes the electricity at a cost that recovers, in total, only the amount it is billed by the licensed electricity distributor; and (c) the distributor allocates the charges on a reasonable basis. It was concluded that the distributor qualified for exempt status and was not in violation of any legislation or regulatory instruments. The case was closed."

Q. 23. How has this restriction been taken into account in THESL's suite metering policy?

<sup>&</sup>lt;sup>26</sup> Discretionary Metering Decision, at p. 10: **Tab 16.** 

<sup>&</sup>lt;sup>27</sup> OEB Decision and Order, March 1, 2004 (RP-2003-0044), paragraph 183: **Tab 17**.

<sup>&</sup>lt;sup>28</sup> Compliance Office, Quarterly Activity Report, Second Quarter, 2008-2009 Fiscal, p. 3: **Tab 18.** 

- A. 23. Although THESL does not and has never refused to connect a condominium developer to its distribution system, it has taken into account the specific configurations requested by condominium developers and will not provide a metering configuration that will facilitate unlicensed distributors to unlawfully profit from distribution activities. The most effective way to ensure this is through THESL's provision of suite metering. When this is not appropriate, such as is the case with Avonshire which, because of the timing of its request for an offer to connect is not subject to THESL's current policy, THESL has made its offer to connect conditional upon compliance with the legal obligations for exempt distributors.
- Q. 24. How has THESL addressed this issue with Avonshire?
  - A. 24. THESL has advised Avonshire that THESL will provide a bulk metering configuration that allows Avonshire to be sub-metered by a smart sub-meterer on the condition that it provides and supports a written affirmation that it will not unlawfully profit from distribution services. THESL's offer to Avonshire contains the following condition:<sup>29</sup>

"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 licensed 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 licensed 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."
- Q. 25. How does this condition compare to other conditions that apply to THESL's customers respecting compliance with OEB regulatory requirements?

<sup>&</sup>lt;sup>29</sup> Letter from THESL to Avonshire, November 27, 2009: Tab 8.

A. 25. Demonstrating proof of compliance with licensing requirements is a standard obligation for THESL customers for whom a licence is required, namely generators and retailers.

For example, a generator connecting to THESL's system must represent and warrant that it "holds all permits, licences and other authorizations that may be necessary to enable it to own and operate" a generation facility.<sup>30</sup>

As for retailers, THESL's is only obligated to enter into a service agreement with "retailer licensed by the Board." As well, THESL is only required to purchase electricity from an embedded retail generator "provided that the embedded retail generator has obtained such licences from the Board as may be required."<sup>32</sup>

I also understand that compliance with regulatory licensing obligations is a condition of service by gas utilities under the Gas Distribution Access Rule.<sup>33</sup>

My understanding is that the OEB does not routinely certify whether an exempt distributor complies with its exemption requirement. It apparently has reviewed practices to confirm the compliance of exempted distributors when an exempted distributor has requested it to do so.<sup>34</sup> In this case in particular, the Compliance Team has indicated that it has not reviewed the practices of Avonshire and Metrogate.<sup>35</sup>

Further, THESL does not believe it is appropriate that it should have to verify the claims of each distributor who claims to be exempt from OEB licensing requirements. As a result, the approach taken with Avonshire is a kind of self-certification and the approach taken with new condominiums is to foreclose the possibility of charging unlawful mark-ups through providing suite metering to customers directly.

- Q. 26. What is your basis for believing that some condominium developers or sub-meterers are profiting from distribution services?
  - A. 26. First, THESL offers suite metering to condominium developers at no cost to the developer. For a developer to prefer a licensed smart sub-meterer (which uses the same equipment as THESL), it is reasonable to infer that it is earning a profit; otherwise, there is no financial reason to choose that option. In this regard, it is not unusual for THESL to be requested by condominium developers to pay a royalty for installing smart meters. For example, when providing an offer to connect a condominium developer in June,

<sup>&</sup>lt;sup>30</sup> Distribution System Code, Appendix E, s. 6.1: **Tab 19**.

<sup>&</sup>lt;sup>31</sup> Retail Settlements Code, s. 12 (see also, Appendix C): **Tab 20.** 

<sup>&</sup>lt;sup>32</sup> Retail Settlements Code, s. 3.2: **Tab 20.** 

<sup>33</sup> Gas Distribution Access Rule, ss. 2.6 (a) (ii) and 2.7 (a) (vi): Tab 21.

<sup>&</sup>lt;sup>34</sup> Compliance Office Quarterly Activity Report, Third Quarter 2007-08 Fiscal, p. 3: Tab 22.

<sup>35</sup> Compliance Counsel's Responses to Interrogatories,; Interrogatory 7 (vi): Tab 2.

2009, THESL received the following from the developer's counsel: "I do not see any financial or other incentive included as consideration for the developer committing to this agreement now on behalf of the unit owners and Board. Please advise whether there exists any such incentive and if so, how it is to be delivered to the developer."<sup>36</sup>

Second, and more concretely, it is established business practice for sub-meterers to offer payments to condominium developers in the order of \$100 per unit or more in exchange for the right to install sub-meters in condominiums. In other words, condominium developers are earning a profit of \$100 per unit with respect to distribution services. This type of payment has been expressly prohibited for exempted distributors. The Board stated: "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."

- Q. 27. Can you provide any documented examples of this?
  - A. 27. Yes. Attached as Tab 23 is an offer from a smart sub-meterer to a condominium developer (defined as "Customer" in the offer) dated April 29, 2008. That offer indicates that there are a total of 390 units to be sub-metered and that the smart sub-meterer will make a "Payment to Customer for Installation of [its] Meters" of \$39,000, or \$100 per meter.<sup>38</sup>
- Q. 28. Do you have any other documented examples?
  - A. 28. I have no more documented examples. THESL sought to obtain an order from the Ontario Energy Board for disclosure of other commercial offers from smart sub-meter providers to condominium developers, but the Board refused to provide such disclosure. As a result, there are no other examples on the record. However, as an industry participant, I can advise that this practice is a matter of common knowledge.
- Q. 29. Do you have any information about mark ups for distribution services being earned by agents or contractors of developers?
  - A. 29. Yes. Condominium developers use sub-meter providers as their agents and contractors. Some sub-meterers also charge a mark-up on distribution services to condominium unit holders. For example, one representative sub-meterer posts

<sup>&</sup>lt;sup>36</sup> E-mail From: counsel to condominium developer to THESL dated June 08, 2009 1:14 PM (redacted): Tab 23.

<sup>&</sup>lt;sup>37</sup> Discretionary Metering Decision, at p. 11: Tab 16.

<sup>&</sup>lt;sup>38</sup> Sub Meterer Individual Suite Metering Proposal to Condominium Developer, April 29, 2008 (redacted): **Tab 24.** 

"Frequently Asked Questions" respecting its commercial practices for condominiums on its website. It includes the following:<sup>39</sup>

# "What charges does my monthly bill include?

[sub-meterer] follows the bill format that has been mandated for LDCs by the Ontario Energy Board (OEB). All residential electricity consumers in Ontario see the same four lines on their bill:

Electricity: this line covers the per kilowatt cost of the electricity you consume on a monthly basis.

**Delivery**: the cost of delivering electricity from generators to your utility and then to your home or business....

# Does [sub-meterer] mark-up the cost of my electricity?

No. [sub-meterer] makes a return on the cost of delivering your electricity, not on the cost of the commodity (electricity)" (emphasis added).

As a result, according to this sub-meterer, it earns a return on the cost of delivery of electricity. Because exempted distributors are prohibited from distributing electricity for profit, and because this prohibition applies to sub-meterers as their agents and sub-contractors, it appears that condominium developers who enter into this type of arrangement are acting inconsistently with their exemption. The consequence of this is that they are required to be licensed by the Board. Because they are not licensed, they would appear to be in violation of s. 57 of the Ontario Energy Board Act, 1998.

- Q. 30. Do you have any other concerns with the activities of sub-meterers in this regard?
  - A. 30. Yes. It also does not appear that sub-meterers are complying with the Board's requirement that exempted distributors may only use sub-meterers to allocate, rather than resell, the exempted distributors' costs among sub-metered units. According to the Discretionary Metering Decision:

"Landlords are charged by licensed distributors according to the amount of electricity entering the premises as measured by a bulk meter. The billing determinant used to create the bill for the landlord, who is typically a general service customer, is based on a non-coincident demand measured in kW or kVA at the meter. In order to qualify as an Exempt Distributor, it is the cost generated by this methodology that may be passed through to the individual tenants. To the extent that smart sub-metering equipment uses a different billing determinant, the sum of individual tenants' burden will not accord with the bulk meter billing terminology. The result of this mismatch is a potential for excess revenues,

<sup>&</sup>lt;sup>39</sup> Sub Meterer "Frequently Asked Questions" Web Page (redacted): **Tab 25.** 

# which would take the arrangement out of the Exempt Distributor qualification."40

- Q. 31. Please outline your concerns with respect to how the bulk meter costs charged to the condominium developer or the condominium are passed through to unit holders.
  - A. 31. THESL delivery-related billing units for a typical large condominium would be those for a general service customer with a demand greater than 50 kW; these are a fixed monthly customer charge, a demand charge based on non-coincident demand measured in kVA, and kW-based retail transmission rates.

In contrast, the billing determinants for sub-meterers may be quite different. As far as I am aware, only one sub-meterer has publicly posted their billing determinants. I will therefore use this sub-meterer as an example.<sup>41</sup>

This sub-meterer charges a fixed \$12.55 residential customer charge which does not vary by location, and a kW per day demand charge which varies according to host distributor service area in which the sub-metering installation is located. In Toronto, the demand charge is \$0.2931/dkW/day.

THESL's demand charge is measured by reference to the <u>coincident</u> demand of the building (i.e., the combined demand of the building at any time, as distinct from the 'coincident demand' with respect to the Ontario electricity system). In contrast, the sub-meterer's demand charge is measured by reference to the sum of the sub-meters as registered by the <u>non-coincident</u>, diversified demand of the building. As a result, sub-meter delivery rates must either be adjusted downward to offset the greater number of non-coincident billing units or the sub-meterer will necessarily over-recover the bulk meter delivery costs due to the internal diversity of demand in the condominium.

- Q. 32. Please expand on the need to adjust for 'diversity of demand'
  - A. 32. 'Diversity of demand' in this context refers to the fact that within a building the demands of the individual units are not perfectly synchronized. Put differently, it would only be in the extreme limiting case in which the peak demands of all the units occurred at the same time that the peak demand of the building would equal the sum of the unit demands; otherwise the combined building peak demand will reflect the fact that at least some of the units are not exerting peak demand at the same time as the rest. Because the demands of each of the units are not perfectly synchronized, the sum of the maximum demands of each unit is necessarily higher than the maximum demand exerted

<sup>&</sup>lt;sup>40</sup> Discretionary Metering Decision, at p. 12: Tab 16.

<sup>&</sup>lt;sup>41</sup> Smart Sub-Meterer Bill Components Web Page (Redacted): Tab 26

at any one time by the building as a whole. Since the THESL bulk meter reads the 'coincident' peak demand of the building as a whole each month, that demand reading will be less than the sum of the unit demands. If the bulk meter and sub-meter billing units and rates were the same, say \$x/kW demand per month, a difference in revenue therefore arises due to the fact that the bulk meter rate is applied to the maximum demand over the monthly period exerted by the building as a whole, whereas the sub-meter rates are applied to each unit individually.

This can be illustrated by using a simple example depicted in Table 1:

Table 1: Illustrative Example of the Effect of Demand Diversity on Billing Units

		Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6
Row 1			Unit 1	Unit 2	Unit 3	Building Demand	Building Peak
Row 3	Hour 17		1.8	1.5	1.5	4.8	
Row 4	Hour 18		1.5	. 2	1.5	5	
Row 5	Hour 19		1.5	1.5	2.3	5.3	5.3
Row 7	Unit Peaks		1.8	2	2.3		
Row 8	Sum of Unit Peaks	29					6.1
Row 10	Percentage Difference	in Billing Un	its				15.1%

In this example, a peak demand period during the billing month is illustrated for a building containing just 3 units. In Columns 2 through 4 and Rows 3 through 5, the hourly kW demands for the highest demand hours are given for the 3 units. Other hours and days that do not determine building and/or unit demand are excluded. For each of the three hours, Col. 5 gives the building demand which is simply the sum of the unit demands for that hour. Building demand peaks at 5.3 kW during Hour 19. By construction this is the highest hour of demand during the month and is the basis of the bulk meter bill for the delivery portion of the bill.

In contrast, use of a dkW/day billing unit selects the peaks for each unit at any hour, and those peak demands are not perfectly coincident. Row 7 gives the peak demands for each unit, and Row 8, Col. 6 gives the sum of those demands, each of which occurs at a different time in this example. The sum of the unit peaks is 6.1 kW, 15.1% higher than the coincident demand of the building, and in fact, that 6.1 kW demand is never actually exerted by the building on the distribution system.

In the result, it is clear that even if there were a nominal match between the billing units and the rates applied to those units, the use of the (non-coincident) demands for each unit in a

building would leave the sub-meterer systematically over-recovering the bulk meter bill for delivery services.

- Q. 33. Do you have any further quantitative evidence to explain your concerns?
  - A. 33. Yes. That evidence is a billing simulation comparing the application of THESL bulk meter delivery rates (for the General Service > 50 kW rate class) to the application of the delivery rates of a sub-meterer, based on 30 days of actual hourly consumption data from suite-metered condominium units in three different buildings aggregated to form a hypothetical building consisting of 28 units.

The aggregated data showed that the (synthetic) building demand was 52.58 kW, compared to 1281.31 kW representing the sum of individual unit daily peak demands. The analysis indicates that at current THESL rates compared to the rates for the sub-meterer, the costs for 'delivery' (i.e., transmission plus local distribution) were \$518.30 for THESL and \$722.14 for the sub-meterer, a difference of 39%.

It is also possible to decompose the sub-meterer variable charge to show the separate revenue effects of the rate level and the exploitation of internal building demand diversity. The sub-meterer rates applied on a daily basis to building demand produced revenue of \$199.96 over billing units (i.e., the sum of the daily building demands) of 682.22 kW. Unadjusted variable revenue for the sub-meterer based on the sum of individual unit demands was \$375.55 over billing units of 1281.31 kW. The difference between these values, \$175.59 or 47% of the total variable revenue, can be attributed to the effect of demand diversity within the building.

Results of the analysis are set out and summarized below in Tables 2A and 2B.

Table 2A Bill Analysis: Condominium Consumption under THESL vs. Sub-Meterer Rates Applicable Rates

	Col. 1		Cal. 2	Col.	3
Row 1	Rates: THESL	General Service, 50 - 1000 kW, interval	metered, effective Ma	y 1, 20	09
Row 3	Service Charge		(per 30 days)	\$	32.69
Row 4	Smart Meter Rate Rider	•	(per 30 days)	\$	0.68
Row 5	Smart Meter Rate Rider 2 (effective until April 30, 2010	1	(per 30 days)	\$	0.01
Row 6	Fixed Charge Total	,		\$	33.38
	•		(per 30 days)		
Row 7	Distribution Volumetric Rate	er in the day and	\$/kVA		5.1509
Row B	Regulatory Asset Recovery Account (RARA) Rate Rider (		\$/kVA		0.0441)
Row 9	Shared Savings Mechanism (SSM) Rate Rider (effective	•	\$/kVA	-	0.0002
Row 10	Lost Revenue Adjustment Mechanism (LRAM) Rate Rid	er (effective until April 30, 2010)	\$/kVA	\$ (	0.0011)
Row 11	Sub-Total kVA rates		\$/kVA	\$·	5.1059
Row 12	Assumed Power Factor			\$	0.90
Row 13	kVA Rates Converted to kW Rates		\$/kW	\$	5.6732
Row 14	Retail Transmission Rate - Network Service Rate		\$/kW	\$	2.0100
Row 15	Retail Transmission Rate - Line and Transformation Co.	nnection Service Rate	\$/kW	\$	1.5400
Row 16	Variable Charge Total	•	\$/kW	\$	9.2232
B 40	Product Cult Advances	Partition to 1 Court of the cou	f_1_1_		4
Row 19	Rates: Sub-Meterer	Residential Service, per Sub-meterer W			
Row 20	Monthly Residential Customer Charge, Toronto		(per month)	\$	12,55
Row 21	Residential Customer Charge converted to 30 day basis		(per 30 days)	\$	12.38
Row 22	Fixed Charge Total		(per 30 days)	\$	12.38
Row 23	Charge for System Use (/dkW/day )		\$/max daily kW	\$	0.2931
Row 24	Variable Charge Total		\$/max daily kW	\$	0.2931

Table 2B Bill Analysis: Condominium Consumption under THESL vs. Sub-Meterer Rates Billing Quantities and Revenues

Row 1	Col. 1 Billing Quantities: THESL	Col. 2	Col. 3 Cost
Row 3 Row 4	Customers Peak Demand (of interval meter)	1 52.58	\$ 33.38 \$ 484.92
Row 6	Total Delivery: THESL		\$ 518.30
Row 8	Billing Quantities: Sub-meterer		Cost
Row 10 Row 11	Customers Sum of Daily Peak Demands	28 1281.31	\$ 346.59 \$ 375.55
Row 13	Total Delivery: Sub-meterer  Excess over THESL:		<b>\$ 722.14</b> \$ 203.84 39%
Row 18 Row 19 Row 20	Decomposition of Variable Charge Sub-meterer Rates applied to Building Daily Demand: Internal Diversity of Demand	682.22	\$ 199.96 \$ 175.59

# Q. 34. Does THESL have any other concerns?

A. 34. Yes. THESL is concerned that the condominium developers obtain the benefit of payments from smart meterers (such as the \$100 per unit mark up discussed above), but impose the burden of these contracts on future unit holders, who are the actual energy consumers. In the Discretionary Metering Decision, the Board noted that "In the condominium setting, the condominium corporation has a fiduciary duty to the unit holders and is unequivocally accountable to the occupants of the respective buildings. There is no parallel to the condominium corporation in the residential complex setting. Each tenant in a residential complex has a separate and distinct contractual relationship with the landlord, and there is no corporate entity that has the legal obligation to represent the interests of the respective apartment unit tenants." 42

Seen this way, condominium developers, who do not have a fiduciary duty to unit holders, and instead, have a contractual relationship with them, are much more like landlords than condominium corporations. As a result, condominium developers are in a position to receive royalties on distribution services, and then impose the sub meterer's contracts on subsequent unit holders.

- Q. 35. What is your basis for saying that condominium developers seek to impose obligations with sub-meterers on condominium unit holders?
  - A. 35. In exchange for paying condominium developers for the right to provide distribution services at a profit, sub-meterers acquire the right to have each tenant in a residential complex be subject to a long-term, non-negotiable contract. Acceptance of the contract is a condition of sale and flows with title to the property in the case of resale. In addition, the Conditions of Service for a representative sub-meterer<sup>43</sup>, posted on its website, provide as follows:

Standard Form of Contract – [sub-meterer] requires all Customers and Consumers to enter into an Electricity Supply and Services Agreement in a form acceptable to [sub-meterer].

Implied Contract – In all cases, despite the absence of a written Electricity Supply and Services Agreement, the taking of electricity from [sub-meterer] by any Customer or Consumer constitutes the acceptance of the terms of [sub-meterers] Conditions of Service, as amended from time to time, and applicable charges as established by [submeterer]. Such acceptance and use of electricity shall be deemed to be the acceptance of a binding contract with [sub-meterer], in the form of [sub-meterer's] applicable standard form of Electricity Supply and Services Agreement.

The effect of these arrangements is to bypass the consent to sub-metering of the condominium corporation, which is not yet formed, and to require the consent of the purchasers to sub-metering as a condition of sale.

<sup>&</sup>lt;sup>42</sup> Discretionary Metering Decision, at p. 8: Tab 16.

<sup>&</sup>lt;sup>43</sup>Sub-Meterer Conditions of Service (Redacted): Tab 27.

# THESL's Suite Metering and the Green Energy Act

- Q. 36. Mr. Tyrrell, could you please advise how THESL's suite metering policy facilitates the objectives of the OEB and distributors under the Ontario Energy Board Act, particularly in light of the amendments to that Act under the Green Energy and Green Economy Act?
  - A. 36. (C. Tyrrell) Smart metering, including that for new condominiums, is a fundamental building block for conservation, smart grid implementation, and the connection of renewable power.

Since conservation and demand management (CDM) programs have been launched, THESL has been very successful in reaching out to customers to conserve and manage demand. Nevertheless, further improvements to achieve greater CDM effectiveness and market penetration will require new CDM programs tailored to this market segment and smart meters are critical devices to enable such improvements. By providing customers with the necessary information, options, and tools, they can better understand their energy consumption and make informed decisions on their energy usage, in order to lower their energy costs and reduce their carbon footprint. Moreover, smart meters facilitate the progressing trend towards "smart homes", consisting of a collection of smart devices such as thermostats, washers, dryers, dishwashers, computers, mobile phones, and in-home displays, which will communicate with each other and the smart meter via a home area network (HAN). This network has the ability to capture information on device usage, control the operation of programmable devices to leverage time-of-use rate (TOU) opportunities, and enabling intelligent optimization of devices to lower consumption, reduce costs and carbon footprint.

By in-large, current and future CDM programs, as well as the rollout of the smart grid and integration of renewable generation is dependent on a "direct account relationship" between the customer and the THESL. With respect to CDM programs, suite metering unites the direct economic incentives and benefits available to customers through conservation programs offered by THESL that are designed to encourage and assist customers in achieving conservation goals. Currently, THESL's existing and future (under-development) programs that are available to condominium owners who have a direct account relationship with THESL are as follows:

THESL's Summer Challenge 10/10 Program – In 2010, under the Toronto Directive all residential customers including condominiums that have THESL smart suite meeting will be eligible to participate in THESL's 10/10 program. The program is design to encourage customers to reduce their energy consumption during peak summer periods. The Summer Challenge program provides a 10%

discount on summer electricity bills for those residential rate class customers who reduced their electricity by 10% over the previous summer.

peakSaver Program - peaksaver is an innovative program designed to help customers reduce the demands on the electricity system. During peak electricity demand periods typically in the summer months, a dispatch signal is sent from THESL to participating customers to reduce electricity demand, which currently activates residential air condition cycling. In 2010, the program is being reengineered to include the activation of other discretionary dispatchable electrical loads and will begin to utilize the communication functionality of THESL's smart meters and in-home devices.

THESL's Keep Cool Program — The Keep Cool program encourages THESL customers to turn in their old window air condition in turn for a \$25 gift card at a participating retail store. The program has been widely successfully over the past few years.

Time-of-Use (TOU) Program – As stated, smart meters are one of the fundamental building blocks for conservation and are essential to provide THESL customers with a time-of-use rate program. In 2010, all customers that have a THESL smart meter will be enrolled in a TOU rate program including smart suite metered condominium customers. TOU rates have long been recognized as a conservation program and are designed to encourage customers to shift energy from on-peak to off-peak periods. Pairing the TOU program with other CDM programs like *peaksaver*, will assist customer with the integration of smart in-home devices with TOU rate pricing schedules to maximize energy savings and lower costs.

Future CDM Programs – Given the magnitude of Toronto's multi residential market and the pending OEB CDM directive (which will include achieving CDM targets as a condition of THESL's license), THESL is aggressively developing tailored CDM programs for all market sectors. For most programs, participation eligibility will require customers to have a direct account relationship with THESL and it will be imperative that we have access to all market sector customers to achieve the mandated CDM targets. CDM programs and targets will be governed by the OEB directive and supported by the OPA. Performance results including demand, consumption and greenhouse gas reductions will be routinely reported to track against the goals and objectives of the Green Energy Act.

Energy Information and Education Web Portal – As part of THESL smart meter program for the residential market, we have developed an interactive web

portal where customer can access their up to-date daily energy usage, cost and budget information. The interactive portal is designed to be multi-lingual to minimize communication barriers and includes energy education and information to help customers understand their energy use, how to read their bill and ways to manage their energy more effectively to save costs. As of November 2009, over 60,000 customers have registered for access and is growing in popularity as the rollout of smart meters and TOU rate programs progress.

In addition to enabling CDM, smart meters are the fundamental element that extends intelligence throughout the grid, enabling increased visibility into and control of the distribution network, and coordinating with upstream smart grid elements to enhance system reliability, reduce system losses, and improve asset utilization. Examples include utilizing "last gasp" functionalities and integrating with the Outage Management System (OMS) to identify outage locations and enhance restoration time, and coordinating with upstream distribution transformer and substation meters to calculate system losses.

Finally, smart meters enable customers to prepare for promising developing technologies such as distributed renewable energy generation, such as solar thermal, solar PV, ground source heat pump technology, and plug-in hybrid electric vehicles (PHEV). They allow local interval metering of distributed generation and PHEV load, and enable potential new tariffs and rates that incent such technologies. They further coordinate with the upstream smart grid in identifying and managing the integration of distributed generation and the impacts that these new generation sources may bring to the existing network design and condition, such as reporting on exceeding limits in voltage, current, and harmonics.

Smart technology continues to evolve at a rapid pace and smart metering has become an essential component of energy innovation that is already contributing to a cultural and behavioral change in Toronto.

- Q. 37. Please explain how THESL's goals respecting smart metering are impacted by the metering configuration of condominium buildings. Please provide detail for two scenarios: one where the condominium units are suite metered and one where they are sub-metered.
  - A. 37. THESL's smart metering goals are affected by the metering configuration in condominiums in a number of areas, as follows:
    - 1) In the absence of a direct account relationship with end-use customers, THESL's ability to reach these customers to encourage participation in CDM or other utility programs is significantly limited and creates a market restriction for those customers

who want to participate. This also creates a relatively large faction of customers that have less exposure to conservation which limits cultural and behavioural change objectives of the *Green Energy Act*.

- 2) Future CDM targets will be a condition of THESL's distribution license. THESL is the largest utility in the province with a system peak that is coincident with the provincial system peak and therefore expects to receive one of the largest targets. To achieve the future target, we will need access to all market sector customers including the new condominium market in Toronto.
- 3) Condominiums that are sub metered will not have the ability to interface upstream with the smart grid or to realize the inherent benefits of the smart grid including outage management, reliability, security of supply, two-way communication, CDM and TOU rates, renewable energy integration.
- 4) Limiting access to the new condominium market increases the socialized cost of the smart grid. The investment in Toronto's smart grid is substantial and there is a potential lower the overall socialized cost if the cost is distributed over a larger customer rate base.
- Q. 38. In an internal briefing note, Compliance Staff stated the following:44

"Compliance staff also submit that all of THESL's arguments that sub-metering would hinder the goals of the *Green Energy Act* are without merit. THESL's idea that there will be renewable generation projects on an individual condominium unit level appears to be unrealistic. Also, conservation is driven by customer choice regardless of who bills them for electricity."

Could you please comment on that "submission"?

A. 38. Yes. We found that statement remarkable, and therefore asked an Interrogatory requesting Compliance Staff to provide all of the investigation and research that was conducted in coming to these conclusions. However, it turned out that these assertions were based on an investigator's opinions and belief, and not any research or analysis.<sup>45</sup>

The idea that individual renewable energy projects in condominium units are unrealistic essentially ignores the growing opportunity in this market sector. While we would agree that some renewable energy technologies are in their market infancy, they are evolving rapidly (e.g. Solar PV) and will be economically feasible in the near future and will require a robust smart grid. Other forms of renewable energy like ground source heat

<sup>44</sup> Compliance Staff Briefing Note, July 15, 2009: Tab 28.

<sup>&</sup>lt;sup>45</sup> Compliance Counsel's Responses to Interrogatories, IR 5(iii) to (v): Tab 2.

pumps (GSHP) and solar thermal systems are economical feasible now and are becoming major competitors to conventional systems. GSHP are an excellent and well suited form of renewable energy that can provide both heating and cooling at a much higher coefficient of performance than conventional central plant systems. The GSHP collection loop (typically vertical) would be considered the central plant component and would be maintained by the condominium board. Each condominium unit is then equipped with their own independent heat pump to provide heating and cooling which would be controlled by the owner and smart metered by THESL. In addition to the cost benefits of this type of system, it also provides independency and creates and opportunity for customers to participate in various CDM programs like peakSaver, Summer Challenge 10/10 and TOU rate programs offered by THESL.

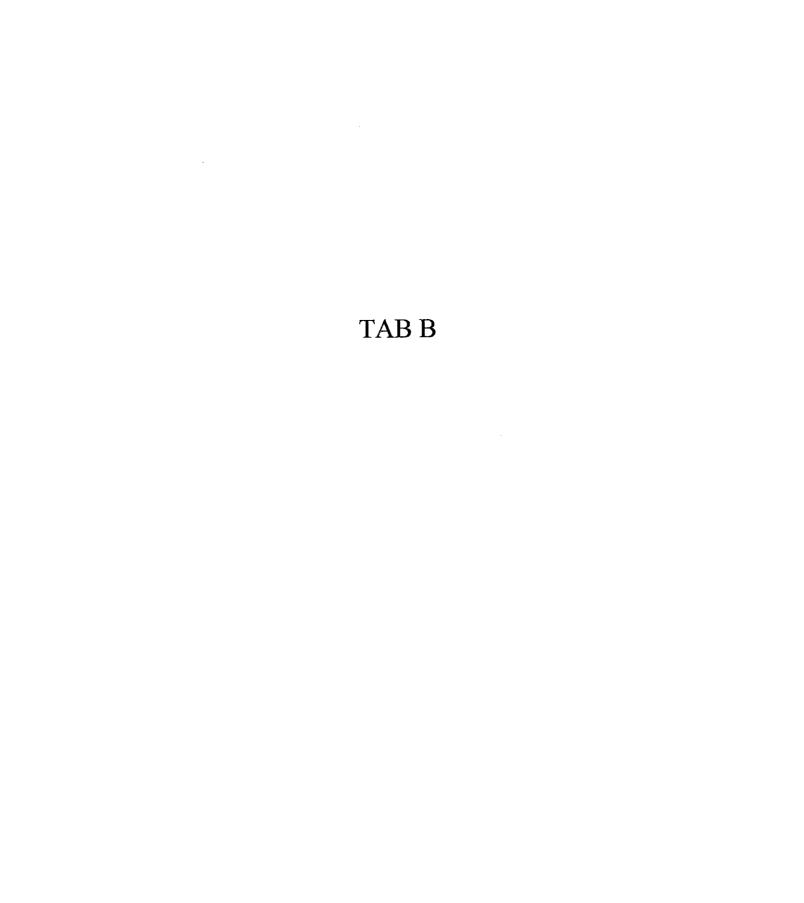
The last statement in the question is, "conservation is driven by customer choice regardless of who bills them for electricity". THESL would agree with the first part of that statement in that CDM is driven by customer choice; however THESL does not agree that it doesn't matter who bills the customer. As outlined, THESL has a number of current and future CDM programs that require a direct account relationship with the customer. Sub metered customers would not be eligible for CDM participation nor would they be eligible for TOU rates which combined, would limit their ability to lower costs and THESL's ability to achieve mandated CDM targets and Green Energy Act objectives. Further, the sub meter service provider referenced in these proceedings has a billing rate structure that in fact disincents CDM and the opportunity to realized cost saving through load shifting. In contrast to THESL CDM mandate, sub meter providers are not mandated as a condition of their license to deliver CDM nor are they economically motivated to assist customers with conservation, smart grid implementation or renewable energy integration.

- Q. 39. Do licensed distributors have the same incentives to encourage consumption as do sub-meterers?
  - A. 39. (Mr. McLorg)Yes. And that is why the OEB has developed tools to counter these incentives for licensed distributors (such as LRAM). But because the rates for submetering service are not subject to OEB oversight, the OEB has no means to counter the incentive that sub-meterers have to encourage, not discourage, consumption. It does not have these tools for exempt distributors.
- Q. 40. If an exempt distributor or a sub-meterer sought to take on the rights and obligations of a licensed distributor, how would it do that?

- A. 40. It would apply to the OEB for a licence to distribute electricity and become subject to rate regulation and other regulatory oversight that goes with being licensed.
- Q. 41. Does this conclude your testimony?

A. 41. Mr. McLorg: Yes

Mr. Tyrrell: Yes.







#### **BRIEFING NOTE**

# ELECTRICITY DISTRIBUTION COMMITTEE REQUEST FOR GUIDANCE

Toronto Hydro Metering Policies & Restricting Smart Sub-metering

May 1, 2009

# REQUEST FOR GUIDANCE

Staff request the Electricity Distribution Committee's views on the following two questions and subsequently, which of the outlined options would be the recommended course of action.

#### QUESTIONS

- 1. Does a new condominium owner have the right to install, either themselves or through a smart sub-meter provider, a smart sub-metering system for each unit, (serviced by a distributor bulk meter), rather than be required to have distributor smart metering be installed for each unit?
- 2. If so are the legal and regulatory requirements set out in legislation or regulations and/or Code sufficiently clear?

## BRIEF BACKGROUND

In July 2008, the Compliance Office received complaints from sub-meter providers about Toronto Hydro's ("THESL") policy regarding the metering of new condominiums. The Compliance Office began an investigation which resulted in a series of correspondence between THESL and Compliance staff. Details of this communication are outlined later in this note under the section "Detailed Background."

This correspondence determined that THESL has implemented a policy that requires individual units in all new condominiums to be directly metered by THESL. A developer or Condominium Board may install its own additional sub-metering system provided that there is no interference with THESL's smart metering system. However, it is THESL's policy that ultimately each residential and commercial unit in a new condominium must be a direct customer of THESL. THESL has based this policy on its belief that there are no regulatory provisions which prohibit its policy and/or require that a distributor install smart metering only at the request of the condominium.

The OEB Compliance Office expressed its that view that to the extent that THESL's policies require smart metering of new condominiums and that each unit must be a direct customer of THESL, such policies are inconsistent with the Board's smart submetering licensing regime.

It is also the concern of the Compliance Office, that if a customer were to refuse to accept individual unit metering by Toronto Hydro, it appears that THESL would refuse to connect the customer. This concern has become real with the filing of a new compliant with the Board. On April 25, 2009, the Compliance Office was provided with two letters from THESL to developers informing the developers that THESL will not prepare an Offer to Connect that provides for the installation of a bulk meter/sub-metering configuration. It is the view of the Compliance Office that such actions are non-compliant with a distributor's obligation to connect as set out in section 28 of the *Electricity Act, 1998* and the obligation to install an interval meter when requested to do so as set out in section 5.1.5 of the Distribution System Code.

The question of whether a distributor can require that customers be directly metered by the distributor will have an impact on more than just THESL's policies. The Compliance Office has received complaints from the smart sub-metering industry regarding the metering activities of other distributors. Compliance staff is also aware that other distributors are closely following the discussions between THESL and Compliance staff, including one distributor who has stated its refusal to discuss their metering activities with staff until the Board has taken a position on THESL's policies.

The most recent activity in this dispute was a meeting between Board and THESL staff. In this meeting THESL reaffirmed its commitment to its policy and requested a Board hearing on the matter. OEB staff stated that we would request guidance from the Board as to its intention in regards to sub-metering activities and then determine next steps.

# RELEVANT REGULATORY & LEGAL REFERENCES

# Distribution System Code

5.1.5 A distributor shall provide an interval meter within a reasonable period of time to any customer who submits to it a written request for such meter installation, either directly, or

through an authorized party, in accordance with the Retail Settlement Code ...

# 5.1.9 When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) 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,

a distributor shall install smart metering that meets the functional specification of Ontario Regulation 425/06 – Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act).

# Electricity Act, 1998

- 28. A distributor shall connect a building to its distribution system if,
- (a) the building lies along any of the lines of the distributor's distribution system; and
- (b) the owner, occupant or other person in charge of the building requests the connection in writing.
- 53.17 (1) Despite the Condominium Act, 1998 and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart submetering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation, in a property or class of properties prescribed by regulation at a location prescribed by regulation and for consumers or classes of consumers prescribed by regulation at or within the time prescribed by regulation.

# **Ontario Regulation 442/07**

- 2. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed classes of property:
  - A building on land for which a declaration and description have been registered pursuant to section 2 of the Condominium Act, 1998.

- A building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the Condominium Act, 1998.
- 3. 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.
- 3. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed circumstances:
  - The approval by the board of directors to install smart meters or smart sub-metering systems, in the case of a building that falls into a prescribed class of property described in paragraph 1 or 2 of section 2.
  - 2. The installation of smart meters or smart sub-metering systems, in the case of a building that falls into a prescribed class of property described in paragraph 3 of section 2.
- (1) For a class of property prescribed under section 2 and in the circumstances prescribed under section 3, a licensed distributor, or any other person licensed by the Board to do so, shall install smart meters or smart submetering systems of a type, class or kind,
  - (a) that are authorized by an order of the Board or by a code issued by the Board; or
  - (b) that meet any criteria or requirements that may be set by an order of the Board or by a code issued by the

# Smart Sub-Metering Code

- 2.2.1 A smart sub-metering provider shall ensure that either:
  - (c) the board of directors of a condominium corporation; or
  - (d) 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,

has requested, and a distributor has installed, a master meter that is an interval meter before beginning to provide smart sub-metering services.

Notice of Proposal to Amend a Code and Notice of Proposal to issue a New Code, dated January 8, 2008, page #2.

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.

The Board uses the term "smart sub-metering" to describe the situation in which a licensed distributor provides service to the condominium's bulk (master) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system. In this scenario, the condominium continues to be the customer of the licensed distributor and will receive a single bill based on the measurement of the bulk (master) meter.

# **OPTIONS**

The following options are based on the answer to Question #1 being that new condominiums do have the right to install, either themselves or with a smart sub-meter provider, a smart sub-metering system rather than be required to have distributor smart metering be installed for each unit

If the answer to Question #1 is that distributors have the right to impose smart metering on customers, then staff suggests that the only action necessary is to inform the smart sub-metering industry of that position.

- Option A The legal and regulatory requirements are sufficiently clear, no further clarification by the Board is necessary.
- Option B The legal and regulatory requirements could benefit from further clarification from the Board. This clarification should take the form of a letter to distributors explaining the Board's expectations.
- Option C The legal and regulatory requirements are not clear and a code amendment to clarify the position is necessary.

# **DETAILED BACKGROUND**

# CUSTOMER CONTACT

In July 2008, Carma Industries and Intellimeter have complained to the Compliance Office regarding what they see as unfair business practices by Toronto Hydro.

In December 2008, a group of private sub-meter providers known as the Smart Sub-Metering Work Group also submitted a compliant that electricity distributors are abusing their market power and as a result hindering the growth of the smart sub-metering industry in the province. The complaint specifically identifies the following utilities:

• Toronto Hydro, Enersource, Oakville Hydro, PowerStream

The alleged activity includes the following:

- Building owners/developers are told that only the LDC may install meters and provide individual suite metering.
- Where a building owner/developer has expressed an interest in smart submetering, the LDC refuses to provide an Offer to Connect, refuses to install a bulk meter or advises that such a choice would result in other causes of delay. The LDC's inform the developers that none of these events would occur if the LDC is permitted to do the metering.
- Certain Offers to Connect are being provided without the LDC undertaking an
  economic evaluation and as a result either inadequate or no financial
  contributions are being requested.

# REVIEW OF COMPLIANCE OFFICE ACTIVITY

On July 16, 2008 and July 25, 2008, the Compliance Office received complaints from Carma Industries and Intellimeter.

On July 24, 2008, Compliance staff requested Toronto Hydro provide a response to questions relating to the distributor's policies regarding metering of multi-unit properties.

On July 29, 2008, Toronto Hydro responded to staff questions and provided the following positions.

 THESL requires distributor smart meters be installed in new facilities. However, it does allow customers to install these meters through alternative bid and then be transferred to the distributor.

- THESL's position is that unit holders and common areas (either residential or commercial) in new condominiums are individual residential or general service customers of THESL, the same as new customers in single detached homes.
- THESL believes that the Board supports this view since it has stated in its June 10<sup>th</sup> Notice for the Sub-Metering initiative that Smart Metering is a distribution activity and that only licensed distributors are allowed to undertake smart metering in condominiums.

On October 22, 2008, the Chief Compliance Officer issued a determination to Toronto Hydro stating that its policy is inconsistent with its regulatory obligations. The CCO stated the following views:

 THESL's policies are inappropriate in light of the legal and regulatory framework applicable to the metering of new condominiums as set out in section 53.17 (1) of the Electricity Act, 1998 which states

"a distributor and any other person licensed by the Board to do so shall, ..., install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment, and technology and any associated equipment, systems and technologies of a type prescribed by regulation." (emphasis added)

- The availability of the smart sub-metering option is clear from the materials
  issued by the Board when it amended the Distribution System Code (the "DSC")
  and created the Smart Sub-Metering Code. Section 5.1.9 of the DSC itself also
  clarifies that a distributor must install smart metering only when requested to do
  so by the condominium corporation or the developer.
- Under section 28 of the Electricity Act, 1998, a distributor must connect a building on request. The DSC sets out a list of the reasons that may justify a refusal to connect. However, the desire of a customer to install smart sub-metering is not one of those reasons.

On November 12, 2008, Toronto Hydro responded to the CCO's letter. THESL stated that it does not accept the opinions that were set out in the letter and would not change its metering policies. THESL presented the views that:

It is incorrect to conclude that their policies preclude the installation of a submetering system; should a customer wish to install an additional sub-metering system, they are at liberty to do so provided there is no interference with THESL's smart metering system. In any case, each distinct residential or commercial unit (including common areas) would remain as a direct customer of THESL.

- Section 53.17 of the Electricity Act is irrelevant to this issue, since it does not
  require a non-distributor to provide sub-metering, nor prohibit a distributor from
  installing smart metering, but goes to the requirement that equipment be of a
  type required by regulation. Furthermore, it clearly does not establish a right on
  the part of any person to install sub-metering equipment.
- The thrust of Section 5.1.9 is clearly to require that the metering installed meet the functional specification of Ontario Regulation 425/06.

On January 29, 2009, the CCO sent a follow up letter to Toronto Hydro stating that after considering THESL's arguments, he remains of the view that their policies are inappropriate. The CCO stated the following views:

- Cannot agree with THESL's characterization of section 53.17 of the Electricity
   Act, 1998 as being either irrelevant to this issue, or as speaking only to the
   nature of the equipment to be installed.
- Cannot agree with THESL's characterization of section 5.1.9 of the Distribution System Code as having, as its thrust, to require that the metering installed meet the specifications in regulation. Section 5.1.9 also makes it clear that the person responsible for a new condominium has the ability to choose between having a licensed distributor install smart meters or having a licensed smart sub-metering provider install smart sub-meters.
- THESL's position that each individual unit must be become a direct customer of THESL is incompatible with the Board's approach to smart sub-metering. As described by the Board, smart sub-metering clearly involves (a) a licensed distributor that bills its customer the condominium corporation based on the measurement of a bulk meter; and (b) a separate person the licensed smart sub-metering provider that bills the individual units and common areas based on the measurement of a smart sub-metering system.
- The provisions of the Board's Smart Sub-Metering Code make it clear that smart sub-metering as a competitive licensed activity goes beyond merely the installation of the meters.
- There are no regulatory provisions that provide licensed distributors with the authority to implement a requirement that each unit and common area in a new condominium must become a direct customer of the distributor.

On February 9, 2009, Toronto Hydro responded to the CCO's letter and restated its view that the CCO's interpretations are incorrect. THESL presented the views that:

 Section 5.1.9 of the DSC does not mention smart sub-metering, nor contain any statement that expressly 'makes it clear' that a distributor may only install smart metering upon the request of a person in charge of a condominium. The unstated premise of your argument appears to be that the Section begins with the word 'Only', which it does not.

- In THESL's view that there are no regulatory provisions which prohibit its smart metering policy.
- Furthermore, the DSC states at Section 5.1.6:

"A distributor shall identify in its Conditions of Service the type of meters that are available to a customer, the process by which a customer may obtain such meters and the types of charges that would be levied on a customer for each meter type."

This statement is not conditioned by any further obligation on the part of distributors concerning smart sub-metering in new condominiums.

On February 27, 2009, Compliance staff sent information request letters to Enersource, Powerstream and Oakville Hydro enquiring about their policies in regards to metering individual units in condominiums. Response to these enquiries has indicated that in the case of Enersource and Powersteam, they do not implement policies that require all customers in new condominiums be directly metered by the distributor. Oakville Hydro has stated that it will no longer communicate with staff on this issue until the Board settles the dispute with Toronto Hydro.

On April 17, 2009 OEB staff and THESL staff meet to discuss the dispute. THESL reaffirmed its previous position that individual customers in new condominiums should be customers of the distributor. They also acknowledged their policy is to not install a bulk meter even when requested by the customer and submitted that they have no regulatory obligation to do so. THESL expressed its willingness to participate in an enforcement proceeding in order for this matter to have a hearing before the Board. OEB staff informed THESL that they would request guidance from the Board regarding interpretation of the legal requirements. Among the results of this guidance could be a Board statement on the interpretation, an enforcement proceeding and/or a code amendment.

On April 24, 2009, the Sub-metering Working Group provided copies of letters from THESL to two property managers in which THESL states that they do not offer a connection configuration based on a bulk meter/sub-metering configuration. As a result THESL would not prepare an Offer to Connect on that basis.

# STAFF ASSESMENT

Through the issuance of Smart Sub-Meter Provider licenses and the Smart Sub-Metering code, it is staff's view that the Board anticipated that all customers would have the option of hiring private contractors to install and operate smart sub-metering systems.

To accept Toronto Hydro's view and policies on this matter would, in staff's view, be a reversal of the intention of the Board when it established its smart sub-metering licensing regime. Despite Toronto Hydro's suggestion that a Condominium could chose to install both smart metering and smart sub-metering, THESL's policy will almost certainly eliminate the practical business opportunities of licensed smart sub-meter providers.

In addition to Toronto Hydro's specific actions, there is also the concern that many distributors around the province may be implementing similar policies that restrict the ability of licensed smart sub-meter providers to operate.

# RELEVANT COMPLIANCE LEGAL REFERENCES

Section 112.3(1) of the OEB Act, 1998 states:

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.

# Section 112.4 of the OEB Act, 1998 states:

- (1) If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence.
- (2) This section applies to contraventions that occur before or after this section comes into force.

Section 112.5 of the OEB Act, 1998 states:

(1) If the Board is satisfied that a person has contravened an enforceable provision, the Board may, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order for each day or part of a day on which the contravention occurred or continues.

Prepared by: Paul Gasparatto

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TAB 2

## NOTICE OF INTENTION TO MAKE AN ORDER OF COMPLIANCE

# EB-2009-0308

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

December 7, 2009

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Counsel for Toronto Hydro-Electric System Limited

Filed: December 7, 2010 EB-2009-0308 Compliance Counsel's Responses to Interrogatories Page 1 of 20

# COMPLIANCE COUNSEL INTERROGATORY 1

#### QUESTION ·

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

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

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

## RESPONSE

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

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#### COMPLIANCE COUNSEL INTERROGATORY 2

## **QUESTION**

Reference: Witness Statement of Paul Gasparatto, Exhibit 8-1, page 1, Paragraph 3

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

- (i) please advise whether Avonshire and Metrogate contacted the OEB directly with respect to this complaint or whether this complaint was made solely through counsel for the Working Group.
- (ii) please advise whether the OEB compliance staff considered counsel for the Working Group to also be acting as counsel for Avonshire and Metrogate. For example, did compliance staff believe that counsel for the Working Group had the authority to speak on behalf of Avonshire and Metrogate?
- (iii) please provide copies of all communications between OEB compliance staff and Avonshire and Metrogate.
- (iv) please provide copies of all materials used in or resulting from investigations of the allegations of Avonshire and Metrogate that have not yet been produced.
- (v) the letter at Exhibit C-14 includes a brief of materials that was apparently provided by the Working Group to the Market Surveillence Panel (the "MSP") of the OEB with respect to the Avonshire and Metrogate complaints. Please request the MSP to provide all information that it has in its possession respect these complaints.
- (vi) approximately a week before receiving the letter at Exhibit C-14, counsel for the Working Group provided Ms Helt with copies of some of the materials included in C-14 (See Materials Provided by Compliance Counsel in response to the Board's Order dated October 14, 2009 (the "Disclosed Doctunents"), Tab 7). Specifically, Counsel for the Working Group argues in its communications to Ms Helt that THESL's position with respect to Avonshire and Metrogate is "clearly wrong." Counsel for the Working Group also argues that THESL's position "will eliminate the competitive smart sub-metering industry in Ontario." He also states that he want to "discuss the immediate steps that can be taken to insure [sic] that these projects are provided with sufficient power to allow construction to proceed."
  - (a) please provide all materials (including research memoranda and analysis) that compliance staff prepared or relied upon in investigating the impact of THESL's position on the competitive smart sub-metering industry in Ontario.

Filed: December 7, 2010 EB-2009-0308 Compliance Counsel's Responses to Interrogatories Page 3 of 20

- (b) please advise of the substance of all communications between compliance staff and counsel for the Working Group that addressed the "immediate next steps" referred to in this correspondence.
- (c) please advise the steps taken by compliance staff to determine whether the Avonshire and Metrogate projects were provided with electrical power to allow construction to proceed.

- (i) The complaints from Avonshire and Metrogate were provided to the Board by counsel for the Working Group.
- (ii) Mr. Gasparatto believed that counsel for the Working Group had the authority to provide the complaints from Avonshire and Metrogate to the Board. He did not inquire whether counsel for the Working Group was acting as counsel for Avonshire and Metrogate.
- (iii) Mr. Gasparatto had telephone conversations with Messrs Bello and Tersigni, but has no record of those conversations. All written communications between Compliance staff and Avonshire and Metrogate were provided previously as required by the Board's Decision and Order dated October 14, 2009.
- (iv) All materials used in or resulting from investigations of the allegations of Avonshire and Metrogate that are not subject to privilege were provided previously as required by the Board's Decision and Order dated October 14, 2009.
- (v) As Compliance Counsel advised in its letter dated November 3, 2009 (attached to these responses), the Working Group's complaint was addressed to the MSP. Upon receipt of the complaint, the Board determined that the complaint was not related to the wholesale electricity market and it was therefore redirected to the Board's Compliance staff. The MSP has no information in its possession with respect to these complaints.
- (vi)(a) Compliance Counsel has provided all materials related to the investigation of the Avonshire and Metrogate complaints that were not subject to privilege as required by the Board's Decision and Order dated October 14, 2009
- (vi)(b) Compliance staff had no communications with counsel for the Working Group in respect of the Avonshire or Metrogate complaints other than those previously disclosed in response to the Board's Decision and Order dated October 14, 2009.
- (vi)(c) Mr. Gasparatto relied on the information contained in THESL's letter of May 20, 2009, which confirmed that THESL provides a bulk meter to a building under construction. Mr. Gasparatto may also have confirmed that the buildings were being provided with power for construction in telephone conversations with Messrs Bello and Tersigni, but has no record of those conversations.

Filed: December 7, 2010 EB-2009-0308 Compliance Counsel's Responses to Interrogatories Page 4 of 20

#### **COMPLIANCE COUNSEL INTERROGATORY 3**

# **QUESTION**

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

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

- (i) please confirm that the complaints and information referred to in this paragraph all come from the letters from Avonshire and Metrogate to THESL dated March 6 and March 10, 2009. If there is additional material or information from Avonshire, Metrogate or the Working Group that informed the information in this paragraph, please advise what it is and produce same.
- (ii) With respect to the Avonshire and Metrogate letters, please advise whether the compliance staff reviewed Avonshire's and Metrogate's initial requests for offers to connect.
- (iii) the Avonshire and Metrogate letters state that, "It has come to our attention that contrary to the advice received... [Avonshire and Metrogate] does have the right under Subsection 53.17 of the Electricity Act, 1998 to choose to have this project smart sub-metered by a licensed sub-metering company." Please advise whether that advice came from compliance staff.
- (iv) in either event, please advise whether compliance staff agrees with that interpretation of s. 53.17 and, if so, please advise what provision of s. 53.17 provides that choice.

- (i) The allegations related to Avonshire and Metrogate in Mr. Gasparatto's letter of May 9, 2009 are based on the materials provided to Compliance staff by counsel for the Working Group on April 29, 2009 (Compliance Counsel Pre-Filed Evidence, Exhibit C-14).
- (ii) Mr. Gasparatto does not have possession of and did not review the initial requests for offers to connect made by Avonshire and Metrogate.
- (iii) This advice was not provided by Mr. Gasparatto or any other member of the Board's staff.
- (iv) The interpretation of s. 53.17 is a legal question for determination by the Board. Compliance staff's position has been set out in the letters issued to THESL by Brian Hewson on October 22, 2008 and January 29, 2009.

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## **COMPLIANCE COUNSEL INTERROGATORY 4**

#### **QUESTION**

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

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

- (i) please provide all correspondence between Mr. Gasparatto and Mr. Hewson (including emails, memoranda and transcribed voice mail messages) where the appropriateness of this provision of THESL's conditions of service was addressed.
- (ii) please advise whether Mr. Gasparatto shared this position with anyone else either inside the Board or externally, advise with whom the information was shared, and provide copies of those communications.

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

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#### COMPLIANCE COUNSEL INTERROGATORY 5

#### QUESTION

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

- (i) please confirm that Mr. Gasparatto was the author of this briefing note.
- (ii) please advise whether this briefing note (or a subsequent version thereof) was provided to anyone outside of compliance staff and, if so, please provide all copies of subsequent versions of this briefing note and the agenda for the meeting where this Note was presented and/or discussed, the identity of all of the individuals to whom this Note was circulated, the identity of all of the individuals who attended the meeting where this Note was presented or discussed, the minutes of any meeting where this Note was presented or discussed, and the notes of all the individuals who attended this meeting.
- (iii) this briefing note states that "THESL's idea that there will be renewable generation projects on an individual condominium unit level appears to be unrealistic". Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether it was realistic for there to be renewable generation projects on an individual condominium unit level. Please produce all materials that were consulted in carrying out this research. Please also provide the same information and materials with respect to renewable generation projects for the common areas of a condominium unit.
- (iv) the briefing note also states that "conservation is driven by customer choice regardless of who bills them for electricity." Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether and how conservation may be impacted by sub-metering versus suite metering. Please produce all materials that were consulted in carrying out this research.
- (v) the briefing note also refers to THESL's statement respecting the relationship between suite metering and distributors' obligations respecting the smart grid. Please advise of all the investigation and research that the author of this note carried out or reviewed that addressed whether and how facilitating the smart grid may be impacted by sub-metering versus suite metering. Please produce all materials that were consulted in carrying out this research.

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

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conduct specific research with respect to this statement.

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

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#### COMPLIANCE COUNSEL INTERROGATORY 6

# **QUESTION**

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

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

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

# **RESPONSE**

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

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#### COMPLIANCE COUNSEL INTERROGATORY 7

#### **QUESTION**

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

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

- (i) please confirm whether, during the period where Mr. Hewson was Chief Compliance Officer, his responsibilities included determining whether exempt distributors were compliant with the provisions of Regulation 161/99, including section 4.0.1 thereof.
- (ii) please confirm that, during this period, Mr. Hewson or his staff did conduct reviews of exempt distributors to confirm that they were compliant with section 4.0.1.
- (iii) please confirm that, in determining whether distributors were exempted, the criteria for exemption included a requirement that a distributor distributes the electricity at a cost that recovers, in total, only the amount it is billed to the exempt distributor by the licenced distributor.
- (iv) please confirm that if a condominium developer or a smart meterer sought to earn a return on delivering electricity it would not qualify for an exemption under section 4.0.1.
- (v) please confirm that if a condominium developer received a royalty payment from a submeterer in exchange for allowing a sub-meterer to sub-meter the condominium units, that developer would not qualify for an exemption under section 4.0.1.
- (vi) please advise whether Mr. Hewson or his staff have reviewed the compliance of condominium developers or their agents and contractors with the exemption requirements of section 4.0.1 and advise of the results of such a review.

- (i) This question is not relevant to the matters in issue in this proceeding. However, without waiving this objection, we can advise that: Mr. Hewson's responsibilities as Chief Compliance Officer included issues of compliance with respect to exempt distributors.
- (ii) This question is not relevant to the matters in issue in this proceeding. However, without waiving this objection, we can advise that: the Board did receive some complaints about exempt distributors and investigated those complaints to determine whether the exempt distributors were compliant with section 4.0.1.
- (iii) This question is not relevant to the matters in issue in this proceeding. This is also a matter of legal interpretation. However, without waiving these objections, we can advise that: To date, it has not been addressed or adjudicated by the Board in the context of a condominium developer or condominium corporation.

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

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#### **COMPLIANCE COUNSEL INTERROGATORY 8**

## **QUESTION**

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

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

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

## **RESPONSE**

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

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#### COMPLIANCE COUNSEL INTERROGATORY 9

#### **QUESTION**

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

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

- (i) Please confirm that Avonshire's initial request for an offer to connect contemplated THESL's installation of smart meters.
- (ii) Please confirm Avonshire's understanding that THESL would install smart meters at no charge to Avonshire.

- (i) Mr. Bello does not know whether Avonshire's initial request for an offer to connect contemplated the installation of smart meters by THESL. The initial request to connect was handled by Nexgen Utilities ("Nexgen") and Nexgen has been unable to locate the initial request for an offer to connect. A copy of the initial request should be in the possession of THESL.
- (ii) This is not clear to Mr. Bello based on THESL's offer to connect dated January 29, 2009 (Compliance Counsel Prefiled Evidence, Exhibit D-1). Schedule B (Expansion Work and Fees) to the offer includes a "Basic Connection Charge" that is applied on a per meter basis. Schedule B applies that charge to 3 meters for the project and each of the sub-meters for the 41 townhouse units in the project.

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#### **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;

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- 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:
  - 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.

- (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.

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#### COMPLIANCE COUNSEL INTERROGATORY 11

#### **QUESTION**

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

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

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

## RESPONSE

(i) The people listed on the email are:

Alex Foundos - Lawyer, Del Zotto, Zorzi LLP

Robert Tomei – Project Director for the Avonshire project

Leona Savoie – Planner for the Avonshire project

David Hamilton - President, Provident Energy Management

Mark Gallow – Representative of K&G Group (partner in the Avonshire development)

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

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#### **COMPLIANCE COUNSEL INTERROGATORY 12**

# **QUESTION**

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

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

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

## **RESPONSE**

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

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#### **COMPLIANCE COUNSEL INTERROGATORY 13**

## QUESTION

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

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

- (i) please confirm that Metrogate's initial request for an offer to connect contemplated THESL's installation of smart meters.
- (ii) please confirm Metrogate's understanding that THESL would install smart meters at no charge to Metrogate.

- (i) Mr. Tersigni does not know whether Metrogate's initial request for an offer to connect contemplated the installation of smart meters by THESL. The initial request to connect was handled by Nexgen and Nexgen has been unable to locate the initial request for an offer to connect. A copy of the initial request should be in the possession of THESL.
- (ii) This is not clear to Mr. Tersigni based on THESL's offer to connect dated February 2, 2009 (Compliance Counsel Prefiled Evidence, Exhibit E-1). Schedule B (Expansion Work and Fees) to the offer includes a "Basic Connection Charge" that is applied on a per meter basis. Schedule B applies that charge to 11 meters for the project and each of the sub-meters for the 74 townhouse units in the project.

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#### **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, Metreogate 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 reducted.
- (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.

- (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

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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.

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#### **COMPLIANCE COUNSEL INTERROGATORY 15**

# QUESTION

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

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

# **RESPONSE**

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

# STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9 Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct

(416) 869-5688

E-mail: gzacher@stikeman.com

BY EMAIL

November 3, 2009 File No. 100519,1011

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

Dear Mr. Vegh:

Re:

Notice of Intention to Make an Order for Compliance under

Section 112.3 of the OEB Act, 1998

Board File No: EB 2009-0308

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

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

Your letter seeks to obtain documents that the Board ruled are not required to be disclosed. The Board's decision is clear that the Notice of Intention to Make an Order "limits the questionable conduct to actions of Toronto with respect to Metrogate and Avonshire" and "accordingly, any production of documents should be limited to documents in the possession of Compliance Counsel that relate to Metrogate and Avonshire". This point was reinforced by the clarification issued by the Board on October 23, 2009 in which the Board stated that: "The decision makes it clear that the order was only intended to require Compliance staff to produce information relating to THESL that also related to Avonshire or Metrogate (in addition to any other information related to Avonshire or Metrogate on their own)".

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

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

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

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

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

Yours truly,

> >- 14 /for:

Glenn Zacher

/mas

cc: Michael Miller Patrick Duffy Maureen Helt TAB 3

toronto hydro-

electric system

January 29, 2009

Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd. 299 Rochampton 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 <a href="https://www.torontohydro.com">www.torontohydro.com</a>.

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 Rochampton 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.

Your 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	<b>n.</b> .	
W. G. C. Coldania Appetanta III od		
K & G Oakburn Apartments I Ltd.		
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OR		•
* · · · ·		
Decidences of Avenchine Inc. and K. &	G Oakburn Apartments I Ltd. each conf	irms it is not accepting Toront
Hydro's Offer to Connect and it will be	e proceeding by way of an alternative bid	i process for the Contestable
Work, as described in Schedule E.	proceeding of way or an accommend on	
7. 02.1, 10 10011001111		;
Residences of Avonshire Inc.		
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Offer to Connect Residences of Avonshire Inc. and K & G Oakburn Apartments I Ltd., 100, 185, & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent, January 29, 2009

## SCHEDULE A CONNECTION WORK and FEES

- 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.
- 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%		\$ 9,696.53
	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.
- 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
Bouipment	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)	63,326.08
	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)	\$ 62,539.28
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%)	\$ 65,053.94
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 advised 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%) \$4,649.05 Capital Contribution and GST \$97,630.05

## 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.
- 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.
- 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

- 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: <a href="http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm">http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm</a> 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.
- 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:
  - 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:
  - Sign an Alternative Bid Agreement;
  - 2. Hire a qualified contractor;
  - 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%)	\$ 490.00
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

## 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.

#### DEMARCATION POINTS

The ownership and operational demarcation points of the Project shall be identified as such by Toronto Hydro on the as-constructed drawings.

In accordance with Toronto Hydro's Conditions of 2.2 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.

#### 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.
- The notice shall name one arbitrator. 3.2
- The party receiving the notice shall, within 10 days of 3.3 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.
- 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.
- The arbitration shall be conducted in accordance with the 3.6 provisions of The Arbitration Act, 1991 S.O. c-17, as
- The decisions of the arbitration tribunal shall be made in 3.7 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.

## **EASEMENTS**

- 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 Toromo 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.
- 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.

### 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.
- 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.

#### LIMITATION OF LIABILITY

- Toronto Hydro shall not be responsible for the acts or omissions of the Customer or its employees, contractors, subcontractors or agent.
- Neither Toronto Hydro nor any of its employees, agents, directors OF 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 Representatives, contractors Customer's subcontractors.
- 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,
- 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 willful misconduct of it or its Representatives, however arising.
- 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 nonpayment 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.

#### TERMINATION

- 11.1 Each of the following shall constitute an event of default ("Event of Default"):
  - 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 Comect;
  - (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 assignment in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, or liquidalor 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:

 exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;

 exercise its rights of set-off against any and all property of the Customer in the possession of Toronto Hydro;

 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.

2.2 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.

## 13.1 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, after 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.

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.

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toronto hydro

electric system

February 2, 2009

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

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 <a href="https://www.torontohydro.com">www.torontohydro.com</a>.

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,

Torond Hydro-Electric System Limited

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:			
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I have authority to bind	the Corporation.		
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Metrogate Inc. confirm of an alternative bid pro	s it is not accepting Toronto I	Hydro's Offer to Connect an k, as described in Schedule	d it will be proceeding by way E.
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Offer to Connect Metrogate Inc, February 2, 2009

## SCHEDULE A CONNECTION WORK and FEES

- 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%	<u>\$ 3,807.70</u>
TOTAL CONNECTION FEES, GST	\$79,961.71
Less Deposit and GST received	- <u>\$</u> 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)	\$_	104,070.14

TOTAL UNCONTESTABLE EXPANSION FEES

## Contestable Expansion Work shall mean the following:

- Supply & instali:
  - 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:

Communic Expansion 1 cesi	4
Materials	\$ 407,657.24
Labour (construction)	\$ 213,180.32
Equipment	\$ 29,568.46
Overhead (including administration)	\$ 69,658.48
TOTAL CONTESTABLE EXPANSION FEES	\$ 720,064.50
TOTAL UNCONTESTABLE EXPANSION FEES	\$1,075,780.14
TOTAL EXPANSION FEES (CONTESTABLE AND UNCONTESTABLE)	\$1,795,844.64
GST (5%)	<b>\$</b> 89,792.23
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 advised 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.

\$1,075,780.14

## 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.
- 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.
- 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
LESS CAPITAL CONTRIBUTION AND GST
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: <a href="http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm">http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm</a> 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 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 GST (5%) TOTAL ADDITIONAL COSTS FOR ALTERNATIVE BID WORK, GST	\$ 10,750.00 \$ 537.50 \$ 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.

#### FORCE MAJEURE

- 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.

#### 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 willful misconduct of it or its Representatives, however arising.
- 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.

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 counter 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 it's 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.

#### 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"):

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;

 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:
  - exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;
  - 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;
  - (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.

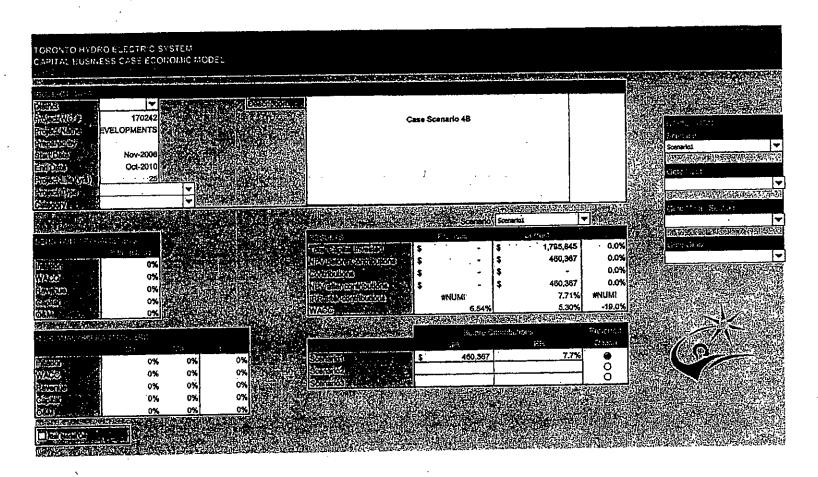
## 3. WARRANTIES

- 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.

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TAB 5

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4800 DUFFERIN STREET TORONTO, ONTARIO M3H 5S9

March 6, 2009

Toronto Hydro-Electric System Limited 14 Carlton Street Asset Management 3<sup>rd</sup> 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

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## METROGATE INC. 4800 DUFFERIN STREET

TORONTO, ONTARIO M3H 5S9

March 10, 2009

Toronto Hydro-Electric System Limitèd 14 Carlton Street Asset Management 3<sup>rd</sup> 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 submetered by a licensed sub-metering company. Metrogate Inc. is desirous of considering the submetered 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

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TAB 6

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

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



2009 April 22

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

Dear Mr. Bello:

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

Thank you for your letter of March 10, 2009 to our Mr. Trgachef. Unfortunately, conflicting address information in your letter resulted in delays in its delivery. Your letter, received by me April 20, has been referred to me for reply.

Your letter generally concerns Toronto Hydro's policy and practice regarding offers to connect and smart metering for new condominiums, particularly those mentioned in the subject line of your letter. Your letter goes on to request that Toronto Hydro prepare a revised Offer to Connect for those condominiums based on a bulk meter / sub-metering configuration. As explained below, Toronto Hydro does not offer that connection configuration for new condominiums and therefore will not prepare a revised Offer to Connect on that basis.

The Ontario Energy Board ('OEB') regulates Toronto Hydro rates and service offerings. The OEB has defined the term 'smart metering' as follows: "The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.")<sup>1</sup>

As set out in Toronto Hydro's Conditions of Service, for condominium projects commenced with Toronto Hydro on and after February 28, 2008 ('new condominiums'), Toronto Hydro will provide smart metering as defined by the OEB (i.e., individual unit or suite metering

<sup>&</sup>lt;sup>1</sup> [EB-2007-0772 Notice of Proposal etc. issued January 8, 2008]

compliant with smart metering regulations) for all separate units and for common areas ('individually metered units') at no charge to the developer. Upon registration and creation of the condominium corporation, the holders of the individually metered units become the direct customers of Toronto Hydro.

Toronto Hydro (along with other licensed distributors) has been specifically authorized to conduct smart metering as part of its standard, licensed distribution activities. The OEB has stated as follows:

"The Board has previously determined in rates proceedings related to smart metering activities of certain distributors that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. As there is no distinction between smart metering condominiums and other residences, the Board has determined that only licensed distributors can smart meter condominiums. In the Board's view, this is in keeping with the current regulatory framework in the electricity sector.

The Board is also of the view that Regulation 442 allows all licensed distributors to smart meter in condominiums."<sup>2</sup>

"As set out in the January Notice, the Board remains of the view that smart metering is a distribution activity, and that the Electricity Act and Regulation 442 taken together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area."

Toronto Hydro therefore asserts that it is authorized to connect new condominiums in the manner described in its Conditions of Service and that it has no obligation to do otherwise.

The statement of Toronto Hydro's position in this matter is not entirely correct in your letter. Specifically, you state your understanding that Toronto Hydro advised you that "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."

While it is the case that ultimately Toronto Hydro will own the metering infrastructure and will attach the individually metered units as direct customers, Toronto Hydro's Conditions of Service provide for alternative bids for the installation of meters and do not preclude the installation of an additional sub-metering system, should the developer or condominium wish to install one, provided it does not interfere with Toronto Hydro's equipment.

Your request for a further Offer to Connect assuming bulk metering is based on an incorrect interpretation of Section 53.17 of the *Electricity Act*, which you state contradicts Toronto Hydro's advice referred to above. In fact, that Section provides as follows:

"Despite the Condominium Act, 1998 and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation."

Section 53.17 of the *Electricity Act* does not contradict Toronto Hydro's position and is irrelevant to this issue, since with respect to new condominiums, it does not prohibit a

<sup>&</sup>lt;sup>2</sup>[EB-2007-0772 Notice of Proposal etc, January 8, 2008, pages 2-3]

<sup>&</sup>lt;sup>3</sup> [EB-2007-0772 Notice of Proposal etc, June 10, 2008, pages 4]

distributor from installing smart metering, nor require a non-distributor to provide submetering, but rather goes to the requirement that whatever equipment is installed be of a type required by regulation. Furthermore, it clearly does not establish a right on the part of any person to install sub-metering equipment. Sub-metering is referred to because such configurations are allowed, but not required, in the case of existing condominiums already fitted with bulk meters.

In summary, nothing with respect to new condominiums in Toronto Hydro's metering or connection practice or in its Conditions of Service is out of compliance with Code, regulation, or legislation. The OEB has expressly concluded that smart metering of condominiums is a distribution activity authorized by the existing licenses of distributors, and has not established any obligation on distributors to provide for sub-metering configurations in new condominiums.

For these reasons Toronto Hydro does not accept the request set out in your letter. Please contact me if you have concerns or questions around any of these matters.

Yours truly,

(Original signed by)

Colin McLorg
Manager, Regulatory Policy and Relations
416-542-2513
cmclorg@torontohydro.com

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

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



2009 April 22

Mr. Lou Tersigni
Project Manager
Metrogate Inc
4800 Dufferin Street
Toronto, ON M3H 5S9
via email

Dear Mr. Tersigni;

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

Thank you for your letter of March 10, 2009 to our Mr. Trgachef. Unfortunately, conflicting address information in your letter resulted in delays in its delivery. Your letter, received by me April 20, has been referred to me for reply.

Your letter generally concerns Toronto Hydro's policy and practice regarding offers to connect and smart metering for new condominiums, particularly those mentioned in the subject line of your letter. Your letter goes on to request that Toronto Hydro prepare a revised Offer to Connect for those condominiums based on a bulk meter / sub-metering configuration. As explained below, Toronto Hydro does not offer that connection configuration for new condominiums and therefore will not prepare a revised Offer to Connect on that basis.

The Ontario Energy Board ('OEB') regulates Toronto Hydro rates and service offerings. The OEB has defined the term 'smart metering' as follows: "The Board uses the term 'smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.")<sup>1</sup>

As set out in Toronto Hydro's Conditions of Service, for condominium projects commenced with Toronto Hydro on and after February 28, 2008 ('new condominiums'), Toronto Hydro will provide smart metering as defined by the OEB (i.e., individual unit or suite metering

<sup>&</sup>lt;sup>1</sup> [EB-2007-0772 Notice of Proposal etc. issued January 8, 2008]

compliant with smart metering regulations) for all separate units and for common areas ('individually metered units') at no charge to the developer. Upon registration and creation of the condominium corporation, the holders of the individually metered units become the direct customers of Toronto Hydro.

Toronto Hydro (along with other licensed distributors) has been specifically authorized to conduct smart metering as part of its standard, licensed distribution activities. The OEB has stated as follows:

"The Board has previously determined in rates proceedings related to smart metering activities of certain distributors that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. As there is no distinction between smart metering condominiums and other residences, the Board has determined that only licensed distributors can smart meter condominiums. In the Board's view, this is in keeping with the current regulatory framework in the electricity sector.

The Board is also of the view that Regulation 442 allows all licensed distributors to smart meter in condominiums."<sup>2</sup>

"As set out in the January Notice, the Board remains of the view that smart metering is a distribution activity, and that the Electricity Act and Regulation 442 taken together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area."

Toronto Hydro therefore asserts that it is authorized to connect new condominiums in the manner described in its Conditions of Service and that it has no obligation to do otherwise.

The statement of Toronto Hydro's position in this matter is not entirely correct in your letter. Specifically, you state your understanding that Toronto Hydro advised you that "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."

While it is the case that ultimately Toronto Hydro will own the metering infrastructure and will attach the individually metered units as direct customers, Toronto Hydro's Conditions of Service provide for alternative bids for the installation of meters and do not preclude the installation of an additional sub-metering system, should the developer or condominium wish to install one, provided it does not interfere with Toronto Hydro's equipment.

Your request for a further Offer to Connect assuming bulk metering is based on an incorrect interpretation of Section 53.17 of the *Electricity Act*, which you state contradicts Toronto Hydro's advice referred to above. In fact, that Section provides as follows:

"Despite the Condominium Act, 1998 and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation."

Section 53.17 of the *Electricity Act* does not contradict Toronto Hydro's position and is irrelevant to this issue, since with respect to new condominiums, it does not prohibit a

<sup>&</sup>lt;sup>2</sup>[EB-2007-0772 Notice of Proposal etc, January 8, 2008, pages 2-3]

<sup>&</sup>lt;sup>3</sup> [EB-2007-0772 Notice of Proposal etc, June 10, 2008, pages 4]

distributor from installing smart metering, nor require a non-distributor to provide submetering, but rather goes to the requirement that whatever equipment is installed be of a type required by regulation. Furthermore, it clearly does not establish a right on the part of any person to install sub-metering equipment. Sub-metering is referred to because such configurations are allowed, but not required, in the case of existing condominiums already fitted with bulk meters.

In summary, nothing with respect to new condominiums in Toronto Hydro's metering or connection practice or in its Conditions of Service is out of compliance with Code, regulation, or legislation. The OEB has expressly concluded that smart metering of condominiums is a distribution activity authorized by the existing licenses of distributors, and has not established any obligation on distributors to provide for sub-metering configurations in new condominiums.

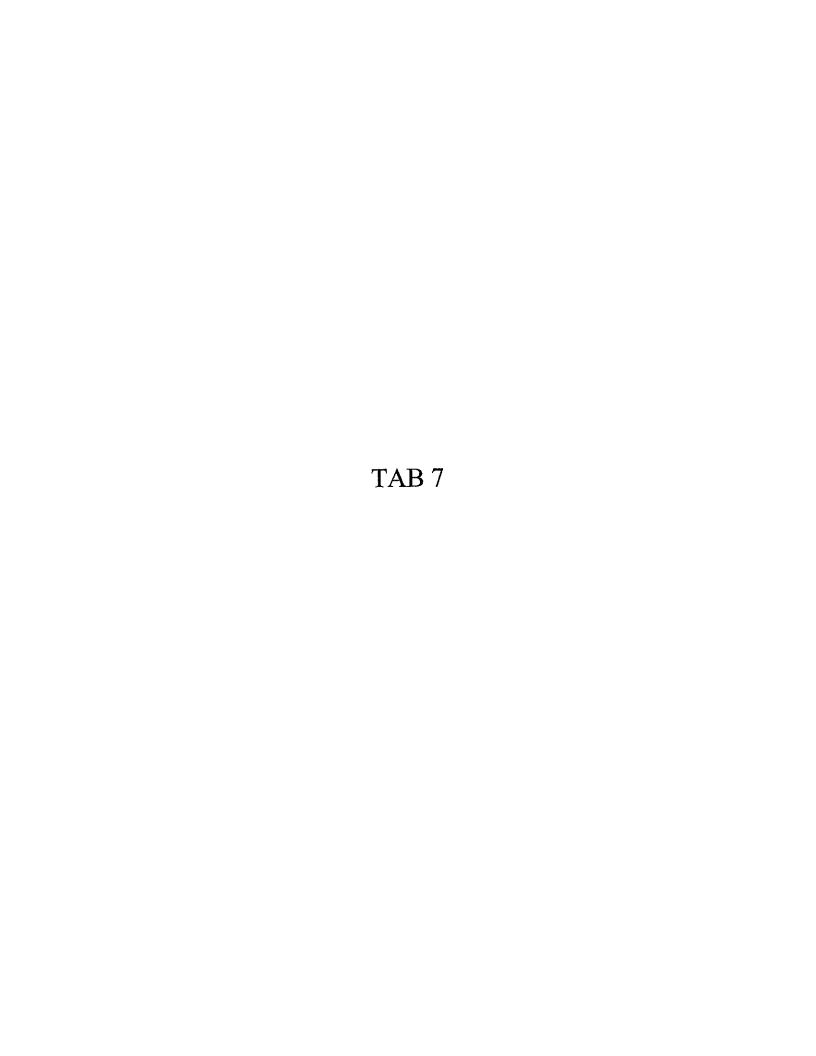
For these reasons Toronto Hydro does not accept the request set out in your letter. Please contact me if you have concerns or questions around any of these matters.

Yours truly,

(Original signed by)

Colin McLorg
Manager, Regulatory Policy and Relations
416-542-2513
cmclorg@torontohydro.com

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June 25, 2009

Residences of Avonshire Inc. c/o 4800 Dufferin Street Suite 200 Toronto, Ontario M3H 5S9

RE-ISSUED

toronto hydro electric system

Attention: Giuseppe Bello

Dear Sir.

Re:

Residences of Avonshire Inc. development of 100 & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent – Avonshire Community Phase 2 as legally described in PIN Nos. 10104-1613 (LT), 10104-1614 (LT), 10104-1622 (LT) and 10104-1624 (LT) ("Property")

437 high-rise residential units (437 Toronto Hydro suite meters)

41 townhouses

2 General Service 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 ("Customer") written request for connection of the Project to the Toronto Hydro main distribution system.

The Customer has represented to Toronto Hydro that 478 residential units and 2 General Service Connections will be constructed and connected to the Toronto Hydro main distribution system and the estimated increased demand load attributable to the Project will be 1,100 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 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 <a href="https://www.torontohydro.com">www.torontohydro.com</a>.

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;

Schedule G - Addendum to Offer to Connect.

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

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.

299 Rochampton 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.

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

Name: Anthony Haines

Title: President

I have authority to bind the Corporation.

Residences of Avonshire 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.	- -
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Residences of Avonshire Inc.	1
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Per:	Date: 5/69
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Title: pcesident	
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Per:	Barel Son Sept 17/09
Name:	
Title:	
I have authority to bind the Corporatio	ni.
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OR	
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	s it is not accepting Toronto Hydro's Offer to Connect and it will be
proceeding by way of an alternative bi	d process for the Contestable Work, as described in Schedule E.
	•
Residences of Avonshire Inc.	
Per:	Date:
Name: Title:	
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I have authority to bind the Corporatio	<b>ID.</b>
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Offer to Connect Residences of Avonshire Inc., 100 & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent, June 25, 2009

# 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 1,100 kW ("Estimated Incremental Demand") and that 478 residential units and 2 General Service Connections will be constructed and 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** \$21,560.00 GST (5%)

\$ 1,078.30 \$22,315.70 → CONSTRUCTION BUDGET! Capital Contribution and GST

# 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.
- 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.
- 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 \$962,960.00 LESS CAPITAL CONTRIBUTION AND GST \$22,644.30 EXPANSION DEPOSIT \$940,315.70

# SCHEDULE E ALTERNATIVE BID PROCESS AND CONTESTABLE WORK

- 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: <a href="http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm">http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm</a> 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.
- 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.
- 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:
  - 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 Ayondale 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;
- Connections to existing Toronto Hydro distribution system;
- 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 Toronto Hydro distribution system.

Toronto Hydro's Additional Costs for Alternative Bid Work GST (5%) TOTAL ADDITIONAL COSTS FOR ALTERNATIVE BID WORK, GST	\$ 7,350.00 \$ 367.50 \$ 7,717.50
ALTERNATIVE BID EXPANSION DEPOSIT	\$94,031,57

# 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 willful 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.

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.

#### 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 5<sup>th</sup> 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.

P.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.

#### O. 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;

 the Customer fails to execute and deliver any agreement, or deliver any other document, within the time period specified for execution and/or delivery;

 the Customer fails to commence the Expansion Work within 1 year from the date of this Offer to Connect;

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;

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:

 exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;

 exercise its rights of set-off against any and all property of the Customer in the possession of Toronto Hydro;

 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.

#### Schedule G - Addendum to Offer to Connect

Whereas Residences of Avonshire Inc. requested and received an Offer to Connect dated June 25, 2009 from Toronto Hydro that contemplates Toronto Hydro installing, owning and operating individual smart meters in each of the suites to be constructed at the Project;

And Whereas Residences of Avonshire Inc. has requested that Toronto Hydro provide an Offer to Connect that contemplates these units being metered by a licensed smart sub-meter provider retained by Residences of Avonshire Inc., and to accommodate this request Toronto Hydro would be required to install a master revenue meter(s);

And Whereas Toronto Hydro has advised Residences of Avonshire Inc. that Toronto Hydro has no obligation to provide for smart sub-metering in new condominiums and has refused to provide a further Offer to Connect which contemplates suite metering being undertaken by a licensed smart sub-metering provider;

And Whereas Residences of Avonshire Inc. requires that Toronto Hydro provide a permanent power connection to the Project so that construction may commence;

And Whereas Residences of Avonshire Inc. and Toronto Hydro are in agreement that a permanent power connection to the Project can be installed on a timely basis without first resolving the issue of whether Toronto Hydro or a licensed smart sub-metering service provider meters the Project's suites as a result of which Residences of Avonshire Inc. and Toronto Hydro hereby follows:

- 1. Residences of Avonshire Inc. will execute this Offer to Connect and will comply with all provisions contained in the Offer to Connect provided that, Residences of Avonshire Inc. may, despite having executed this Offer to Connect, pursue any legal or regulatory remedy before the Courts or the Ontario Energy Board to permit it to engage a licensed smart sub-metering provider to meter the individual suites at the Project and/or to require Toronto Hydro to take all necessary actions consistent with Residences of Avonshire Inc.'s desire to engage a smart sub-metering provider.
- Toronto Hydro will proceed, on a timely basis, with all required steps to prepare for a permanent power connection to the Project. This power connection will be of sufficient design and capacity to provide power to the Project when fully occupied.
- Residences of Avonshire Inc. and Toronto Hydro agree that Toronto Hydro will comply
  with all orders issued by the courts or Ontario Energy Board as a result of remedies
  sought by Residences of Avonshire Inc.

Residences of Avanshire Inc. OTC June 25, 2009 Schedule G

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toronto hydro

electric system

February 2, 2009

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

Attention: Lou Tersigui

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 <a href="https://www.torontohydro.com">www.torontohydro.com</a>.

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.

Schedule G - Addendum to Offer to Connect

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 ilmited

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 – 3<sup>rd</sup> 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.

Torond Hydro-Blectric System Limited

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

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Title: President	•			
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Offer to Connect Metrogate Inc, February 2, 2009

Schedule E.

# SCHEDULE A CONNECTION WORK and FEES

- 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.
- 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	<b>-</b>	- <u>\$ 0</u>
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.
- 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.
- 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>\$</u>	104,070.14
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 : A deliver and the second	\$ 407,657.24
Labour (construction)	\$ 213,180.32
Equipment	\$ 29,568.46
Overhead (including administration)	\$ 69,658.48
TOTAL CONTESTABLE EXPANSION FEES	\$ 720,064.50
TOTAL UNCONTESTABLE EXPANSION FEES	\$1,075,780.14
TOTAL EXPANSION FEES (CONTESTABLE AND UNCONTESTABLE)	\$1,795,844.64
GST (5%)	\$ 89,792.23
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 advised 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

- 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.
- 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
LESS CAPITAL CONTRIBUTION AND GST
EXPANSION DEPOSIT

\$1,885,636.87

# SCHEDULE E ALTERNATIVE BID PROCESS AND CONTESTABLE WORK

- 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: <a href="http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm">http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm</a> 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:
  - 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.
- 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:

- o 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

#### 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

- .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.
- 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 willful 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"):

 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;

 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 I year from the date of this Offer to Connect;

v) the Customer cancels the Project for any reason;

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:

 exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;

 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.

# Schedule G - Addendum to Offer to Connect

Whereas Metrogate requested and received an Offer to Connect dated February 2, 2009 from Toronto Hydro that contemplates Toronto Hydro installing, owning and operating individual smart meters in each of the suites to be constructed at the Project;

And Whereas Metrogate has requested that Toronto Hydro provide an Offer to Connect that contemplates these units being metered by a licensed smart sub-meter provider retained by Metrogate, and to accommodate this request Toronto Hydro would be required to install a master revenue meter(s);

And Whereas Toronto Hydro has advised Metrogate that Toronto Hydro has no obligation to provide for smart sub-metering in new condominiums and has refused to provide a further Offer to Connect which contemplates suite metering being undertaken by a licensed smart sub-metering provider;

And Whereas Metrogate requires that Toronto Hydro provide a permanent power connection to the Project so that construction may commence;

And Whereas Metrogate and Toronto Hydro are in agreement that a permanent power connection to the Project can be installed on a timely basis without first resolving the issue of whether Toronto Hydro or a licensed smart sub-metering service provider meters the Project's suites as a result of which Metrogate and Toronto Hydro hereby follows:

- 1. Metrogate will execute this Offer to Connect and will comply with all provisions contained in the Offer to Connect provided that, Metrogate may, despite having executed this Offer to Connect, pursue any legal or regulatory remedy before the Courts or the Ontario Energy Board to perinit it to engage a licensed smart sub-metering provider to meter the individual suites at the Project and/or to require Toronto Hydro to take all necessary actions consistent with Metrogate's desire to engage a smart sub-metering provider.
- Toronto Hydro will proceed, on a timely basis, with all required steps to prepare for a
  permanent power connection to the Project. This power connection will be of sufficient
  design and capacity to provide power to the Project when fully occupied.
- 3. Metrogate and Toronto Hydro agree that Toronto Hydro will comply with all orders issued by the courts or Ontario Energy Board as a result of remedies sought by Metrogate.

Y:\THC\Corporate\Legal Svcs\Commercial\General Counsel\Agreements\Offers to Connect\Schedule G

June 25, 2009

Residences of Avonshire Inc. c/o 4800 Dufferin Street Suite 200 Toronto, Ontario M3H 589 **RE-ISSUED** 

toronto hydro electric system

Attention: Giuseppe Bello

Dear Sir:

Re:

Residences of Avonshire Inc. development of 100 & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent — Avonshire Community Phase 2 as legally described in PIN Nos. 10104-1613 (LT), 10104-1614 (LT), 10104-1622 (LT) and 10104-1624 (LT) ("Property") 437 high-rise residential units (437 Toronto Hydro suite meters) 41 townhouses

2 General Service 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 ("Customer") written request for connection of the Project to the Toronto Hydro main distribution system.

The Customer has represented to Toronto Hydro that 478 residential units and 2 General Service Connections will be constructed and connected to the Toronto Hydro main distribution system and the estimated increased demand load attributable to the Project will be 1,100 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 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 <a href="https://www.torontohydro.com">www.torontohydro.com</a>.

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;

Schedule G - Addendum to Offer to Connect.

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

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.

299 Roehampton Ayenue

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.

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

Name: Anthony Haines

Title: President

I have authority to bind the Corporation.

Residences of Avonshire 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 Schedule E.	not be obtaining alternative bids for	the Contest	table Work described in
	<b>1</b> /		
Residences of Avonshire Lic.	$l_{I}$ .	١	
	$U = C_{\kappa}$		
Per:	Date:	3/09	
Name: Bigo Carriel		Y	•
Title: president	•		
I have authority to bind the Corpor	ration.	1	0 ,
	Jacquelelle Co	سعد ال	17/08
Per:	Date 100	209	Sept 17/09
Name:			• [ ]
Title:			•
I have authority to bind the Corpor	ration.		
•			
	• .		•
OR <sub>.</sub>			
•			
•			
Residences of Avonshire Inc. cont proceeding by way of an alternative	firms it is not accepting Toronto Hydive bid process for the Contestable Wo	ro's Offer t ork, as desc	o Connect and it will be ribed in Schedule E.
Residences of Avonshire Inc.			•
Per:	Date:		
Name:			
Title:			
I have authority to bind the Corpo	ration.		

Offer to Connect Residences of Avonshire Inc., 100 & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent, June 25, 2009

# SCHEDULE C CAPITAL CONTRIBUTION REQUIREMENTS and ECONOMIC EVALUATION

- The Customer acknowledges that it has represented to Toronto Hydro that the estimated increased demand load attributable to the Project will be 1,100 kW ("Estimated Incremental Demand") and that 478 residential units and 2 General Service Connections will be constructed and 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 GST (5%) Capital Contribution and GST \$21,560.00 \$ 1,078.30

\$22,315.70 -> CONSTRUCTION BUDGET!

# 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.
- 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
LESS CAPITAL CONTRIBUTION AND GST
EXPANSION DEPOSIT

\$962,960.00
\$22,644.30
\$940,315.70

# SCHEDULE E ALTERNATIVE BID PROCESS AND CONTESTABLE WORK

- 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: <a href="http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm">http://www.torontohydro.com/electricsystem/customer\_care/cond\_of\_services/index.cfm</a> 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.
- 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:
  - 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;
- Connections to existing Toronto Hydro distribution system;
- 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 Toronto Hydro distribution system.

Toronto Hydro's Additional Costs for Alternative Bid Work GST (5%)	\$ 7,350.00 \$ 367.50
TOTAL ADDITIONAL COSTS FOR ALTERNATIVE BID WORK, GST	\$ 7,717.50
ALTERNATIVE BID EXPANSION DEPOSIT	\$94,031.57

# 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 yaults 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.

#### 5. 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 willful 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 5<sup>th</sup> business day after mailing.
- 7.5 Bither 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"):
  - 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;
  - 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 lnability 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:

 exercise any of the rights and remedies of a secured party including any such rights and remedies under law then in effect;

 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");

- 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.

#### 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.

#### Schedule G - Addendum to Offer to Connect

Whereas Residences of Avonshire Inc. requested and received an Offer to Connect dated June 25, 2009 from Toronto Hydro that contemplates Toronto Hydro installing, owning and operating individual smart meters in each of the suites to be constructed at the Project;

And Whereas Residences of Avonshire Inc. has requested that Toronto Hydro provide an Offer to Connect that contemplates these units being metered by a licensed smart sub-meter provider retained by Residences of Avonshire Inc., and to accommodate this request Toronto Hydro would be required to install a master revenue meter(s);

And Whereas Toronto Hydro has advised Residences of Avonshire Inc. that Toronto Hydro has no obligation to provide for smart sub-metering in new condominiums and has refused to provide a further Offer to Connect which contemplates suite metering being undertaken by a licensed smart sub-metering provider;

And Whereas Residences of Avonshire Inc. requires that Toronto Hydro provide a permanent power connection to the Project so that construction may commence;

And Whereas Residences of Avonshire Inc. and Toronto Hydro are in agreement that a permanent power connection to the Project can be installed on a timely basis without first resolving the issue of whether Toronto Hydro or a licensed smart sub-metering service provider meters the Project's suites as a result of which Residences of Avonshire Inc. and Toronto Hydro hereby follows:

- 1. Residences of Avonshire Inc. will execute this Offer to Connect and will comply with all provisions contained in the Offer to Connect provided that, Residences of Avonshire Inc. may, despite having executed this Offer to Connect, pursue any legal or regulatory remedy before the Courts or the Ontario Energy Board to permit it to engage a licensed smart sub-metering provider to meter the individual suites at the Project and/or to require Toronto Hydro to take all necessary actions consistent with Residences of Avonshire Inc.'s desire to engage a smart sub-metering provider.
- 2. Toronto Hydro will proceed, on a timely basis, with all required steps to prepare for a permanent power connection to the Project. This power connection will be of sufficient design and capacity to provide power to the Project when fully occupied.
- 3. Residences of Avonshire Inc. and Toronto Hydro agree that Toronto Hydro will comply with all orders issued by the courts or Ontario Energy Board as a result of remedies sought by Residences of Avonshire Inc.

Residences of Avonshire Inc. OTC June 25, 2009 Schedule G

TAB 8

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

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



2009 November 27

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

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 submetering 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 submetered 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:<sup>1</sup>

"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;
- 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;

<sup>&</sup>lt;sup>1</sup> Ontario Energy Board Decision and Order, August 13, 2009 (EB-2009-0111) at pp. 10-11.

- The price charged for electricity by Avonshire or its sub-meterer to all submetered 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.

TAB 9



ELVIO DELZOTTO, Q.C. STEVEN B. WEISS ROBERT W. CALDERWOOD HARRY HERSKOWITZ LORI R. TANEL ALEXANDER A. FOUNDOS EDWARD P. MICHELI MICHAELE DELZOTTO DEBRA J.M. EVELEIGH MARY G. CRITELLI RICHARD P. HOFFMAN

Delivered by e-mail; cmclorg@torontohydro.com

December 9th, 2009

Mr. Colin McLorg
Manager, Regulatory Policy and Relations
Toronto Hydro Electric System
14 Carlton Street
Toronto, ON M5B 1K5

Dear Mr. McLorg:

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

I am writing in my capacity as legal counsel for Residences of Avonshire Inc. ("Avonshire") which is under construction at 100 & 115 Harrison Garden Boulevard and 5, 7 & 9 Oakburn Crescent (the "Project"). I have been provided with a copy of your letter of November 27, 2009 by our Project Manager, Mr. Giuseppe Bello.

It is appropriate to summarize your letter before responding. In brief, your letter states:

- (a) Subject to Avonshire satisfying the conditions demanded by THESL as set out below, THESL has changed its position in respect of this Project, and contrary to your letter of April 22, 2009, THESL is now prepared to provide a revised Offer to Connect ("OTC") which contemplates the Project being smart sub-metered by a licensed smart sub-metering provider;
- (b) The revised OTC may result in an additional capital contribution being payable to THESL by Avonshire in an undefined amount. No economic evaluation or explanation was given for this.
- (c) The revised OTC will be provided only upon Avonshire confirming in writing to THESL that it and any licensed sub-metering provider that Avonshire chooses will be in compliance with the law, as articulated by THESL;
- (d) Receiving the revised OTC is further conditional upon Avonshire providing to THESL copies of "all documentation with smart submeterers" so that THESL can confirm compliance with the law as articulated by THESL; and

(e) Avonshire must agree to all of the above by December 14, 2009, failing which the Project will be deemed by THESL to be one where it is authorized to suite meter the Project.

We find it surprising that THESL would make such demands at a time when its conduct in respect of this Project is the subject of a compliance proceeding before the Ontario Energy Board ("OEB"). Additionally, we find it troubling that your letter, which is clearly written to advance THESL's position in the current OEB proceeding, is somehow premised on THESL's Conditions of Service that existed prior to February 29, 2008. Presumably, this is the reason that THESL has not sent a similar letter in respect of the Metrogate Inc. project.

In any event, as this is the first time that we have been required to accept such conditions in order to receive an OTC which contemplates a new project being smart sub-metered, we feel compelled to respond. In response to your letter, we advise as follows:

- 1. Avonshire continues to be desirous of receiving an OTC from THESL which contemplates the building being smart sub-metered by a licenced third party smart sub-metering provider. Given the implication in your letter that there will be an increase in the capital contribution payable, we request that the revised OTC include a copy of THESL's complete economic evaluation (including all assumptions and data relied upon) which justifies any capital contribution payable. It is certainly not reasonable to expect that Avonshire can properly evaluate any new OTC if any associated capital contribution is not identified and explained.
- There is not now, nor has there ever been, any basis to believe or imply that Avonshire will fail to meet any applicable legal or regulatory requirement. THESL has at no prior time expressed such concern to Avonshire and we note that your letter does not indicate that THESL has any evidence or belief that Avonshire is at risk of contravening any applicable law. To be clear, your November 27 letter is THESL's first request for confirmation of compliance.
- 3. We are concerned by your request for copies of "all documentation with smart sub-meterers". We are unaware of any legal or regulatory requirement which makes the production of such materials a prerequisite to obtaining an OTC in connection with a building being smart sub-metered.
- 4. We are particularly concerned by the role which THESL appears to want to take as the entity that will make determinations, apparently unilaterally, about whether developers, condominium corporations and/or licenced smart sub-metering providers are in compliance with certain regulatory requirements. Aside from the fact that THESL would in effect be supplanting the true regulator, namely, the Ontario Energy Board, there is the further troubling fact that THESL would be in a clear conflict of interest, acting as judge and potential direct beneficiary of its decision. This cannot be right.
- Finally, Avonshire does not accept your arbitrary deadline of December 14, 2009, failing which the Project will be deemed by THESL to be one where it is authorized to suite meter the Project. The continuing arrangement between

Avonshire and THESL is as set out in the Addendum to the OTC that Avonshire executed under duress, which expressly states, among other things:

"The Customer will execute this Offer to Connect "under duress" and on a without prejudice basis. The Customer may, despite having executed this Offer to Connect, pursue any legal or regulatory remedy before the Courts or the Ontario Energy Board to permit it to engage a licensed smart sub-metering provider to meter the individual suites at the Project and/or to require the Toronto Hydro to take all necessary actions consistent with the Customer's desire to engage a smart sub-metering provider."

Accordingly, Avonshire will not accept the conditions set out in your letter. We continue to assert our right to receive a revised OTC, unfettered by unreasonable conditions, which contemplates that the Project will be smart sub-metered by a licensed smart sub-metering provider.

Yours very truly,

DELZOTTO, ZORZI LLP

Harry Herskowitz

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**TAB 10** 

Ontario Energy Board Commission de l'énergie de l'Ontario



## NOTICE OF PROPOSAL TO AMEND A CODE AND NOTICE OF PROPOSAL TO ISSUE A NEW CODE

# PROPOSED AMENDMENT TO THE DISTRIBUTION SYSTEM CODE AND CREATION OF THE SMART SUB-METERING CODE

**BOARD FILE NO.: EB-2007-0772** 

To: All Licensed Electricity Distributors

**All Licensed Electricity Retailers** 

All Participants in Proceeding RP-2005-0352

**All Other Interested Parties** 

Re: Code Amendments and Code Creation for the Licensing of Smart Sub-

Metering Providers

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of a proposed amendment to the Distribution System Code (the "DSC") and is giving notice under section 70.1 of the Act of the creation of a proposed Smart Sub-Metering Code (the "SSM Code") (altogether, the Notice").

The Board will not be granting cost awards in this matter.

#### Background

#### A. Regulations Regarding Smart Sub-Metering in Condominiums

Ontario Regulation 443/07—Licensing Sub-Metering Activities (made under the Ontario Energy Board Act, 1998) ("Regulation 443") came into force on December 31, 2007. Regulation 443 states that in relation to the classes of property prescribed by section 2 of Ontario Regulation 442/07, no person shall engage in the commercial offering or the commercial provision of smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies and any associated services unless licensed to do so by the Board.

The classes of property prescribed by section 2 of Ontario Regulation 442/07—
Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums (made under the Electricity Act, 1998) ("Regulation 442") are:

- (a) a building on land for which a declaration and description have been registered pursuant to section 2 of the *Condominium Act*, 1998;
- (b) a building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the *Condominium Act, 1998*; and
- (c) 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.

For the purposes of this Notice, the three classes of property described above will be referred to as condominiums.

Therefore, any person wishing to engage in smart sub-metering services in condominiums will need to be licensed by the Board to provide those services.

## B. Smart Metering Versus Smart Sub-Metering

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.

The Board uses the term "smart sub-metering" to describe the situation in which a licensed distributor provides service to the condominium's bulk (master) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system. In this scenario, the condominium continues to be the customer of the licensed distributor and will receive a single bill based on the measurement of the bulk (master) meter. The condominium corporation, which is responsible for the distribution of electricity on the consumer side of the bulk (master) meter, is an exempt distributor under section 4.0.1 of Ontario Regulation 161/99—Definitions and Exemptions (made under the Act). The smart sub-metering provider, which is acting on behalf of the exempt distributor, would then issue a bill to each unit and the common areas based on the consumption of the unit or common area.

## C. Smart Metering

The Board has previously determined in rates proceedings related to smart metering activities of certain distributors that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. As there is no distinction between smart metering condominiums and other residences, the Board has determined that only licensed distributors can smart meter condominiums. In the Board's view, this is in keeping with the current regulatory framework in the electricity sector.

The Board is also of the view that Regulation 442 allows all licensed distributors to smart meter in condominiums. Even though only thirteen distributors were allowed to conduct discretionary metering activities for smart meters under Ontario Regulation 427/06—Smart Meters: Discretionary Metering Activity and Procurement Principles (made under the Electricity Act, 1998) ("Regulation 427"), Regulation 442 states that a licensed distributor shall install smart meters of a type, class or kind, for a certain type of property (i.e., condominiums) and in certain circumstances. Section 53.18 of the Electricity Act, 1998 states that a distributor can conduct discretionary metering activities if the activity is authorized by the Electricity Act, 1998 or regulation. Since section 53.17 of the Electricity Act, 1998 authorizes distributors to install smart meters in condominiums and since Regulation 442 states that a licensed distributor shall install smart meters and neither of those instruments limits the number of distributors, all licensed distributors can install smart meters in condominiums.

Regulation 442 also states that licensed distributors who are installing smart meters in condominiums need to comply with the procurement requirements set out in section 2 of Regulation 427.

## D. Smart Sub-Metering Providers

Smart sub-metering is not a distribution activity; therefore, anyone who wants to be a smart sub-metering provider needs to be licensed by the Board to do so under a Smart Sub-Metering Licence.

Since the provision of smart sub-metering services is a competitive activity, the Board intends to provide the minimum of oversight that is consistent with the protection of the interests of consumers with respect to the adequacy, reliability and quality of electricity service as they pertain to the licensed activities of the smart sub-metering provider.

Some aspects of a smart sub-metering provider's services are covered by other regulatory bodies. For example, the accuracy of the metering device is under the jurisdiction of Measurement Canada and the Electricity Safety Authority has jurisdiction over the standards for the installation of electrical equipment and the licensing system for electrical contractors, master electricians and electricians engaged to carry out the electrical work.

It should be noted that the Board has no rate-making authority over smart sub-metering providers. The condominium corporation maintains its status as an exempt distributor by recovering no more than its reasonable cost.

Section 71(1) of the Act states that distributors cannot carry on any business activity other than the distributing of electricity except through an affiliate. However, section 71(2) of the Act provides an exception from the general rule. Section 71(2) states that a distributor may provide services in accordance with section 29.1 of the *Electricity Act*, 1998 that would assist the government of Ontario in meeting its objectives in relation to

electricity conservation. The enumerated services included in electricity conservation are services related to: the promotion of electricity conservation and the efficient use of electricity; electricity load management; and the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.

The Board is of the opinion that smart sub-metering of condominiums is intended to help the government achieve its conservation objectives through individual accountability for energy use and, eventually, load-shifting due to time-dependent pricing. The Board believes that smart sub-metering is covered by section 71(2) of the Act. Therefore, licensed distributors will be allowed to offer smart sub-metering services. A licensed distributor interested in providing smart sub-metering services would have to apply for a smart sub-metering licence distinct from its distribution licence. Licensed distributors who are also licensed as smart sub-metering providers would have to comply with all of the requirements of the smart sub-metering licence, including the SSM Code, as any other licensed smart sub-metering provider would.

## II. Summary of the Proposed Amendments

The regulations provide the Board with certain powers in relation to technical requirements for smart meters and smart sub-meters that can be achieved by setting out the technical requirements in a code. The purpose of the amendments to the DSC is to encapsulate the technical requirements that a distributor must meet when smart metering condominiums.

The purpose of the proposed SSM Code is to set up a regulatory framework to support the smart sub-metering regulations. Furthermore, in order to ensure the adequacy, reliability and quality of electricity service to consumers they pertain to the licensed activities of the smart sub-metering provider, the Board needs to ensure that licensed smart sub-metering providers have appropriate rules in place for them to follow. The SSM Code will set out the minimum conditions and standards that a licensed smart sub-metering provider must meet when providing smart sub-metering services on behalf of exempt distributors.

#### A. The DSC

Regulation 442 states that licensed distributors shall install smart meters of a type authorized by an order or code issued by the Board or that meet the criteria or requirements that may be set by an order or code issued by the Board. Regulation 442 states that licensed distributors who are installing smart meters in condominiums do not need to comply with Ontario Regulation 425/06—Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act, 1998) ("Regulation 425") unless required to do so by the Board.

The Board has determined that licensed distributors installing smart meters in condominiums must comply with the requirements set out in Regulation 425. A section

will be added to the DSC to make that requirement mandatory for all licensed distributors.

Again, as stated above, Regulation 442 states that licensed distributors who are installing smart meters in condominiums need to comply with the procurement requirements set out in section 2 of Regulation 427. Since this is already a legal requirement imposed on licensed distributors by regulation, it will not be added into the DSC; however, the Board is taking this opportunity to remind all licensed distributors of that requirement.

The text of the proposed amendment to the DSC is set out in Attachment A to this Notice.

#### B. The SSM Code

A summary of the more significant proposed terms of the SSM Code are set out below. The text of the proposed SSM Code is set out in Attachment B to this Notice.

### 1. General Provisions

These sections will include the purpose of the SSM Code, the definitions to be used in the SSM Code, an interpretation clause, and a clause that allows the Board to make determinations under the SSM Code with or without a hearing.

This part of the SSM Code will also include the coming into force section (i.e., when it is published on the Board's website after being made by the Board) and the section setting out to whom the SSM Code applies (i.e., all persons licensed as smart sub-metering providers under section 57(i) of the Act).

Lastly, this part of the SSM Code will include the requirement that smart sub-metering providers can only carry out smart sub-metering activities in prescribed condominiums if the smart sub-metering provider has a contract with the specific condominium to do so.

#### 2. Meterina

Regulation 442 states that licensed distributors or any other person licensed by the Board to do so shall install smart sub-metering systems of a type authorized by an order or code issued by the Board or that meet the criteria or requirements that may set by an order or code issued by the Board. This part of the SSM Code sets out the technical requirements that smart sub-metering providers must meet. The technical requirements are the same as those set out in Regulation 425 except for the requirement to transmit information to the Smart Metering Entity's (the "SME") meter data management and meter data repository (the "MDM/R"). The Board believes that smart sub-metering providers' smart sub-metering systems should be able to do everything required by Regulation 425, including being capable of transmitting to the SME's MDM/R, but they are not required to transmit to the SME's MDM/R.

This part of the SSM Code also requires smart sub-metering providers to ensure that the bulk (master) meter for the condominium is an interval meter.

The SSM Code will also require smart sub-metering providers to implement and follow a validating, estimating and editing ("VEE") process. The VEE process must validate the data in a similar method to that used by the SME for data in the MDM/R.

This part of the SSM Code also includes provisions regarding the competency of persons involved in the metering services, standards for metering services, and resolution of metering disputes.

#### 3. Standards of Business Practice and Conduct

The SSM Code will require smart sub-metering providers to disclose to the condominium corporation and consumers any agreement between itself or its affiliate and the condominium corporation or the developer.

The SSM Code will also require smart sub-metering providers to include certain information in all of their contracts with consumers, exempt distributors, and developers. The information includes but is not limited to: the disclosure of the smart sub-metering provider's capital investment and the types of costs included in the capital investment; the depreciation method used to depreciate the capital investment if the smart sub-metering provider is going to include that as part of a termination fee; and a description of, and whenever possible, the actual amount for, all termination fees and charges.

All smart sub-metering providers must have conditions of service. The conditions of service must be written and be made available to the public. A smart sub-metering provider must send a copy of its conditions of service to all of its consumers. If a smart sub-metering provider is going to amend its conditions of service, it must provide notice of the change to its consumers and a process by which the consumers can comment on the change. Smart sub-metering providers must provide a copy of the amended conditions of service to all of its consumers.

The conditions of service must include, among other things: its dispute resolution procedure; its security deposit procedure; and its disconnection/reconnection policy.

The SSM Code also includes a number of provisions relating to information that the smart sub-metering provider must provide to its consumers as well as the requirement that all smart sub-metering providers have a local telephone number for its consumers or one that is capable of being reached without charge to the consumer. There are also provisions that relate to the resolution of consumer complaints.

Lastly, this part of the SSM Code includes provisions relating to the transfer and assignment of contracts (i.e., can only be transferred or assigned to another licensed

smart sub-metering provider and notification of the transfer or assignment must be given to the Board and all of the smart sub-metering provider's consumers).

## 4. Billing and Collection

The SSM Code includes provisions relating to the collection and return of security deposits, including the requirement to have a security deposit policy as part of the smart sub-metering providers' conditions of service. The SSM Code sets out the restrictions on when a smart sub-metering provider can ask for a security deposit, what constitutes good payment history, and the maximum amount of a security deposit that the smart sub-metering provider can obtain. The security deposit provisions also set out what amount of interest is associated with the security deposit and rules relating to when the security deposit needs to be returned to the consumer.

If the contract between the condominium corporation or the developer allows the smart sub-metering provider to disconnect consumers, the SSM Code sets out rules for the smart sub-metering provider to follow. Smart sub-metering providers will need to have a process for disconnection and reconnection that specifies the notification requirements and the timing requirements for disconnection and reconnection as part of their conditions of service. The SSM Code also sets out certain reasons that smart sub-metering providers may consider when disconnecting a consumer.

Smart sub-metering providers must follow Ontario Regulation 275/04—Information on Invoices to Low-Volume Consumers of Electricity (made under the Act).

If a smart sub-metering provider assumes the payment of the bulk (master) invoice for the exempt distributor, then the amount to be collected from consumers shall not include any penalties assessed by the licensed distributor on the master bill.

# III. Anticipated Costs and Benefits of the Proposed Amendments and the Proposed Code

As previously stated, the Board is of the opinion that smart sub-metering of condominiums is intended to help the government achieve its conservation objectives through individual accountability for energy use and, eventually, load-shifting due to time-dependent pricing. To that end, the government has issued Regulation 442 and Regulation 443 to ensure that licensed providers install smart meters or smart sub-metering systems in prescribed locations. The Board is proposing a Smart Sub-Metering Code in order to support the regulations and impose appropriate standards on the activities of the smart sub-metering providers.

The proposed change to the DSC will ensure that all distributors are following the same rules when smart metering, whether they are smart metering houses, condominiums, or small businesses.

The SSM Code will protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service as they pertain to the licensed activities of the smart sub-metering provider by setting out the minimum standards and conditions with which a smart sub-metering provider must comply. The SSM Code provides for standards in the type of metering equipment to be used by smart sub-metering providers as well as billing and collection practices that smart sub-metering providers must follow. The SSM Code also includes provisions regarding the disclosure of information to consumers of smart sub-metering providers. These provisions will ensure that consumers within condominiums receive adequate information to make informed decisions about their consumption of electricity and are treated in a similar manner to those consumers served by a licensed distributor.

Smart sub-metering providers will incur costs to comply with the SSM Code. For example, smart sub-metering providers will face costs in having to provide a copy of all agreements entered into by it or an affiliate with the developer or an affiliate of the developer to all of its consumers. Likewise, smart sub-metering providers will incur costs in having to create conditions of service and send them to all of their consumers (as well as sending out any amended conditions of service to all of their consumers). Also, if a smart sub-metering provider does not have a local telephone number, it will need to have one that is capable of being reached without charge to the consumer and there may be a cost associated with that (i.e., a cost associated with obtaining and maintaining a toll free line or accepting collect calls etc.).

Overall, the Board anticipates that the benefits of the proposed DSC amendment and the proposed SSM Code will outweigh the costs of the proposed DSC amendment and the proposed SSM Code.

## IV. Coming into Force

The Board proposes that the proposed amendment to the DSC and the new SSM Code, described above and set out more fully in Attachments A and B to this Notice, come into force on the date on which they are published on the Board's website after having been made by the Board.

### V. Invitation to Comment

All interested parties are invited to make written submissions on the Board's proposed amendment to the DSC and the proposed new SSM Code set out in Attachments A and B to this Notice by **4:30 p.m.** on **January 31, 2008**. Your submission must quote file number **EB-2007-0772** and include your name, address, e-mail address, telephone number, and fax number.

Three (3) paper copies and one electronic copy of the written submissions must be provided.

Paper copies should be sent to:

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

The Board requests that interested parties make every effort to provide electronic copies of their submissions in searchable/unrestricted Adobe Acrobat (PDF) format, and to file their submissions through the Board's web portal at <a href="www.err.oeb.gov.on.ca">www.err.oeb.gov.on.ca</a>. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at <a href="www.oeb.gov.on.ca">www.oeb.gov.on.ca</a>, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the RESS e-Filing Guides also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of submissions may be filed by e-mail at <a href="mailto:boardsec@oeb.gov.on.ca">boardsec@oeb.gov.on.ca</a>.

Those that do not have internet access should provide a CD or diskette containing their submissions in PDF format.

This Notice, including the attached proposed amendment to the DSC and the new SSM Code, and all written submissions received by the Board in response to this Notice, will be available for public viewing on the Board's website at <a href="www.oeb.gov.on.ca">www.oeb.gov.on.ca</a> and at the office of the Board during normal business hours.

If you have any questions regarding the proposed amendments described in this Notice, please contact Laurie Reid at 416-440-7623. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, January 08, 2008.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli Board Secretary

Attachment A:

Proposed Amendment to the Distribution System Code

Attachment B:

Proposed Smart Sub-Metering Code

#### Attachment 'A'

## **Proposed Amendment to the Distribution System Code**

Note: The text of the proposed amendment is set out in italics below, for ease of identification only.

1. Section 5 of the Distribution Settlement Code is amended by adding the following new section 5.1.9 immediately after section 5.1.8:

#### 5.1.9 Smart Meters in Condominiums

When requested by the board of directors of a condominium corporation or 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, a distributor shall install metering that meets the functional specification of Ontario Regulation 425/06—Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act).

Ontario Energy Board

Attachment 'B'

Proposed Smart Sub-Metering Code

 **TAB** 11

Ontario Energy Board Commission de l'énergie de l'Ontario



## NOTICE OF REVISED PROPOSAL TO AMEND A CODE AND NOTICE OF REVISED PROPOSAL TO ISSUE A NEW CODE

## REVISED PROPOSED AMENDMENT TO THE DISTRIBUTION SYSTEM CODE AND CREATION OF THE REVISED SMART SUB-METERING CODE

**BOARD FILE NO.: EB-2007-0772** 

To: All Licensed Electricity Distributors

All Licensed Electricity Retailers

All Participants in Proceeding RP-2005-0352

All Participants in EB-2007-0772

**All Other Interested Parties** 

Re: Revised Code Amendment and Revised Code Creation for the Licensing of

**Smart Sub-Metering Providers** 

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of a revised proposed amendment to the Distribution System Code (the "DSC") and is giving notice under section 70.1 of the Act of the creation of a revised proposed Smart Sub-Metering Code (the "SSM Code") (altogether, the "Notice").

The Board will not be granting cost awards in this matter. .

## I. <u>Background and Summary of Comments</u>

On January 7, 2008, the Board released a Notice of Proposal in which it proposed to amend the DSC and proposed the creation of a new SSM Code (the "January Notice"). The Board received 10 written submissions regarding the January Notice from a variety of stakeholders including distributors, an electricity retailer, a condominium corporation, and groups representing smart sub-metering providers, building owners, and consumers. The submissions are available for viewing on the Board's website at <a href="https://www.oeb.gov.on.ca">www.oeb.gov.on.ca</a>.

The Board has considered all of the comments received and has determined that minor clarifying changes should be made in relation to some of the amendments proposed in the January Notice.

Further details regarding the comments received and the Board's responses are set out in sections A through D below. A summary of revised proposed amendments is set out in Part II.

Ontario Regulation 443/07-Licensing Sub-Metering Activities (made under the Act) requires the Board to licence persons engaged in the commercial offering or the commercial provision of smart sub-metering systems to the class of properties prescribed by Ontario Regulation 442/07-Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums (made under the Electricity Act, 1998 (the "Electricity Act")) (altogether, "Regulation 442").

The classes of property prescribed by Regulation 442 are:

- (a) a building on land for which a declaration and description have been registered pursuant to section 2 of the *Condominium Act, 1998*;
- (b) a building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the *Condominium Act, 1998*; and
- (c) 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.

For the purposes of this Notice, the three classes of property described above will be referred to as condominiums.

The Board explained the distinction between smart metering and smart sub-metering in the January Notice. Smart metering describes the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. Smart sub-metering describes the situation in which a licensed distributor provides service to the condominium's master (bulk) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system.

#### A. Condominiums as Exempt Distributors

Two stakeholders submitted that a condominium is not a distributor, and therefore cannot be an exempt distributor. The Board does not agree with this submission.

Under the Act, a distributor is a person who owns or operates a system for conveying electricity at voltages of 50 kilovolts or less.

Electricity distributors have a number of obligations under the Act as well as the Electricity Act. Unless exempted by regulation, these obligations include, but are not limited to:

- (a) having a Board-issued licence;
- (b) having a Board-approved rate order for distribution rates;
- (c) selling electricity to anyone connected to their system; and
- (d) providing access to their system for retailers to sell electricity.

The licences of electricity distributors require the distributors to comply with codes issued by the Board including the Distribution System Code, the Retail Settlement Code, the Affiliate Relationships Code, and the Standard Supply Service Code.

Section 4.0.1 of Ontario Regulation 161/99–Definitions and Exemptions (made under the Act) ("Regulation 161") provides an exemption from certain requirements of the Act, including the requirement to hold a licence and be rate-regulated, for a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs and who owns or operates a distribution system that is entirely located on land on which a condominium (or other specified types of buildings or facilities) is located.

The Board refers to distributors who are unlicensed as a result of Regulation 161 as exempt distributors.

It is the Board's view that condominiums are included in the definition of distributor under the Act. If they were not included in the definition of distributors under the Act, there would have been no need to specifically exempt them under Regulation 161. The condominiums are therefore the exempt distributors.

An electricity retailer and a distributor both proposed that smart sub-metered consumers be allowed to exercise retail choice. However, the Board notes that section 2.2.1 of Ontario Regulation 160/99-Defintions and Exemptions (made under the Electricity Act) provides an exemption from section 26 of the Electricity Act (the obligation to provide non-discriminatory access) if the distributor is exempt from holding a licence under Regulation 161.

The group representing smart sub-metering providers asserted that the smart sub-metering provider is required to comply with the billing and collection services in section 4 of the proposed SSM Code on its own behalf rather than on behalf of the exempt distributor. The Board does not agree with this assertion. The Board is of the view that a smart sub-metering provider cannot undertake any prescribed activity, including associated services such as billing and collection activities, unless it has a contract with the condominium corporation or developer to do so.

## B. Distributors, Smart Metering, and Smart Sub-Metering

Distributors, an electricity retailer and a group representing building owners all posed questions with regard to a licensed distributor's ability to both smart meter and smart sub-meter.

As set out in the January Notice, the Board remains of the view that smart metering is a distribution activity, and that the Electricity Act and Regulation 442 taken together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area.

One distributor has asserted that the potential additional costs of installing smart meters in condominiums must be funded by the condominium. The Board notes that section 3 of the DSC requires the distributor to set the basic connection under its Conditions of Service and allows the distributor to recover costs above and beyond the basic connection through a connection charge or equivalent payment. The basic connection should be equivalent in cost to any other residential connection.

As also set out in the January Notice, the Board remains of the view that smart submetering is intended to help the government achieve its conservation objectives, and therefore the Board believes that section 71(2) of the Act permits licensed distributors to smart sub-meter. To do so, a licensed distributor would have to apply for a smart sub-metering licence distinct from its distribution licence. If a licensed distributor chooses to obtain a smart sub-metering licence and provide smart sub-metering services, the Board's policies relating to conservation and demand management ("CDM") activities will apply. The Affiliate Relationships Code would only apply if the smart sub-metering provider was an affiliate of the licensed distributor rather than the licensed distributor itself.

One distributor sought assurance that it is not required to act as a default provider of smart sub-metering services. The Board confirms that if a condominium is smart sub-metered and the smart sub-metering provider ceases operations or ceases to honour its contract, the licensed distributor is not required to step in and provide smart sub-metering services to the condominium.

### C. Smart Sub-Metering Providers and Smart Sub-Metering

Distributors, a condominium corporation, and a group representing consumers submitted that the Board should set rates for the smart sub-metering providers. As stated in the January Notice, the Board remains of the view that it has no rate-making authority over smart sub-metering providers.

Smart sub-metering providers offer their products and services in a competitive market. There are multiple service offerings from multiple providers from which developers and boards of directors of condominiums can compare and choose. The prices charged are therefore determined by the market forces of competitive supply and demand and are, presumably, reasonable. The developer or board of directors of a condominium are able to freely choose the product and services which meet their needs and then enter into a contract with the smart sub-metering provider for the requested product and/or services. Developers and boards of directors of condominiums can avail themselves of a number of resources to assist them before entering into a contract, including lawyers and building or condominium associations. It should be noted that smart sub-metering

is not a new activity—developers and boards of directors of condominiums have been entering into contracts with smart sub-metering providers for a number of years. The fact that smart sub-metering providers are now required to hold a licence should not alter or remove the obligations of parties to exercise the necessary care and diligence expected of parties before entering into a contract.

The Board will set out rules to protect the interests of consumers that are within its jurisdiction. In the proposed SSM Code, the Board has included customer protection measures similar to those provided to customers of licensed distributors regarding disconnection, security deposits, and the consumer complaint process. Otherwise, the Board has applied requirements similar to the other area of competition in the electricity sector—the retailing of the commodity.

The group representing smart sub-metering providers submitted that a smart sub-metering provider is, in its own right, a customer of the licensed distributor. The Board does not agree. In the DSC, "customer" means a person that has contracted for or intends to contract for connection of a building, and includes developers of residential or commercial sub-divisions. This definition flows from section 28 of the Electricity Act which obligates a distributor to connect a building if the building lies along any of the lines of the distributor's distribution system and "the owner, occupant or other person in charge of the building requests the connection in writing." The smart sub-metering provider is not the owner, occupant or person in charge of the building, and therefore can only request a connection if it has been authorized by one of these persons to do so.

Groups representing smart sub-metering providers and building owners submitted that the smart sub-metering provider is unable to ensure the master meter is an interval meter. The group representing the building owners further suggested that licensed distributors must be obligated to provide the interval meter in a timely and reasonable manner. Distributors stated that it is the licensed distributor that installs the master meter. One distributor submitted that the smart sub-metering provider must work with the licensed distributor to make the necessary arrangements and reimburse the licensed distributor's costs.

The Board agrees with the parties that it is the licensed distributor who is responsible for installing the master (bulk) meter. Furthermore, the Board notes it is the customer that must submit a written request to the licensed distributor if an interval meter is required. If the smart sub-metering provider submits this request, it is only able to do so if authorized by the customer. However, in order to provide reconciliation to the master bill, the smart sub-metering provider must ensure that an interval meter is provided. Since distributors are already required under section 5.1.5 of the DSC to "provide an interval meter within a reasonable period of time" at the customer's cost when requested by the customer or an authorized party, the smart sub-metering provider can ensure that the master meter is an interval meter (not necessarily a smart meter) capable of providing hourly data for reconciliation with the smart sub-metering data.

The smart sub-metering group also submitted that there were requirements in the SSM Code regarding the provision of information to customers that were more onerous than the requirements set out in the DSC for licensed distributors (i.e., providing Conditions of Service to all customers automatically). The Board agrees that the requirement in the SSM Code should mirror the requirement in the DSC and will therefore change that section of the SSM Code.

#### D. Other Issues Raised in the Submissions

A distributor and a group representing consumers provided comments on the need to protect confidential consumer information. The Board considers the issue of the protection of confidential consumer information to be adequately addressed in the smart sub-metering provider's licence. A sample of the smart sub-metering licence has been available on the Board's website since January 9, 2008.

Distributors have suggested that smart sub-metering providers be required to transmit meter data to the meter data management and meter data repository (the "MDM/R") managed by the Smart Metering Entity (the "SME"). The proposed SSM Code has specified that smart sub-metering systems must be capable of providing data to the SME but that they are not currently required to actually transmit the data. The Board remains of the view that this proposed provision is appropriate. The Board notes that one of the purposes of the SME is to avoid duplication of data management capability for smart metering in all licensed distributors but that smart sub-metering providers already have that capability as part of their service offerings. Also, the SME is currently in the initial phases of registering licensed distributors into its MDM/R. It is premature to require smart sub-metering providers to transmit data at this time. However, the Board considers it advisable to ensure that the smart sub-metering systems are capable of transmitting the data in the event the Board may determine such transmission is required.

Lastly, several stakeholders expressed concerns with the required form of the invoice for smart sub-metering providers and the type and transparency of the charges that appear on the invoice.

The Board notes that Ontario Regulation 275/04-Information on Invoices to Low-Volume Consumers of Electricity (made under the Act) applies to all invoices to low-volume consumers and specifies the information that must appear on invoices to low-volume consumers of electricity. This regulation applies whether the distributor is a licensed distributor or an exempt distributor and it would apply to a smart sub-metering provider issuing bills on behalf of an exempt distributor.

## II. Summary of the Proposed Amendments

The January Notice summarized the general intent and purpose of the proposed amendments and discussed the specifics of the amendments to the DSC and the new

SSM Code. This notice discusses only the revisions being proposed to those original amendments.

#### A. The DSC

The Board has revised the formatting of the proposed section 5.1.9 of the DSC to clarify that it applies to existing condominiums as well as ones under development. The Board also added the word "smart" into the amendment to clarify that distributors are only required to smart meter under the DSC, not smart sub-meter.

The complete text of the proposed amendment to the DSC is set out in Attachment B to this Notice.

#### B. The SSM Code

The Board has revised section 2.2.1 of the SSM Code to clarify that it is the developer or the board of directors of the condominium corporation who is the customer of a licensed distributor and that it is the customer who requests an interval meter as the master meter. The revision to section 2.2.1 of the SSM Code also confirms that it is the licensed distributor that installs the master meter. The section still requires a smart submetering provider to ensure that the master meter is an interval meter before beginning to provide smart sub-metering services.

The Board has revised section 3.1.2 of the SSM Code to require the smart sub-metering provider to provide copies of the agreements in 3.1.1 of the SSM Code only when requested as opposed to providing the agreements to each consumer automatically.

The Board has revised section 3.2.2 of the SSM Code to require the smart sub-metering provider to make a copy of its Conditions of Service available on its website. The Board has deleted section 3.2.3 of the SSM Code which required the smart sub-metering provider to provide a copy of its Conditions of Service to each of its consumers. The Board agrees with the submissions of the parties that stated that the DSC only required a distributor's Conditions of Service be provided upon request. The requirements set out in section 3.2.2 of the SSM Code are more in keeping with the provision of the DSC. Smart sub-metering providers will now only have to provide a copy of Conditions of Service to a person upon request as opposed to providing the Conditions of Service to each consumer automatically.

Because of the deletion of section 3.2.3 of the SSM Code, the other remaining subsections of section 3.2 were renumbered.

Lastly, the Board has revised section 4.1.14 of the SSM Code to put the onus on the smart sub-metering provider to respond to a request from a consumer to review the consumer's security deposit.

The complete text of the SSM Code is set out in Attachment D to this Notice.

## III. Anticipated Costs and Benefits of the Proposed Amendments and the Proposed Code

As stated in the January Notice, the Board is of the opinion that smart sub-metering of condominiums is intended to help the government achieve its conservation objectives through individual accountability for energy use and, eventually, load-shifting due to time-dependent pricing. To that end, the government has issued Regulation 442 and Regulation 443 to ensure that licensed providers install smart meters or smart sub-metering systems in prescribed locations. The amendment to the DSC and the issuance of the SSM Code are in support of the regulations.

The proposed change to the DSC will help to clarify who can ask for the installation of smart meters and that distributors are only required to provide smart meters to the prescribed locations. This additional clarity will benefit the industry by ensuring that all parties understand their roles in the smart metering framework.

The SSM Code will protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service as they pertain to the licensed activities of the smart sub-metering provider by setting out the minimum standards and conditions with which a smart sub-metering provider must comply.

Smart sub-metering providers will incur costs to comply with the SSM Code. However, in response to comments from stakeholders, the Board has revised the SSM Code to try to limit the costs by only requiring disclosure of certain documents when they are requested by a consumer.

Overall, the Board anticipates that the benefits of the proposed DSC amendment and the proposed SSM Code will outweigh the costs of the proposed DSC amendment and the proposed SSM Code.

### IV. Coming into Force

The Board proposes that the proposed amendment to the DSC and the new SSM Code, described above and set out more fully in Attachments B and D to this Notice, come into force on the date on which they are published on the Board's website after having been made by the Board.

#### V. Invitation to Comment

All interested parties are invited to make written submissions on the Board's revised proposed amendment to the DSC and the revised proposed SSM Code set out in Attachments A and B to this Notice by **4:30 p.m.** on **June 24, 2008**. The Board asks that interested parties confine their comments to the revisions to the proposed amendments as shown in the comparison version of the proposed amendments set out

in Attachments B and D. Your submission must quote file number **EB-2007-0772** and include your name, address, e-mail address, telephone number, and fax number.

The Board requests that interested parties make every effort to provide electronic copies of their submissions in searchable/unrestricted Adobe Acrobat (PDF) format, and to file their submissions through the Board's web portal at <a href="www.err.oeb.gov.on.ca">www.err.oeb.gov.on.ca</a>. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at <a href="www.oeb.gov.on.ca">www.oeb.gov.on.ca</a>, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the RESS e-Filing Guides also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of submissions may be filed by e-mail at <a href="mailto:boardsec@oeb.gov.on.ca">boardsec@oeb.gov.on.ca</a>.

Those that do not have internet access must provide three (3) paper copies and one electronic copy of the written submissions. The electronic copy should be a CD or diskette containing their submissions in PDF format.

Paper copies should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

This Notice, including the attached revised proposed amendment to the DSC and the revised SSM Code, and all written submissions received by the Board in response to this Notice, will be available for public viewing on the Board's website at <a href="https://www.oeb.gov.on.ca">www.oeb.gov.on.ca</a> and at the office of the Board during normal business hours.

If you have any questions regarding the proposed amendments described in this Notice, please contact Laurie Reid at 416-440-7623. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, June 10, 2008.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli Board Secretary Attachments:

Attachment A: Revised Proposed Amendment to the Distribution System Code

(Comparison Version)

Attachment B: Revised Proposed Amendment to the Distribution System Code

(Clean Version)

Attachment C: Revised Proposed Smart Sub-Metering Code (Comparison

Version)

Attachment D: Revised Proposed Smart Sub-Metering Code (Clean Version)

#### Attachment A

# Revised Proposed Amendment to the Distribution System Code (Comparison Version)

1. Section 5 of the Distribution Settlement Code is amended by adding the following new section 5.1.9 immediately after section 5.1.8:

#### 5.1.9 Smart Meters in Condominiums

When requested by either:

(a) the board of directors of a condominium corporation; or

(b) 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,

a distributor shall install <u>smart</u> metering that meets the functional specification of Ontario Regulation 425/06–Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act).

#### Attachment B

## Revised Proposed Amendment to the Distribution System Code (Clean Version)

1. Section 5 of the Distribution Settlement Code is amended by adding the following new section 5.1.9 immediately after section 5.1.8:

#### 5.1.9 Smart Meters in Condominiums

When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) 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,

a distributor shall install smart metering that meets the functional specification of Ontario Regulation 425/06–Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act).

## Attachment C

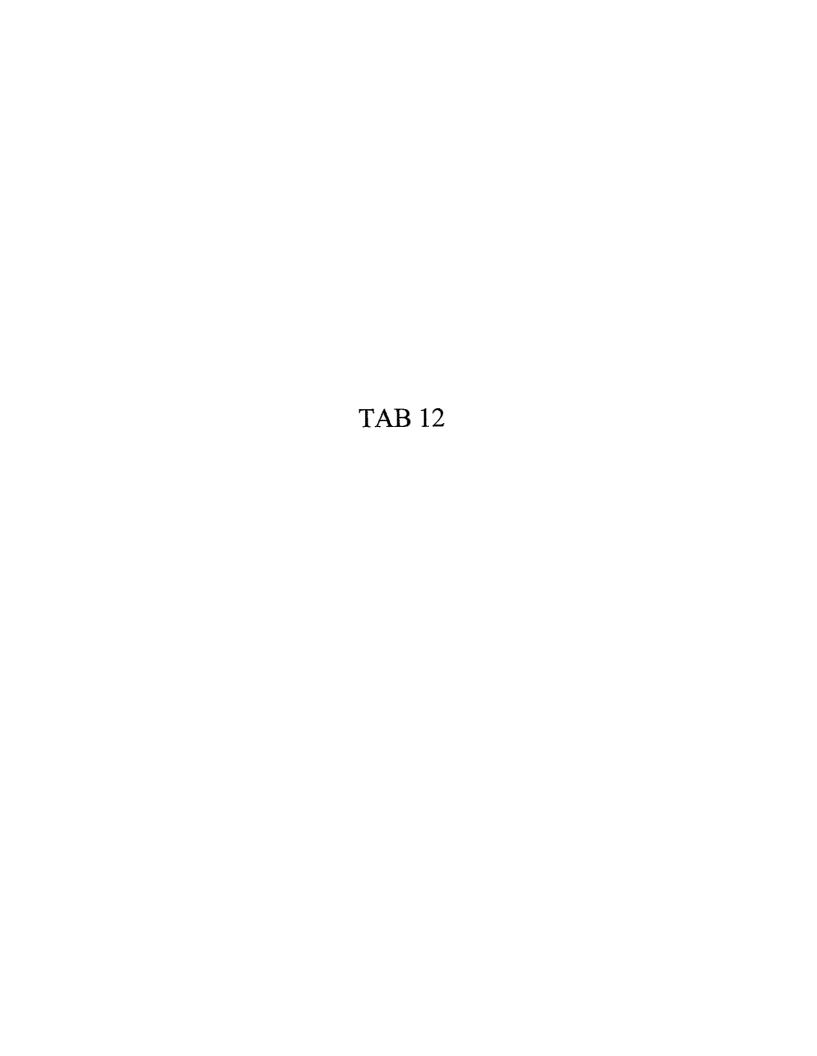
Revised Proposed Smart Sub-Metering Code (Comparison Version)

(see attached document)

## Attachment D

Revised Proposed Smart Sub-Metering Code (Clean Version)

(see attached document)



Ontario Energy
Board
P.O. Box 2319
2300 Yonge Street
Suite 2700
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273
Compliance Office

Commission de l'énergie de l'Ontario C.P. 2319 2300, rue Yonge Suite 2700 Toronto ON M4P 1E4 Téléphone: 416-481-1967 Télécopieur: 416-440-7656 Numéro sans frais: 1-888-632-6273



October 22, 2008

Board File: CO20080066

Via Mail & E-Mail (regulatoryaffairs@torontohydro.com)

Mr. Colin McLorg
Manager Regulatory Affairs
Toronto Hydro-Electric System Limited
14 Carlton Street
Toronto, ON
M5B 1K5

Dear Mr. McLorg:

Re: Installation of Metering for Multi-Unit Sites and Condominium Corporations

I am writing you in regards to a concern that has come to the attention of the OEB's Compliance Office regarding the business activities of Toronto Hydro Electric System Ltd. ("THESL") relating to smart metering and smart sub-metering. To clarify, for purposes of this letter the term "smart metering" refers to a situation in which a licensed distributor individually meters every unit in a multi-unit property with a smart meter. In such a case, the account holder of each unit becomes a customer of the distributor. The term "smart sub-metering" refers to a situation in which a licensed distributor provides a bulk meter for a multi-unit property and a separate person (for example, a smart sub-metering provider on behalf of a condominium corporation) installs individual unit metering. In that case, only the account holder responsible for the bulk meter is the customer of the distributor.

As you are aware from earlier correspondence, the Compliance Office received a complaint regarding the charging of customers that wish to install smart sub-metering using an "alternative bid" contractor.

Based on information that you have provided, and specifically that the \$1,260.00 charge in question is not a fee but an allowance that is deducted from any capital contribution required in circumstances where the actual connection costs exceed \$1,260.00, I am satisfied that THESL is not unfairly charging customers who choose to install smart submetering using an "alternative bid" contractor. I therefore consider the matter of this particular complaint to be closed.

However, as part of Compliance staff's review of this matter, it has come to our intention that THESL is applying inappropriate policies in regards to the installation of smart metering and smart sub-metering systems in new condominiums and other multi-unit sites.

Specifically, in its responses to questions posed by Compliance staff, THESL stated that "THESL's Conditions of Service require that new facilities be suite metered" (letter from Colin McLorg dated July 29, 2008), and subsequently that "THESL takes the position that unit holders (residential or commercial, as the case may be) as well as the common facilities in new condominiums are individual residential or general service customers of THESL" (e-mail from Colin McLorg dated August 5, 2008). THESL interprets and applies section 2.3.7.1.1 of its Conditions of Service accordingly.

It is my view that, to the extent that THESL's Conditions of Service or other policies require the smart metering of new condominiums and other multi-unit sites to the exclusion of smart sub-metering, those Conditions of Service and other policies are inappropriate.

With respect to new condominiums, the policies are inappropriate in light of the legal and regulatory framework applicable to the metering of new condominiums. In this regard, I note that section 53.17 (1) of the Electricity Act, 1998 states as follows:

Despite the Condominium Act, 1998 and any other Act, a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation. (emphasis added)

When it issued its Smart Sub-Metering Code, the Board confirmed that new condominiums have two options when installing metering for individual units. They can choose to have the distributor install smart meters or they can choose to have a smart sub-metering provider install smart sub-meters. The availability of the smart sub-metering option is clear from the materials issued by the Board when it amended the Distribution System Code (the "DSC") and created the Smart Sub-Metering Code. Section 5.1.9 of the DSC itself also clarifies that a distributor must install smart metering when requested to do so by the board of directors of a condominium corporation or the developer of a building that is intended to be registered as a condominium corporation.

It is therefore my view that a distributor may not impose a requirement that a new condominium property be smart metered. Unless the customer requests otherwise, the

distributor's obligation is to install a bulk interval meter to supply a new condominium property.

It is also my view that any Conditions of Service or other policies of a distributor that require that other multi-unit sites be smart metered are similarly inappropriate. There are no legal or regulatory requirements that support the authority of a distributor to require that such other multi-unit sites be smart metered.

Under section 28 of the *Electricity Act*, 1998, a distributor must connect a building to its distribution system on request. This is a fundamental obligation imposed on each distributor, and is one that is subject to few exceptions. The DSC does set out a list of the reasons that may justify a refusal to connect. However, the desire of a customer to install smart sub-metering is not one of those reasons. If THESL were to refuse to connect a property by reason of the customer's decision to install smart sub-metering, THESL would in my view be acting in a manner contrary to section 28 of the *Electricity Act*, 1998 and its licence.

In light of the above, I expect that THESL will immediately cease requiring that new condominiums and other multi-unit sites be smart metered, and will revise its Conditions of Service in a manner that makes it clear that these properties retain the right to choose the type of individual unit metering that is to be installed. Please provide confirmation of THESL's intentions in this regard by November 14, 2008.

I also take this opportunity to respond to the concern that THESL expressed to the effect that the Board's compliance process allows "anonymous parties to make unsubstantiated allegations ... without requiring that the detailed facts of the matter and/or allegation be disclosed to the distributor". Having reviewed the correspondence relating to this file, I am satisfied that THESL was provided with a description of the nature of the complaint adequate to enable THESL to respond to it.

The views expressed in this letter are mine and are not binding on the Board. Although no statutory power of decision has been delegated to me, I may seek enforcement action by the Board under Part VII.1 of the *Ontario Energy Board Act, 1998* in relation to non-compliance.

Please do not hesitate to contact me at 416-440-7682, or Paul Gasparatto at 416-440-7724, should you have any questions or wish to discuss this matter further.

Brian Hewson

Sincerely

Chief Compliance Officer

# Paul Gasparatto

From:

Brian Hewson

Sent:

August 28, 2009 12:10 PM

To:

Paul Gasparatto

Subject:

FW: THESL reply re C020080066: THESL COS re smart metering inCondominiums

Attachments: CondoSmartMeteringReply\_C020080066.doc

Brian Hewson

Senior Manager, Networks & Smart Grid

Direct: 416-440-7628

From: regulatoryaffairs@torontohydro.com [mailto:regulatoryaffairs@torontohydro.com]

Sent: November 12, 2008 3:08 PM To: BoardSec; Brian Hewson Cc: Colin McLorg; Pankaj Sardana

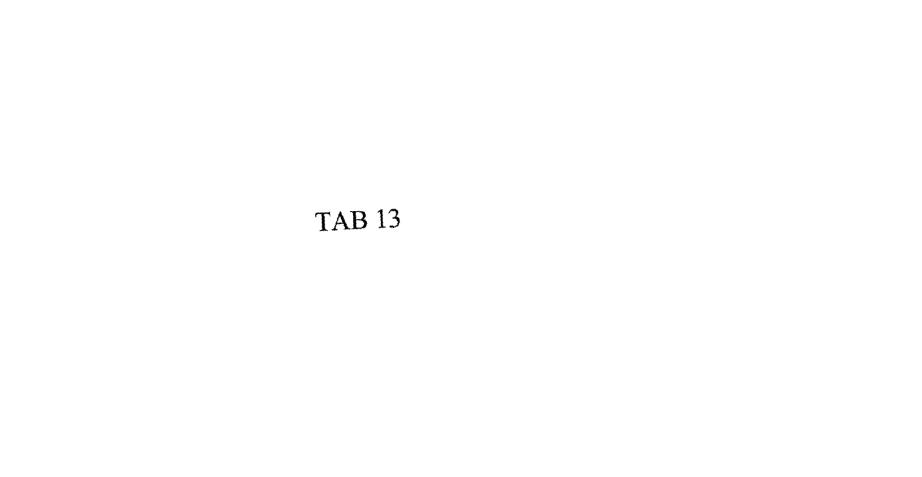
Subject: THESL reply re C020080066: THESL COS re smart metering inCondominiums

Dear Mr. Hewson and Ms. Walli:

Please see the attached correspondence in reply to Mr. Hewson's letter to THESL of October 22 2008.

Toronto Hydro-Electric System Limited Regulatory Affairs 14 Carlton Street Toronto, ON M5B 1K5 tel 416.542.3100 fax 416.542.2776 regulatoryaffairs@torontohydro.com

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Ontario Energy Board P.O. Box 2319 2300 Yonge Street Suite 2700 Toronto ON M4P 1E4 Telephone: 416- 481-1967 Facsimile: 416- 440-7656 Toll free: 1-888-632-6273 Compliance Office Commission de l'énergie de l'Ontario C.P. 2319 2300, rue Yonge Suite 2700 Toronto ON M4P 1E4 Téléphone: 416-481-1967 Télécopieur: 416-440-7656 Numéro sans frais: 1-888-632-6273



January 29, 2009

Board File: CO20080066

Via Mail & E-Mail (regulatoryaffairs@torontohydro.com)

Mr. Colin McLorg Manager Regulatory Affairs Toronto Hydro-Electric System Limited 14 Carlton Street Toronto, ON M5B 1K5

Dear Mr. McLorg:

Re: Metering of New Condominium Units

I am writing in response to your letter of November 12, 2008, in which you take issue with the views expressed in my letter to you dated October 22, 2008, regarding Toronto Hydro Electric System Ltd.'s ("THESL") Conditions of Service and other policies pertaining to the metering of end-use customers in new condominium units.

Your letter has confirmed that THESL considers that each distinct residential or commercial unit in a new condominium is and would in all cases remain a direct customer of THESL, whether THESL installs the relevant meter or the relevant meter is installed by a third party under an alternative bid framework, and presumably interprets and applies its Conditions of Service accordingly (points 1 and 2 in your letter).

Having carefully considered THESL's arguments and the relevant legislation and regulatory requirements, I remain of the view that THESL's policies in this regard are inappropriate for the reasons set out in my earlier letter and below.

It is, in my view, central to the Board's approach to the issue of metering for new condominiums that the legislative framework (established by section 53.17 of the *Electricity Act, 1998*, Ontario Regulation 442/07 – *Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums*, section 57(i) of the *Ontario Energy Board Act, 1998* and Ontario Regulation 443/07 – *Licensing Sub-Metering Activities*) contemplates the co-existence of two distinct types of activity. This approach is reflected in the Board's "Notice of Proposal to Amend a Code and Notice of Proposal to issue a New Code" dated January 8, 2008, in which the Board identified and described those two activities as follows:

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.

The Board uses the term "smart sub-metering" to describe the situation in which a licensed distributor provides service to the condominium's bulk (master) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system. In this scenario, the condominium continues to be the customer of the licensed distributor and will receive a single bill based on the measurement of the bulk (master) meter.

On that basis, I cannot agree with your characterization of section 53.17 of the Electricity Act, 1998 as being either irrelevant to this issue, or as speaking only to the nature of the equipment to be installed. Rather, the legislation states that new condominiums shall be metered with smart meters (if installed by a licensed distributor) or smart sub-meters (if installed by a licensed smart sub-metering provider). Similarly, I cannot agree with your characterization of section 5,1.9 of the Distribution System Code as having, as its thrust, to require that the metering installed meet the specifications referred to in Ontario Regulation 425/06 - Criteria and Requirements for Meters and Metering Equipment, Systems and Technology. While section 5.1.9 of the Distribution System Code does require compliance with Ontario Regulation 425/06, it also makes it clear that the person responsible for a new condominium has the ability to choose between having a licensed distributor install smart meters or having a licensed smart sub-metering provider install smart sub-meters. A licensed distributor that seeks to engage in smart sub-metering activities (as opposed to smart metering activities) may do so provided that the distributor is licensed by the Board as a smart sub-metering provider under section 57(i) of the Ontario Energy Board Act, 1998 and Ontario Regulation 443/07.

In point 4 of your letter, you state that "the Board clearly stated that distributors can smart meter condominiums and in fact are the only parties legally able to do so." As noted above, smart metering of condominiums is by definition a distribution activity that can be conducted only by a distributor and, on that basis, I agree with your comment. My earlier letter in no way presented a differing opinion.

Rather, the concern that I expressed was that, to the extent that THESL's Conditions of Service or other policies require the smart metering of new condominiums to the exclusion of smart sub-metering (defined as noted above), those Conditions of Service and other policies are inappropriate. THESL's position that each individual unit and common area in a condominium must be smart metered and become a direct customer of THESL is in my view incompatible with the Board's approach to smart sub-metering. As described by the Board, smart sub-metering clearly involves (a) a licensed distributor that bills its customer – the condominium corporation – based on the measurement of a bulk meter; and (b) a separate person – the licensed smart sub-metering provider – that bills the individual units and common areas based on the measurement of a smart sub-metering system. The provisions of the Board's Smart Sub-Metering Code make it clear that smart sub-metering as a competitive licensed activity goes beyond merely the installation of the meters, and extends to billing, the collection of security deposits, disconnection and the like on behalf of the condominium corporation or developer.

Finally, I reiterate my view that there are no provisions in any law, regulation, or Board regulatory instrument that provide licensed distributors with the authority to implement a requirement that each unit and common area in a new condominium must become a direct customer of the distributor. As such, if THESL were to refuse to connect a property by reason of the customer's decision to install smart sub-metering, THESL would in my view be acting in a manner contrary to section 28 of the *Electricity Act*, 1998 and its licence. To the extent that THESL's Conditions of Service purport to eliminate choice for new condominiums, it is also my view that those Conditions of Service are inconsistent with section 5.1.9 of the Distribution System Code as they fail to reflect the element of the customer's request that is embodied in that section.

I therefore continue to expect that THESL will immediately cease requiring that new condominiums be smart metered, and will revise its Conditions of Service in a manner that makes it clear that persons responsible for new condominiums retain the right to freely choose the manner on which individual units will be metered (whether smart metering or smart sub-metering).

Please confirm THESL's intentions in this regard by February 9, 2009. In light of the adverse implications of THESL's position in the marketplace, I intend to recommend that the Board take enforcement action in the event that THESL chooses to maintain its current approach to the metering of new condominiums.

No statutory power of decision has been delegated to me, and the views expressed in this letter are not binding on the Board. I may seek enforcement action by the Board under Part VII.1 of the *Ontario Energy Board Act*, 1998 in relation to non-compliance.

Please do not hesitate to contact me at 416-440-7682, or Paul Gasparatto at 416-440-7724, should you have any questions or wish to discuss this matter further.

Sincerely,

Brian Hewson

Chief Compliance Officer



	v.,		
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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.

# NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE UNDER SECTION 112.3 OF THE ONTARIO ENERGY BOARD ACT, 1998

The Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the Ontario Energy Board Act, 1998 (the "Act"), intends to make an Order under section 112.3 of the Act requiring Toronto Hydro-Electric System Limited ("THESL") to comply with a number of enforceable provisions as defined in section 112.1 of the Act. The Board also intends to make an Order under section 112.3 of the Act requiring THESL to take such action as the Board may specify to remedy the contravention that has occurred or prevent a contravention or further contravention of the enforceable provisions. This Notice and Order concerns THESL's conduct relating to smart metering and smart sub-metering in new condominiums. For the purposes of the Order, the enforceable provisions are: 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.

The particulars of non-compliance are set out below.

1. THESL's Conditions of Service, specifically section 2.3.7.1.1, states that THESL "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, THESL informed Metrogate Inc. ("Metrogate") and Avonshire Inc. ("Avonshire")

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

- 2. THESL's refusal to connect on that basis is contrary to the requirement of a distributor to connect 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. The Board is also satisfied that THESL is likely to contravene section 28 of the Electricity Act and section 3.1.1 of the DSC in the future by continuing to refuse to connect buildings with a smart sub-metering system to its distribution system.
- 3. THESL'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. [emphasis added]
- 4. THESL'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. THESL'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.

THEREFORE TAKE NOTICE that THESL may request, within fifteen days after receiving this Notice, that the Board hold a hearing on these matters. If no request for a hearing is made within this time period, the Board may proceed to make an Order that THESL comply with any of the enforceable provisions listed in this Notice. The Board may also make an Order requiring THESL to take such action as the Board may specify, including but not limited to an Order to THESL to amend its Conditions of Service, to remedy the contravention that has occurred or prevent a contravention or further contravention of any of the enforceable provisions.

FURTHER TAKE NOTICE that if a hearing is requested, the Board is not bound by the proposed above noted action and has discretion, upon finding a contravention(s) of the enforceable provision(s), to make any order it deems appropriate under sections 112.3, 112.4 or 112.5 of the Act. THESL is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should THESL fail to attend, the hearing may be conducted in its absence and THESL will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, THESL must file 6 copies of their request with the Board Secretary at the following address:

Ontario Energy Board P.O. Box 2319 2300 Yonge Street, 27<sup>th</sup> Floor Toronto, Ontario M4P 1E4 Attention: Board Secretary

Email: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273 Fax: 416-440-7656

If a hearing is requested, it will proceed before a Panel of the Board, at the offices of the Board (address listed above), on a date to be set by the Board.

DATED at Toronto, August 4, 2009.

Original signed by

Kirsten Walli Board Secretary

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**TAB 15** 



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

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



February 9, 2009

via email

Mr. Brian Hewson Chief Compliance Officer Ontario Energy Board P.O. Box 2319 2300 Yonge Street, 27<sup>th</sup> floor Toronto, ON M4P 1E4

Dear Mr. Hewson:

RE: Board File C020080066 - Suite Metering of New Condominium Units

Thank you for your correspondence of January 29, 2009, in which you provided your reply to our response of November 12, 2009 to your October 22, 2008 letter regarding certain provisions of the Conditions of Service of Toronto Hydro-Electric System Limited (THESL). Those provisions pertain to the metering of end-use customers in new condominium units.

THESL has answered in its November response the contentions stated in your October 22 letter concerning Section 53.17 of the *Electricity Act*. THESL does not perceive anything further in your January 29 letter that supports the relevance of Section 53.17 to this issue.

Similarly, THESL has answered in its November response the assertions contained in your October 22 letter concerning Section 5.1.9 of the DSC, which at the time you claimed required installation of smart meters in a new condominium only as an exception. You now assert at page 2 of your January 29 letter that Section 5.1.9 "makes it clear that the person responsible for a new condominium has the ability to choose between having a licensed distributor install smart meters or having a licensed smart sub-metering provider install smart sub-meters."

THESL observes that Section 5.1.9 has not changed in the interim. In its November response, THESL noted:

"In fact, Section 5.1.9 of the DSC is as follows:

"When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) 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 Condom inium Act, 1998,

a distributor shall install smart metering that meets the functional specification of Ontario Regulation 425/06–Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act)."

THESL believes that a plain reading of this Section within its context in the DSC does not support your conclusion. Section 5.1.9 does not mention smart sub-metering, nor contain any statement that expressly 'makes it clear' that a distributor may only install smart metering upon the request of a per son in charge of a condominium. The unstated premise of your argument appears to be that the Section begins with the word 'Only', which it does not.

The second paragraph on page 3 of your January 29 letter implies that THESL's policy requires smart metering to the exclusion of smart sub-metering. As noted in our November response, THESL's policy does not exclude the installation of an additional sub-metering system. Furthermore, there are no grounds for your hypothetical under which THESL would refuse to connect a customer.

Finally, you state at page 3 that "there are no provisions in any law, regulation, or Board regulatory instrument that provide licensed distributors with the authority to implement a requirement that each unit and common area in a new condominium must become a direct customer of the distributor". In THESL's view however, neither is there any prohibition of that policy nor any specific limitation on a licensed distributor's to implement it. To the contrary, the Board's expressed views on the authorization of distributor smart metering were set out in Item 4 of THESL's November response, which is reproduced below (emphasis added):

4. In both its January and July Notices, the Board clearly stated that distributors can smart meter condominiums, and in fact are the only parties legally able to do so.

"The Board has previously determined in rates proceedings related to smart metering activities of certain distributors that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. As there is no distinction between smart metering condominiums and other residences, the Board has determined that only licensed distributors can smart meter condominiums. In the Board's view, this is in keeping with the current regulatory framework in the electricity sector.

The Board is also of the view that Regulation 442 allows all licensed distributors to smart meter in condominiums."

[EB-2007-0772 Notice of Proposal etc, January 8, 2008, pages 2-3]

"As set out in the January Notice, the Board remains of the view that smart metering is a distribution activity, and that the Electricity Act and Regulation 442 taken together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area."

[EB-2007-0772 Notice of Proposal etc, June 10, 2008, pages 4]

Furthermore, the DSC states at Section 5.1:6:

"A distributor shall identify in its Conditions of Service the type of meters that are available to a customer, the process by which a customer may obtain such meters and the types of charges that would be levied on a customer for each meter type."

This statement is not conditioned by any further obligation on the part of distributors concerning smart sub-metering in new condominiums.

THESL's position in this matter has not changed from that expressed in its November reply. From the above, it is clear to THESL that it acts within its authority and in accordance with the terms of its license. Nevertheless, you make reference at page 3 of your letter to 'adverse implications of THESL's position in the marketplace". THESL is not aware of any 'adverse implications' of its current position but is undertaking research on adverse implications of changing its position. THESL will advise you of the outcome of that research.

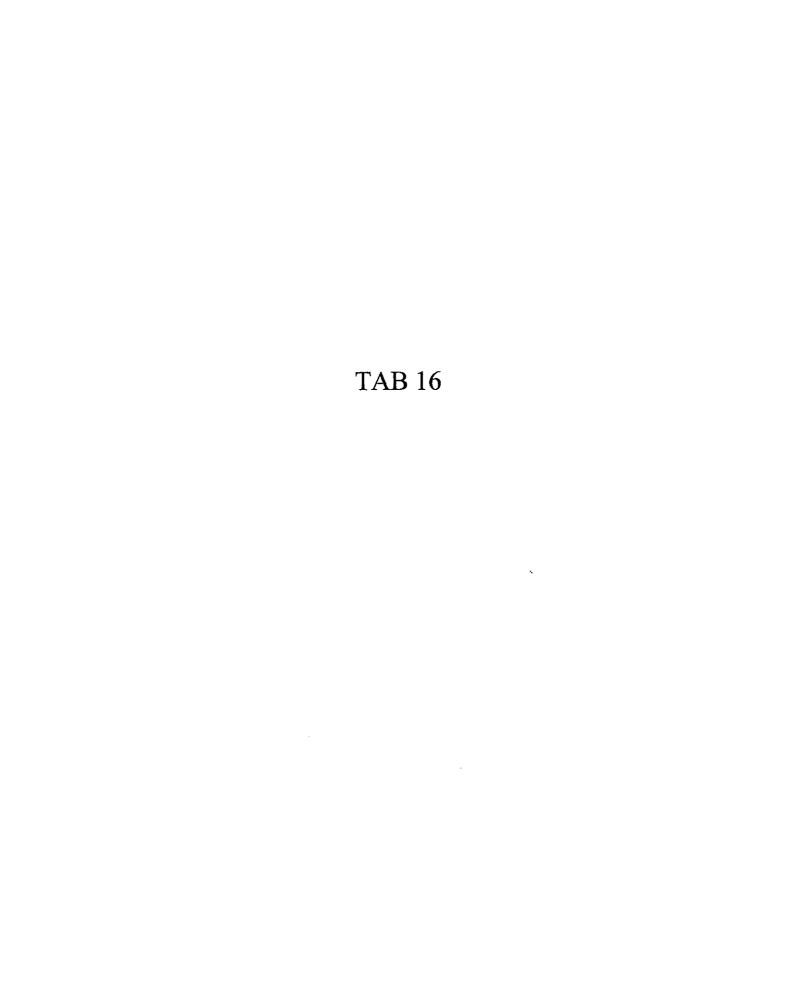
Yours truly,

[Original signed by]

Colin McLorg
Manager, Regulatory Policy & Relations
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c: Ms. Kirsten Walli, Board Secretary

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Ontario Energy Board Commission de l'énergie de l'Ontario



EB-2009-0111

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

AND IN THE MATTER OF an order or orders authorizing certain distributors to conduct specific discretionary metering activities under section 53.18 of the *Electricity Act*, 1998, S.O. 1998, c. 15, Schedule A.

**BEFORE:** 

Paul Sommerville

**Presiding Member** 

**DECISION AND ORDER** 

August 13, 2009

### Introduction

The Ontario Energy Board (the "Board") has initiated this proceeding respecting discretionary metering activities on its own motion. Discretionary metering activity includes the installation of smart sub-meters.

This case has documented that considerable unauthorized discretionary metering activity has been undertaken by landlords or those working on their behalf.

Technically, landlords are "Exempt Distributors". This status has important implications for the manner in which smart sub-metering may be implemented in rental apartments and industrial, commercial, or office building settings. These implications will be dealt with later in this Decision and Order.

Prior to the creation of this proceeding the Board received many complaints from tenants with respect to the implementation of smart sub-metering in their apartment buildings.

In addition, in the course of this proceeding, the Board received over 250 submissions from affected parties, an overwhelming number of which came from bitterly unhappy tenants and tenant organizations. Tenants have indicated that smart sub-meters have been installed in their buildings and their units under a variety of terms and conditions, not all of which have been clear. Submissions made by smart sub-metering companies have confirmed that a considerable number of rental premises have in fact been smart sub-metered over the last couple of years.

As noted above, the volume of complaints, their nature, and the scope of the smart submetering activity being undertaken in the province led the Board's Chief Compliance Officer to issue a Compliance Bulletin which unequivocally characterized the discretionary metering activity being undertaken as unauthorized, and inconsistent with the requirements of the *Electricity Act, 1998* (the "Electricity Act").

It is not intended that this proceeding make any findings with respect to compliance with the Electricity Act, the *Ontario Energy Board Act, 1998* (the "Act"), any regulations made pursuant to either of those statutes, or Board codes.

For the purposes of this proceeding it is sufficient to say that there exists no regulation in force today that has the effect of authorizing discretionary metering activities by

landlords in rental apartment buildings, also referred to as "residential complexes"<sup>1</sup>, or industrial, commercial or office building settings. Nor is there any Board order or any Board code which has the effect of authorizing such activities in those settings. The Board will address the effect of these unauthorized arrangements later in this Decision.

The issue facing the Board in this case is whether to make such an order in light of the considerable activity being undertaken by landlords.

In making this determination, the Board has considered the statements made by the Minister of Energy and Infrastructure respecting his intention to enact regulations authorizing discretionary metering activity by landlords on appropriate terms and conditions. In his public pronouncements<sup>2</sup> and in the Provincial Legislature<sup>3</sup> the Minister has indicated that it is his intention to introduce legislation and develop regulations for this purpose later this year. The Minister also recognized in the course of his comments that the development of these legislative tools would require consultation involving a variety of interests and opinion.

The development of a Board code directed to the subject, which could also serve as authorization pursuant to the Electricity Act, would take a considerable period of time, time during which there may be serious prejudice to legitimate interests.

In the Board's view, the best mechanism for the authorization of discretionary metering activity is in fact legislation specifically developed by and enacted by the government to address the issues after an appropriate period of consultation. It appears, however, that that process may take a considerable period of time. In this interval the aggressive pursuit of smart sub-metering by landlords in residential complexes may continue. In the past, the absence of authorization does not appear to have curbed the enthusiasm of landlords and smart sub-metering agents or contractors working on their behalf in this process. They have a legitimate interest in providing smart sub-metering systems, provided it can be done pursuant to an authorization consistent with the requirements of section 53.18 of the Electricity Act.

The consequences of the continued implementation of smart sub-metering without the benefit of authorization are serious. As indicated above, many tenants have

Residential Tenancies Act, 2006, S.O. 2006, c. 17, s. 2(1) [hereinafter referred to as the RTA].

<sup>&</sup>lt;sup>2</sup> T. Hamilton, "Rogue energy sellers face fall clampdown" The Toronto Star (21 May 2009).

<sup>&</sup>lt;sup>3</sup> Ontario, Legislative Assembly, *Debates* (2 June 2009) at 7144 and Ontario, Legislative Assembly, Standing Committee on Estimates, *Debates* (2 June 2009) at E-714.

complained about the process and outcomes associated with the rollout of smart submetering in apartments. In some instances, this process has led to very important financial consequences for tenants, and uncertain mechanisms for the consideration and resolution of their concerns. Tenants have been, and apparently are being, asked to consent to smart sub-metering under circumstances that do not meet the statutory requirements, or even reasonable practice. The submissions received from all sides of the issue suggest that there is an air of urgency respecting this subject.

It is the Board's view that, during the period between now and the time the government is able to put in place its comprehensive legislative package, the public interest requires that some measure of regulatory guidance is given. Accordingly, the Board has determined that it is appropriate for it to make an order arising from this proceeding which will authorize discretionary metering activities by landlords, and those operating on their behalf, on certain terms and conditions.

The terms and conditions are largely directed to consumer protection measures designed to ensure that tenants, in consenting to their participation in the smart submetering program that has been made available within their respective buildings, are appropriately informed about the financial, energy efficiency and environmental implications associated with it.

The Board is also mindful of the importance that the smart sub-metering program plays in the government's overall energy strategy. As things stand now, no discretionary metering activity by landlords in residential complexes or industrial, commercial, or office building settings is authorized. The Board considers it to be in the public interest to remove such barriers as it reasonably can to the orderly and lawful implementation of this important government policy.

Accordingly, the Board has decided to issue an order which will permit these discretionary metering activities, according to a set of terms and conditions which are thought to provide reasonable protection for the legitimate interests of all affected persons, until such time as the anticipated legislative package is in place. In the Board's view, reasonable protection will be achieved through written consent, which is both informed and voluntary, by tenant consumers.

While the Board is issuing this Decision and Order to address the current situation, the Board cautions landlords and their smart sub-metering agents or sub-contactors that

this Order is intended to be transitional and interim in nature. Legislative action by the government in this area may have important consequences for any installations undertaken in this interim period.

#### The Submissions

The parties were sharply divided on which course the Board should take. Tenants and organizations representing tenants strongly urged the Board to not issue an order authorizing discretionary metering activity. Smart sub-metering companies, on the other hand, sought to have these activities authorized by the Board by way of order.

A common feature among those tenants and tenant organizations most vehemently opposed to the rollout of smart sub-metering was strong support for the government's overall electricity strategy of conservation and energy efficiency, and the general objectives associated with smart sub-metering and smart metering. Their concerns centered on several key questions.

First, they had little confidence in the methodologies employed by landlords to establish rent reductions associated with individual metering. A very high percentage of the submissions received reported that the rent reductions offered by landlords were far smaller than the new electricity bill they were being asked to pay. In many instances, there does not appear to have been a particularly programmatic exposition by the landlord as to how the rent reduction was arrived at, nor what would be the basis for the new electricity charges to be paid by the individual tenant. Tenants complained about being surprised at both the level of the new electricity bill and some of its constituent elements. These elements included installation charges and administration fees associated with the operation of the smart sub-meters.

Another area of concern for tenants really goes to the heart of the program itself. Tenants expressed the view that they had little ability to control or manage the costs associated with their electricity use. They complained that the landlord has exclusive authority to select and install all of the important electricity dependent appliances. In many cases they indicated that the appliances in use in their particular apartments were old, inefficient, and sometimes poorly maintained. Similar concerns were raised with respect to the insulation value of their respective apartments. Tenants have typically no authority, and little ability, to improve leaking windows and doors or poorly insulated walls. This lack of control of key elements of conservation potential is particularly

concerning. If tenants have no genuine ability to improve the energy efficiency of their units, how meaningful can individual billing be?

Many tenants complained that the proposal for smart sub-metering was presented substantially as a requirement and not as a matter requiring their consent. Many tenants also expressed concern about the unauthorized nature of the smart sub-metering activity in their buildings, and wondered how and where their remedies might lie.

The organizations representing residential tenants generally took the view that they would rather have any authorization of smart sub-metering activity be subject to the legislative process to be undertaken by the government later this year. In their view, that process offered their constituency its best opportunity to have its interests reflected.

For their part, organizations representing residential property owners and the smart submetering companies urged the Board to issue an order which would permit them to get on with the implementation of the government's program. They pointed to the general public interest in ensuring that conservation measures are implemented as soon and as effectively as possible. They submitted that consumer protection could be achieved through use of an approved voluntary code.

The smart sub-metering companies also noted the effect that the decision may have on employment levels within their industry and their legitimate interests in meeting their business objectives.

The companies also pointed to specific endorsements made by political officials as indicators of both the legality and desirability of the rollout of smart sub-meters in apartment building settings.

Representatives acting on behalf of owners of commercial buildings submitted that consumer protection should be available to residential tenant consumers but that smart sub-metering in commercial buildings occurs as an accepted normal business practice requiring no further tenant protections.

# What Is Discretionary Metering Activity?

Discretionary metering activity is a defined term arising from the Electricity Act. The term was defined in amendments to the Electricity Act which were enacted to support

the government's smart metering initiative (the "SMI"). The SMI was defined in those amendments as the government's policy to ensure electricity consumers are provided, over time, with smart meters. The prohibition of discretionary metering activity ensured that the SMI is, in fact, phased in over time as distributors are authorized to conduct these activities.

# Section 53.18 of the Electricity Act states:

- (1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this Act, a regulation, an order of the Board or a code issued by the Board or it is required to do so under the *Electricity and Gas Inspection Act* (Canada).
- (2) For the purpose of this section,

"discretionary metering activity" means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the *Electricity and Gas Inspection Act* (Canada), by regulation, by an order of the Board or by a code issued by the Board or authorized by a regulation made under this Act.

Residential complexes and industrial, commercial or office building settings are typically supplied with electricity by licensed distributors through a bulk meter. This meter records all of the electricity flowing into the building without any differentiation between users.

Smart sub-metering systems are designed to enable the allocation of electricity usage by individual tenants on an apartment-by-apartment basis. Each tenant consumer will be assessed according to his or her actual usage as recorded by their individual smart sub-meters. Ultimately it is intended that the smart sub-meters will operate so as to be capable of charging for the actual electricity consumption by the tenant according to the time of usage. Smart sub-meters are intended to enable consumers to time their use of electricity so as to avoid high-priced peak period usage. Smart sub-meters will operate in conjunction with time-of-use rate structures that will reward off-peak usage with lower per unit rates.

In the residential complex setting the implementation of smart sub-meters is intended to at once make tenants directly responsible for their actual usage, while enabling them to control and constrain their usage to control their costs. This element of direct control

and attendant responsibility for electricity usage is key to the government's smart metering strategy. It is the government's stated intention to drive overall conservation and energy efficiency through individual responsibility incented by pricing structures. It is for this reason that the government announced that smart meters will be installed in every home in the province by the end of 2010. The government explicitly authorized licensed distributors to install smart meters through Ontario Regulation 427/06 made under the Electricity Act. That process for single-family residential dwellings is well underway, and in some communities in Ontario has been completed. It is expected that the government's goal of province wide installation of smart meters will be achieved soon, and that time-of-use rates, necessary to exploit the full value of smart meters and smart sub-meters, will be in place in the near term. The Board has noted the government's announcement on May 14, 2009 which stated that an estimated 3.6 million customers will be on time-of-use rates by June 2011.<sup>4</sup>

The government also explicitly authorized the installation of smart meters or smart submetering systems in condominium settings through the adoption of Ontario Regulation 442/07 made under the Electricity Act. The regulatory regime established by the government to achieve this purpose involved empowering the condominium corporation or the developer to enter into smart metering or smart sub-metering implementation arrangements.

In the condominium setting, the condominium corporation has a fiduciary duty to the unit holders and is unequivocally accountable to the occupants of the respective buildings. There is no parallel to the condominium corporation in the residential complex setting. Each tenant in a residential complex has a separate and distinct contractual relationship with the landlord, and there is no corporate entity that has the legal obligation to represent the interests of the respective apartment unit tenants.

Implementation of smart sub-metering in the residential tenancy environment is a very different exercise than in the condominium context. That may explain why the government has not yet put in place parallel legislative instruments to authorize the program for residential complexes.

First, in an important sense, the roll-out of smart sub-meters in residential complexes is inconsistent with a key principle of the overall culture of conservation energy strategy, which is that with control over energy usage comes cost responsibility.

<sup>4</sup> http://www.mei.gov.on.ca/english/news/?page=news-releases&body=yes&news\_id=36

As was pointed out by many tenants in their submissions, a very substantial element of conservation and energy efficiency activity lies exclusively within the power and purview of the landlord. The landlord selects, maintains and installs the appliances used in the units, and is solely responsible for the maintenance of the buildings, including installation of windows, doors and insulation. Typically, the tenant has no control over these key elements, yet the installation of smart sub-meters has the effect of transferring responsibility for electricity charges for the apartment unit from the landlord to the tenant. This is a disconnect between control and cost responsibility.

In the Board's view, this set of circumstances requires that the implementation of smart sub-metering in residential complexes is accompanied by a set of terms and conditions that provides the tenant with sufficient information respecting the condition of the appliances and the integrity of the building's apartments to make his or her consent an informed consent. The Order accompanying this Decision will contain a provision requiring that the landlord conduct an energy audit of the premises, and make that audit available to the tenant at the time his or her consent is sought. A tenant should not be asked to agree to participate in the smart sub-metering program without having a good appreciation of the extent to which the building and the appliances in use meet the government's objectives with respect to conservation and energy efficiency.

There is a considerable variety of arrangements between landlords and tenants. The informed consent structure reflected in the Order enables tenants to take into account their specific circumstances in deciding whether to participate in a smart sub-metering program in their building.

The Board finds that any smart sub-metering installation in bulk metered residential complexes and industrial, commercial, or office building settings on or after November 3, 2005 is unauthorized, and any resulting changes to financial arrangements respecting the payment of electricity charges by tenants to be unenforceable. This conclusion flows directly from the clear wording of section 53.18(1) of the Electricity Act.

It is important to note again that this proceeding is not a compliance proceeding nor is it intended to impose any form of penalty, restitution order, or other disciplinary action against any Exempt Distributor that has engaged in unauthorized discretionary metering activity. However, having engaged in unauthorized metering activity, in contradiction to the terms of the Electricity Act, the Board finds that the landlord cannot now insist on performance of the changes to lease agreements. Whatever unwinding of changed

financial arrangements may be necessary should be undertaken within the context of the specific leasehold or rental arrangement existing between the tenant and his or her landlord.

## The Architecture of Exempt Distribution

In order to put the rest of this Decision in its proper context, it is necessary to describe the manner in which landlords, who are Exempt Distributors, are entitled to engage in discretionary smart sub-metering activities.

The concept of an exempt distributor is set out in section 4.0.1 of Ontario Regulation 161/99 – *Definitions and Exemptions* made under the Act. In that regulation several categories of persons are exempted from the usual requirements of electricity distribution, such as licensing and rate regulation. For the purposes of this proceeding, the Board refers to the "Exempt Distributors" as those that are exempt under section 4.0.1(1)(a)(2) and (3); that is, those that distribute electricity entirely on land on which the following types of buildings are located: (i) a residential complex as defined in the RTA; and (ii) an industrial, commercial or office building. A key qualification for Exempt Distributors 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.

Exempt Distributors who are engaged in this case have entered into contractual arrangements with smart sub-metering providers whose business involves the installation and administration of the smart sub-meters. In conducting this activity, the smart sub-metering providers are in reality the agents or sub-contactors of the Exempt Distributor (e.g., the landlord). It is axiomatic that neither agents nor sub-contractors, sometimes referred to as smart sub-metering providers, acquire any novel or additional rights or status viz-a-vis third parties, in this case tenants, by reason of their agency or contractual relationship with the landlord.

Accordingly, the smart sub-metering provider does not have a stand-alone contractual relationship with the tenants in buildings that have been rewired, in the case of existing buildings, or configured for smart sub-meters during the construction phase, in the case of new buildings. The relationship is always a relationship rooted in the relationship between the landlord, who qualifies as the Exempt Distributor, and the tenant. The smart sub-metering provider, as agent or sub-contractor of the landlord, has no, and legally can have no, genuinely independent relationship with the tenant with respect to

the distribution of electricity within the building, whether related to smart sub-meters or otherwise.

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.

The Board has no authority to regulate the rates of smart sub-metering companies. The Board also has no authority to regulate the rates of the Exempt Distributors so long as the distributor meets the exemption requirements. However, the status of Exempt Distributors is based upon the wording of the exemption regulation and is dependent on the Exempt Distributor distributing electricity for a price that is no greater than that required to recover all reasonable costs.

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 violates 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. The landlord, in passing these costs through to the participating tenants, must ensure that the full range of costs, including but not limited to the costs making up the administration charge, is justifiable and reasonable.

In establishing the rules governing discretionary metering activities, the transparency of this cost issue is key. A consenting tenant must be in a position to have confidence that the smart sub-metering activity does not impose an unreasonable cost burden associated with the distribution of electricity. This means that the arrangements between the landlord and the smart sub-metering provider must be disclosed to tenants and regulatory authorities requesting the same. Accordingly, the Order accompanying this Decision will contain a provision requiring that the landlord retain, for examination

upon request, all of the contractual documents related to any smart sub-metering activity at his or her place of business.

Administration charges imposed by smart sub-metering agents or sub-contractors are charges to the landlord, not to individual tenants; however, to the extent that these costs are reasonable, they can then be passed through to the tenant. Again, the smart sub-metering provider, as agent or sub-contractor for the Exempt Distributor, has no independent relationship with the tenant.

The methodology used to arrive at the rent reduction proposal shall contain a detailed and comprehensive depiction of any administration charges sought to be passed through to the tenant arising from the Exempt Distributor's relationship with the smart sub-metering agent or sub contractor.

There may be additional complexity relating to distribution delivery charges.

Landlords are charged by licensed distributors according to the amount of electricity entering the premises as measured by a bulk meter. The billing determinant used to create the bill for the landlord, who is typically a general service customer, is based on a non-coincident demand measured in kW or kVA at the meter. In order to qualify as an Exempt Distributor, it is the cost generated by this methodology that may be passed through to the individual tenants. To the extent that the smart sub-metering equipment uses a different billing determinant, the sum of individual tenants' burden will not accord with the bulk meter billing determinant methodology. The result of this mismatch is a potential for excess revenues, which would take the arrangement out of the Exempt Distributor qualification.

In order to avoid this outcome, which would violate the pass-through requirement, in these circumstances the landlord's allocation of the distribution cost to individual tenants must be based on their <u>proportional</u> share of the overall bulk meter burden. That is to say that the quantum of the monthly bill derived from the bulk meter and payable by the landlord must be distributed to individual tenants according to their <u>proportional</u> share.

Billing predicated on individual non-coincident peak demands, for example, is not apparently compatible with the requirements of the Exempt Distributor's pass through obligation.

In soliciting tenants for participation in the smart sub-metering program in individual buildings, Exempt Distributors must take care to ensure that this potential outcome is addressed, and that the underlying calculations demonstrating pass through of both delivery charges and commodity charges are available to tenants as part of the informed consent needed to support enrollment.

# The Significance of Section 137 of the RTA

Section 137 of the RTA formed part of a reform package in 2006. It has not been proclaimed to be in force. The proclamation of the section, together with the development and adoption of necessary regulations, is intended to form part of the government's legislative approach to the implementation of smart metering in apartment buildings.

Organizations representing tenants, who generally opposed the issuance of an order by the Board authorizing smart sub-metering activities, looked to the existence of section 137 of the RTA as a definite short-cut to the implementation of the government's legislative package. And so it may be. But the Board urges caution in this approach.

There is an anomaly that lies at the core of section 137 of the RTA and its presumed relevance to smart sub-metering situations. In fact, the Electricity Act and regulations made under that Act make it clear that there is intended to be a distinction between "smart meters" as that term is used in the various legislative instruments, and "smart sub-metering systems" as that term is used in the same instruments.

Put simply, "smart meters" is a term that is used to describe <u>exclusively</u> the smart metering activities of licensed distributors. It does not appear to refer to smart submetering activities undertaken by Exempt Distributors.

The Board dealt with this distinction in the process leading to the development of the Smart Sub-Metering Code, proceeding EB-2007-0772. Interested persons are urged to read the Board's treatment of this issue in that proceeding, but the important distinction between smart metering on the one hand, and smart sub-metering on the other hand, flows directly from the use of those terms in the statute and the regulations adopted by the Lieutenant Governor in Council.

Section 137 of the RTA references only "smart metering". Even when proclaimed into force, it appears that section 137 of the RTA will only apply to the scenario where a

<u>licensed</u> distributor smart meters the individual units in the residential complex. Section 137 of the RTA does not appear to apply to the smart sub-metering situation where an Exempt Distributor, or its agent or sub-contractor, individually smart sub-meters the units in the residential complex.

Further support for the view that the terms are not intended to be used interchangeably can be found in the other provisions contained in section 137. Section 137 of the RTA appears to be geared towards the situation in which the Exempt Distributor is no longer the distributor of electricity, which is what occurs in the smart metering situation when the licensed distributor takes over the individual tenants as new, independent customers. This is not true in the smart sub-metering scenario.

In the smart sub-metering scenario, the smart sub-metering provider acts as an agent or sub-contractor for the Exempt Distributor under the terms of a contract. The smart sub-metering providers have no status to become distributors of electricity to tenants. That status is always reserved for the Exempt Distributor. The Exempt Distributor never terminates the obligation to provide electricity in the smart sub-metering situation even though there may be a change in the methodology used to account for and bill electricity.

The smart sub-metering agent or sub-contactor cannot assume the role of distributor, exempt or otherwise, independently. If the landlord chooses to abandon his role as distributor, he may only do so in favour of a licensed distributor.

It can be seen that section 137 of the RTA can operate only if the units of residential complexes are smart metered, not smart sub-metered. As stated above, the Board has previously determined that smart metering can only be undertaken by licensed distributors. Further, at the current time, almost all licensed distributors have been authorized to conduct smart metering activities by Ontario Regulation 427/06 made under the Electricity Act. This means that licensed distributors are currently authorized to install and implement smart meters in residential complexes.

For all of these reasons, the Board does not believe that the proclamation of section 137 of the RTA is relevant to this proceeding as it appears that section 137, once proclaimed, will not apply to smart sub-metering.

#### The Order

## Should Exempt Distributors be authorized to install smart sub-metering systems?

The Board has concluded that it is appropriate at this time to make an order which authorizes Exempt Distributors to conduct discretionary metering activities in relation to smart sub-metering systems in residential complexes; however, as part of the authorization allowing the installation, the Board is requiring the Exempt Distributors to meet certain conditions before they can use the smart sub-metering systems for the purposes of billing tenant consumers. The Order establishes the elements necessary to establish informed consent and a genuine acceptance of the terms and conditions associated with the transition to smart sub-metering for billing purposes within an apartment building. It is the Board's view that any existing purported consents in the residential tenant setting are ineffective, and must be renovated in a manner consistent with this Order.

With respect to the industrial, commercial or office building settings, the Board considers that industrial and commercial entities have access to, and are presumed to avail themselves of, appropriate legal and other advice so as to protect their interests in relation to landlords seeking to smart sub-meter their leased premises. The Board notes that no concerns were submitted from consumers in this category. Further, representatives of consumers in this category supported the existing arrangements. Accordingly, while the Board will require a much more demanding set of conditions for residential tenants, implementation of smart sub-metering for commercial tenants will not be subject to these protections. The only requirements attaching to industrial, commercial or office building settings are that the consent of the commercial tenant must be evidenced in writing and a licensed smart sub-metering provider must be used. Where landlords have implemented smart sub-metering with their industrial or commercial tenants, and the consent of the industrial or commercial tenant is evidenced in writing, there is no requirement that the landlord re-visit that consent. If the consent of the industrial or commercial tenant is not in writing, the landlord must procure it in that form.

## Scope of discretionary metering activities and associated services.

The Board considers that, provided the preconditions and conditions established within this Order are met, Exempt Distributors for residential complexes and industrial,

commercial or office buildings may conduct discretionary metering activities in relation to smart sub-metering systems.

The smart sub-metering companies argued for, and in some instances have apparently implemented, arrangements that would change the terms and conditions associated with consent to the implementation of smart sub-metering according to whether the residential tenant was an existing tenant or a new tenant entering the premises. The Board has found that all of the sub-metering activity in apartment settings following November 3, 2005 has been unauthorized, and arrangements predicated on the unauthorized activities are unenforceable. It makes no difference that those arrangements may have been made with a tenant who is newly entering the premises as opposed to a tenant who is already resident in the residential complex undergoing the transition to smart sub-metering. The same is true going forward. Prospective tenants are entitled to the same protections as those afforded existing tenants, and the same preconditions and conditions associated with informed consent will apply to both categories.

# Must a licensed smart sub-metering provider be retained to provide and install smart sub-metering systems and/or to provide associated services?

Yes. Licensed smart sub-metering providers are obliged to conduct their activities in a manner consistent with the Board's Smart Sub-Metering Code. This Code ensures that appropriate metering equipment is installed and that protections are in place for consumers in relation to metering services and business practices and conduct. Failure to conform to the Code can result in a number of sanctions, including licence suspension. The Order will require licensed smart sub-metering providers to comply with the Code when providing smart sub-metering services on behalf of Exempt Distributors.

#### Tenant/Consumer consent.

The Board recognizes that the government's future program may not require the consent of individual tenants. It is the Board's view that for the purposes of this Order, which is intended to fill the gap pending the development and implementation of the government's legislative package, a regime requiring the written consent of individual tenants is most appropriate. To date, this environment has been characterized by a high degree of confusion and complaint, and imposing mandatory enrollment by residential tenants in smart sub-metering would seem to be premature. It is better in the

Board's view for all affected parties to gain a better working knowledge of how smart sub-metering can operate in residential complexes. There is also an unfortunate legacy of unauthorized activities, the effect of which should be purged to allow a more thoughtful and orderly roll-out of smart sub-metering programs.

The Board considers that an informed written consent by the tenant consumer is a precondition to any transition to smart sub-metering. This means that the conditions outlined in this Order must be satisfied before any consent executed by a tenant can be of effect.

As noted above, smart sub-metering may only be undertaken pursuant to a Board order or legislation enacted by the government. It follows that to be authorized any smart sub-metering activity must be consistent with the enabling order. In this case, the Board Order requires conformity with a set of conditions associated with the consent of a tenant for the implementation of smart sub-metering in his or her apartment.

Neither the landlord nor its agent or sub-contractor smart sub-meterer has the authority to assume any form of consent that is not explicitly consistent with the terms of this Order. The Board notes that a contrary position was advanced by at least one of the smart sub-metering companies who suggested that, where the landlord had reserved the right to change the contractual terms of the lease agreement, that no specific consent was required. The Board rejects this point of view on the basis of the clear words of the statute and the requirement that discretionary metering activities be conducted pursuant to, *inter alia*, an order of the Board. The landlord has no unilateral authority to assume consent or to act on a consent that is not consistent with this Order.

It is appropriate to remind landlords that the structure created by the legislation and regulations for the implementation of smart sub-metering places the landlord squarely at the centre of the process. Conformity with the Board Order is the responsibility of the landlord. This does not involve, and cannot involve, the termination of its obligation to provide electricity to its tenants. The Exempt Distributor, that is typically the landlord, is always the provider of electricity to the tenants within the building.

The smart sub-metering agent or sub-contractor is not a distributor of electricity and cannot be a licensed distributor of electricity unless duly authorized by the Ontario Energy Board. That engagement would involve the full range of regulatory measures,

including rate regulation and conformity to all of the Board's codes governing the actions, responsibilities and obligations of licensed distributors in Ontario.

The smart sub-meterer has no stand-alone billing relationship with the tenant and, to the extent that the smart sub-metering equipment records usage on a different billing determinant than that used to establish the landlord's obligation to the licensed distributor, the amount of the bill charged to the individual tenant must be predicated on the tenant's proportional share of the landlord's bulk meter electricity bill. Any other arrangement may take the situation out of the Exempt Distributor context and may place the landlord in the role of a conventional electricity distributor, requiring licensing and rate regulation.

The Board appreciates that this approach may create a need for adjustments to be made to the arrangements made to date by landlords and smart sub-metering companies in relation to tenants. Whatever unwinding of these arrangements may be necessary needs to be undertaken pursuant to structures and processes in place to resolve and adjudicate such matters. Landlords and smart sub-metering companies accepted a risk by embarking on discretionary metering activities without the benefit of any authorization pursuant to section 53.18 of the Electricity Act. Their approach has resulted in considerable confusion and disaffection among tenants. The rather awkward state that now exists must be regularized in a responsible fashion if the government's conservation program is to have any credibility among this segment of consumers. The Board's Order is intended to do that.

The constituents of informed consent for smart sub-metering in residential apartment buildings are set out below.

The landlord is required to conduct and share the results of an energy audit of the premises with the tenant. The audit must be conducted by an independent third party, and must disclose what proportion of the landlord-supplied appliances within the apartment units are certified to be Energy Star or otherwise certified to be energy-efficient appliances. The audit must also assess the overall energy efficiency of the building envelope and identify deficiencies that can be remedied through weatherization techniques. This includes an assessment of the integrity of in-suite outside doors and windows in the units. This audit report must be provided to the tenant unexpurgated.

The landlord is required to disclose to the tenant the methodology to be used to establish the rent reduction associated with that specific tenant's rent obligation. This will include an explicit description of all of the constituent elements brought to bear in establishing the proposed electricity-related reduction in the rent charge. The Board will not prescribe the precise methodology to be used, but it must include the method adopted to account for electricity usage associated with common areas, any assumptions that are made must be explicitly stated, and the landlord must detail how electricity charges associated with non-participating tenants will be used in the calculation for an individual tenant's rent reduction. The methodology must also disclose as a separate line item any administration charges the landlord seeks to recover from the tenant. The methodology must also disclose the methodology to be used to apportion an individual tenant's proportional share of the landlord's overall distribution delivery charge as established by the bulk meter.

The consent must be in writing, and attached to the document at the time of execution of the consent will be the energy audit and methodology disclosure referenced above. The landlord shall retain this record in a manner consistent with all other documents associated with the tenancy.

## Confidentiality

In the Notice of Hearing and Procedural Order No. 1 (the "Notice"), the Board required each licensed smart sub-metering provider to file with the Board a list of the Exempt Distributors with whom it had entered into a contract for the commercial provision of smart sub-metering systems and/or associated services (the "List").

Stratacon Inc. ("Stratacon"), a smart sub-metering provider, filed the required information together with a request that the List be held in confidence by the Board. The filing was made in accordance with the Board's *Rules of Practice and Procedure* pursuant to section 10.01. In accordance with the Board's Practice Direction on Confidential Filings, Stratacon filed a non-confidential version of the document in which it redacted the List and instead disclosed the number of identified Exempt Distributors.

In its covering letter, Stratacon asserted that disclosure of the List would prejudice its competitive position and would not be required under either the *Freedom of Information* and *Protection of Privacy Act* or the *Statutory Powers Procedure Act*. Stratacon also stated that most of its contracts obligate it not to disclose the information.

As a rule, the Board is reluctant to receive information on a confidential basis, and is unsympathetic to contractual terms that purport to limit disclosure of arrangements made with regulated entities where those arrangements may be relevant from a regulatory point of view.

As is clear from the Decision and Order, the commercial environment surrounding the installation and operation of smart sub-metering systems is at an early and crucial stage. A key objective of this proceeding is to attempt to provide some regulatory guidance to smart sub-metering providers as they pursue their business goals. In the Board's view, in this light, Stratacon's request is not objectionable, and will be granted.

It is to be noted that the Board offers no opinion on whether the confidentiality claim made by Stratacon would survive a request made pursuant to the *Freedom of Information and Protection of Privacy Act*. In this Decision the Board merely finds that it will not, on its own motion, place the affected material on the public record. This approach should be seen to be very case specific, and without any broad or precedential application to other circumstances.

## **Funding**

The Notice stated that the Board will provide funding.

Requests for funding were submitted by the following parties (altogether, the "requesting parties"):

- Advocacy Centre for Tenants Ontario ("ACTO");
- Building Owners and Managers Association of the Greater Toronto Area ("BOMA");
- Federation of Rental-housing Providers of Ontario ("FRPO");
- Green Light on a Better Environment ("GLOBE");
- Low-Income Energy Network ("LIEN"); and
- Vulnerable Energy Consumers Coalition.

The Board has reviewed the funding requests submitted by the requesting parties and has determined that 100% of the funds submitted by the requesting parties will be paid to each individual party.

#### THE BOARD THEREFORE ORDERS THAT:

- 1. Distributors that meet the requirements of section 4.0.1(1)(a)(2) of Ontario Regulation 161/99—Definitions and Exemptions (made under the Ontario Energy Board Act, 1998), namely distributors that:
  - (a) distribute electricity for a price no greater than that required to recover all reasonable costs; and
  - (b) distribute the electricity through a distribution system that is owned or operated by the distributor that is entirely located on land on which a residential complex as defined in the Residential Tenancies Act, 2006 is located,

are authorized, under section 53.18 of the *Electricity Act, 1998*, to conduct discretionary metering activities in relation to smart sub-metering systems in their properties; however, the distributors must comply with the conditions in sections 2 to 6 below in order to use the smart sub-metering system for the purposes of billing their customers.

- 2. Distributors included in section 1 of this Order must obtain an energy audit of the property where the smart sub-metering system is installed. The energy audit must be conducted by an independent third party. The report from the energy audit must, in addition to any other energy efficiency evaluation:
  - (a) disclose the proportion of the landlord-supplied appliances within the individual units of the residential complex that are certified to be Energy Star or certified to be energy-efficient appliances; and
  - (b) assess the energy loss through the building envelope, and identify deficiencies that can be remedied through weatherization techniques for the building and the individual units.
- 3. Distributors included in section 1 of this Order must retain all contractual documents relating to the installation of the smart sub-metering system in the property including, but not limited to, documents regarding the costs of installation, the costs of the capital assets, and the administrative fees for the smart sub-metering provider. This information must be provided to any customer of the distributor, or the Board, upon request.

- 4. Distributors included in section 1 of this Order may only use the smart submetering system for their customers that consent in writing to the use of the smart sub-metering system. The customer's written consent must be voluntary and informed. Therefore, distributors included in section 1 of this Order must provide their customers with the following information at the time they request their customer's consent to use the smart sub-metering system:
  - (a) the results of the energy audit required by section 2 of this Order must be provided in their entirety;
  - the amount of any administrative charge that will be included on the electricity bills;
  - (c) a detailed description of the methodology used to arrive at the rent reduction (including information relating to how the electricity used by the common areas will be accounted for, how the electricity charges for non smart sub-metered customers will be used in the rent reduction methodology, and any other numbers or assumptions used in the methodology);
  - (d) the specific amount of the rent reduction being offered to the customer; and
  - (e) the methodology used to apportion the delivery charges amongst the customers.

The customer's written consent must be attached to the documents referred to above and the customer must initial all of the documents to show that they were provided to them. Distributors included in section 1 of this Order shall provide their customers with a copy of the executed documents and shall retain the customer's written consent and the initialed documents in a manner consistent with all other documents associated with the tenancy.

5. Any consent obtained by a distributor included in section 1 of this Order prior to this Decision and Order is ineffective and cannot be relied upon. Distributors included in section 1 of this Order will need to obtain new consents from their customers in accordance with the terms and conditions in this Order. The terms and conditions contained in this Order apply to existing customers as well as prospective customers.

- 6. Distributors included in section 1 of this Order must use a licensed smart submetering provider if the distributor is going to conduct discretionary metering activities in relation to a smart sub-metering system. Smart sub-metering providers must comply with the Board's Smart Sub-Metering Code, as applicable, when conducting these activities on behalf of the distributors included in section 1 of this Order. For the purpose of following the Smart Sub-Metering Code in relation to smart sub-metering in residential complexes as defined in the Residential Tenancies Act, 2006, smart sub-metering providers shall:
  - (a) consider "prescribed activity" to mean the installation and use of smart sub-metering systems;
  - (b) consider "prescribed location" to mean a residential complex as defined in the Residential Tenancies Act, 2006;
  - (c) consider the "condominium corporation or developer" to mean a distributor included in section 1 of the Board's Order in Proceeding EB-2009-0111; and
  - (d) for the purposes of section 4.1.3 of the Smart Sub-Metering Code, and in addition to sections 4.1.4 and 4.1.5 of the Code, deem a consumer to have a good payment history if the consumer provides a letter from its landlord or a service delivery provider (i.e., a telecommunications or cable provider) confirming a good payment history with the landlord or service delivery provider for the most recent relevant time period set out in section 4.1.3 of the Code where some of the time period which makes up the good payment history has occurred in the previous 24 months.
- 7. Distributors that meet the requirements of section 4.0.1(1)(a)(3) of Ontario Regulation 161/99—Definitions and Exemptions (made under the Ontario Energy Board Act, 1998), namely distributors that:
  - (a) distribute electricity for a price no greater than that required to recover all reasonable costs; and
  - (b) distribute the electricity through a distribution system that is owned or operated by the distributor that is entirely located on land on which an industrial, commercial, or office building is located,

are authorized, under section 53.18 of the *Electricity Act, 1998*, to conduct discretionary metering activities in relation to smart sub-metering systems in their

properties provided that the conditions listed in sections 8 and 9 of this Order are met.

- Distributors included in section 7 of this Order may only use the smart submetering system for their customers that consent in writing to the use of the smart sub-metering system.
- 9. Distributors included in section 7 of this Order must use a licensed smart submetering provider if the distributor is going to conduct discretionary metering activities in relation to a smart sub-metering system. Smart sub-metering providers must comply with the Board's Smart Sub-Metering Code, as applicable, when conducting these activities on behalf of the distributors included in section 7 of this Order. For the purpose of following the Smart Sub-Metering Code in relation to smart sub-metering in an industrial, commercial, or office building, smart sub-metering providers shall:
  - (a) consider "prescribed activity" to mean the installation and use of smart sub-metering systems;
  - (b) consider "prescribed location" to mean a commercial, industrial, or office building;
  - (c) consider the "condominium corporation or developer" to mean a distributor included in section 7 of the Board's Order in Proceeding EB-2009-0111;
     and
  - (d) for the purposes of section 4.1.3 of the Smart Sub-Metering Code, and in addition to sections 4.1.4 and 4.1.5 of the Code, deem a consumer to have a good payment history if the consumer provides a letter from its landlord or a service delivery provider (i.e., a telecommunications or cable provider) confirming a good payment history with the landlord or service delivery provider for the most recent relevant time period set out in section 4.1.3 of the Code where some of the time period which makes up the good payment history has occurred in the previous 24 months.
- 10. Licensed smart sub-metering providers shall promptly provide a copy of this Decision and Order to each Exempt Distributor with whom it has entered into a contract for the commercial provision of smart sub-metering systems and/or associated services. Furthermore, the licensed smart sub-metering provider shall inform the Exempt Distributor that the Exempt Distributor must promptly

post a copy of this Decision and Order in a prominent location in each building in which a smart sub-metering system has been installed.

ISSUED at Toronto, August 13, 2009.

## **ONTARIO ENERGY BOARD**

Original Signed By

Kirsten Walli Board Secretary

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Ontario Energy Board

Commission de l'Énergle de l'Ontario



RP-2003-0044

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

AND IN THE MATTER OF applications by Centre Wellington Hydro, Veridian Connections Inc., EnWin Powerlines Ltd., Erie Thames Powerlines Corp., Chatham-Kent Hydro Inc., Essex Powerlines Corp., Cooperative Hydro Embrun Inc. and Hydro One Networks Inc. pursuant to subsection 74(1) of the Ontario Energy Board Act, 1998 to amend Schedule 1 of their Distribution Licences.

BEFORE:

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Moreover, the Board is not convinced by evidence that suggests that the rate arbitrage problem can be alleviated through an appropriate wheeling or LV rate which reflects the true wheeling cost to the host distributor. Given the complexity of the network system in Ontario, the wheeling rate might have to be dependent on upstream transmission and distribution lines, upstream distribution stations, and different classifications of distribution lines. Hence, each embedded area may require its own LV or wheeling rate, and a large urban area, such as Toronto or the GTA, may require zonal or specific customer-type wheeling rates. This would entail considerable regulatory processes above and beyond what is required to establish existing distribution rates.

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The Board was also concerned by the imprecision in the evidence presented by the proponents of the embedded model regarding which type of customers would be potential candidates for embedding; new or existing customers. The Board found persuasive the arguments that the term "underserved customer" lacked precision and could potentially refer to both new and existing customers. The Board was not persuaded by the argument that an existing customer load, for example a bulk load apartment building, would somehow become redefined as a new customer when the metering arrangements are changed and each individual in the apartment building is separately metered. As Mr. Todd agreed, the issue is about switching the building. The load doesn't change, and the same individuals living in the apartment are still there. Given the criticality of the definition of "underserved customer" for Mr. Todd's analysis, the Board is concerned about its elusive nature. It is not even remotely clear as to what criteria would be required to establish whether a customer was existing, or underserved and therefore eligible to be switched, according to his construction.

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The proponents of discontiguous embedded distribution argue that the benefit to customers from individual interval metering is an important rationale for creating an embedded distribution system. They have suggested that customers who do not have such meters are, by definition "underserved". In the Board's view, the desire to compete for the provision of interval metering is not a strong enough justification to permit service area amendments which would facilitate the creation of new embedded distribution systems. As most of the experts noted in the oral hearings, the distribution sector is a natural monopoly. Rates are set by regulation and distributors are licensed by the Board, which acts as regulator. It may be that the advent of individual meters will become a key element in the province's effort to conserve energy, and to avoid peak demand shortages. This development is dependent on a number of factors, some of which fall outside the control or scope of the distribution sector of the industry. The proliferation of individual interval meters is not in any event dependent upon, or even best served by, the creation of new embedded distribution operators. The sale and installation of such meters can occur completely independent of the advent of new embedded distributors. Further, it is to be noted that sections 5.1.3 and 5.1.5 of the Distribution System Code currently require that all licensed distributors install interval meters for new customers with demand in excess of 500 kW, and provide an interval meter for any customer that requests one.

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The Board notes that section 4.0.1 of Ontario Regulation 161/99, as amended, provides an exemption from licensing for owners and operators of distribution systems in a broad range of settings including condominium buildings, residential complexes, industrial, commercial, or office buildings, and shopping malls. The exemption extends to distribution systems located entirely on land owned or leased by the distributor. For the exemption to apply, the distributor must simply recover its reasonable costs associated with the distribution, and not impose upon consumers a price which includes a profit. Services provided by the distributor can include the installation of meters or any other physical enhancement.

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**TAB 18** 

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Board
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Compliance Office

Commission de l'énergie de l'Ontario C.P. 2319 2300, rue Yonge Suite 2700 Toronto ON M4P 1E4 Téléphone: 416-481-1967 Télécopieur: 416-440-7656 Numéro sans frais: 1-888-632-6273



## Compliance Office Quarterly Activity Report

Second Quarter 2008-09 Fiscal

The Ontario Energy Board (OEB) is committed to publishing quarterly reports on the activities of the Compliance Office. This report provides details as to the level of activity as well as an overview of matters resolved between July 1 and September 30, 2008.

The quarterly report is separated into three sections dealing with each role of the Compliance Office: compliance management, consumer dispute resolution and providing information to market participants.

A highlight of compliance activity undertaken in this quarter includes:

- Retail Compliance Plan outlines the intent of the Compliance Office to conduct a
  review of retail company's compliance with the applicable legal and regulatory
  requirements pertaining to consumer protection. The first steps in the Retail
  Compliance Plan to review and audit the operation of gas marketers and
  electricity retailers were undertaken in September. Inspections were conducted in
  October with plans to have reports for review in November.
- A key component of the new Consumer Interaction Dispute Resolution
   Application (CIDRA) was rolled out on September 2<sup>nd</sup>. This new feature provides
   the ability of licensees to access their complaints through the external PIVOTAL
   portal. Some of the expected benefits of the new complaint process are:
  - o Greater efficiency and increased timeliness in the processing of customer issues
  - o Encourage the relationship between the licensee and the customer.
  - Provide accountability of the licensees in resolving customer issues directly.
  - Early review by a licensee will improve the likelihood that customers will not call back with a second complaint.

It is expected that all complaints receive thorough attention and investigation and that a complete and detailed response is provided to both the consumer and the

Compliance Office. The licensees have been very responsive to the change and find the system very helpful.

#### 1. COMPLIANCE MANAGEMENT & ENFORCEMENT ACTIVITIES

Compliance management refers to the review of allegations of non-compliance to assess whether, and to what extent, a regulated energy company has breached a legal or regulatory obligation.

Table 1 shows the number of active (Phase 1) compliance cases under review during the quarter, including those that have been completed and the number on-going. "Open" cases refer to those cases which are still in the review stage. "Completed" cases refer to those cases in which a determination of compliance or non-compliance by the Chief Compliance Officer.

Table 1 - Compliance Cases (Phase 1)  Report for Q1 (July 1 - September 30)			
Open from Q1	21	23	
Opened in Q2	3	10	
Phase 1 Completed in Q2	12	10	
Open at end of Q2	12	23	

A synopsis of selected compliance cases underway or completed during the quarter follows. These summaries are provided to help inform regulated energy companies about their compliance obligations and potential broader application.

- Sixteen of the cases closed in this period involved allegations of disputed signatures. Five of the cases involved three electricity retailers and eleven cases involved two natural gas marketers. Ten cases were dismissed as the allegation could not be validated. In the remaining six cases the licensees confirmed they would be contacting all customers enrolled by the agents against whom the allegations were made to verify the status of customer's contracts.
- Through the resolution of a customer complaint, it came to the attention of the Compliance Office that an electricity distributor had not performed a reconciliation of actual consumption for a significant number of budget billing accounts since 2003. Over 11,000 customers were affected. After working with the Compliance Office the distributor implemented a plan to notify each customer affected and allowed a 5 year interest free repayment plan for those customers

who owed money and issue rebate cheques for those customers who had a credit balance.

- The Board received an anonymous complaint regarding the electricity billing practices of a distributor that owns and operates a distribution system that is entirely located on land owned by an unlicensed distributor, specifically a seasonal campground for recreational vehicles. An investigation found that (a) the distributor purchases the electricity as a standard supply service from a licensed electricity distributor and retails it at a price that is no greater than the price for which it is purchased; (b) the distributor distributes the electricity at a cost that recovers, in total, only the amount it is billed by the licensed electricity distributor; and (c) the distributor allocates the charges on a reasonable basis. It was concluded that the distributor qualified for exempt status and was not in violation of any legislation or regulatory instruments. The case was closed.
- The Compliance Office reviewed a complaint about the connection fees that an
  electricity distributor was charging a customer to service a new factory. Staff
  reviewed the offer to connect and determined that the charges were reasonable.
  The customer continued to refuse to pay the amount and the distributor decided
  to negotiate with the customer to resolve all concerns.
- During this quarter, retailer/marketers reported compliance activities resulted in the cancellation of over 110 customer contracts with reimbursement amounts in excess of \$175,000.00.

#### 2. CONSUMER DISPUTE RESOLUTION SERVICE

Consumer Dispute Resolution Service (CDRS) refers to the activity of the Compliance Office in reviewing allegations of non-compliance filed by consumers against regulated energy companies. Review of the complaint includes bringing the complaint to the attention of the regulated energy company, assessing level of compliance or non-compliance and following up to ensure any resolution of the matter is reasonable. Table 2 shows the number of new CDRS issues/complaints that were reviewed and closed in the quarter.

Table 2 – CDRS - Complaints Reviewed  Report for Q2 (July 1 – September 30)				
	Natural Gas	Electricity	Business Plan Performance Metric Achievement*	
Reviewed and Closed in Q3	48	110 .	95%	

<sup>\*</sup> resolution for 90% of complaints facilitated within 90 days

The CDRS complaints typically involve the following types of issues:

Natural gas and electricity distributors – billing practices such as: estimation practices, meter readings, late payment charges and security deposit calculations.

Electricity retailers and natural gas marketers – contract management and processing issues as well as sales agent conduct complaints.

## 3. PROVIDING INFORMATION TO MARKET PARTICIPANTS

The Compliance Office promotes increased awareness and understanding of regulatory processes for regulated entities to help prevent market participants from unknowingly failing to meet their obligations. Market participants are encouraged to direct questions regarding legal and regulatory obligations to the Board through a dedicated Market Participant hotline and e-mail. Table 3 shows the total number of such enquiries responded to by staff within all branches of the OEB in the quarter.

Table 3 – Market Participant Enquiries				
Report for Q2 (July 1 - September 30)				
	Standard Sta			
Open from Q1	4	0		
Opened in Q2	225 .	14		
Closed in Q2	214	10		
Open at end of Q2	15	4		

Market participants should expect a response to a standard enquiry within 5 business days. During this quarter, the Market Participant hotline responded to enquiries within the requirement timeframe 96% of the time. Of the non-standard enquiries closed during the quarter, 100% were responded within the 45 business day metric.

The principal areas of enquiry included:

- Generator Connection
- Licence Requirements
- Audit/Accounting Requirements

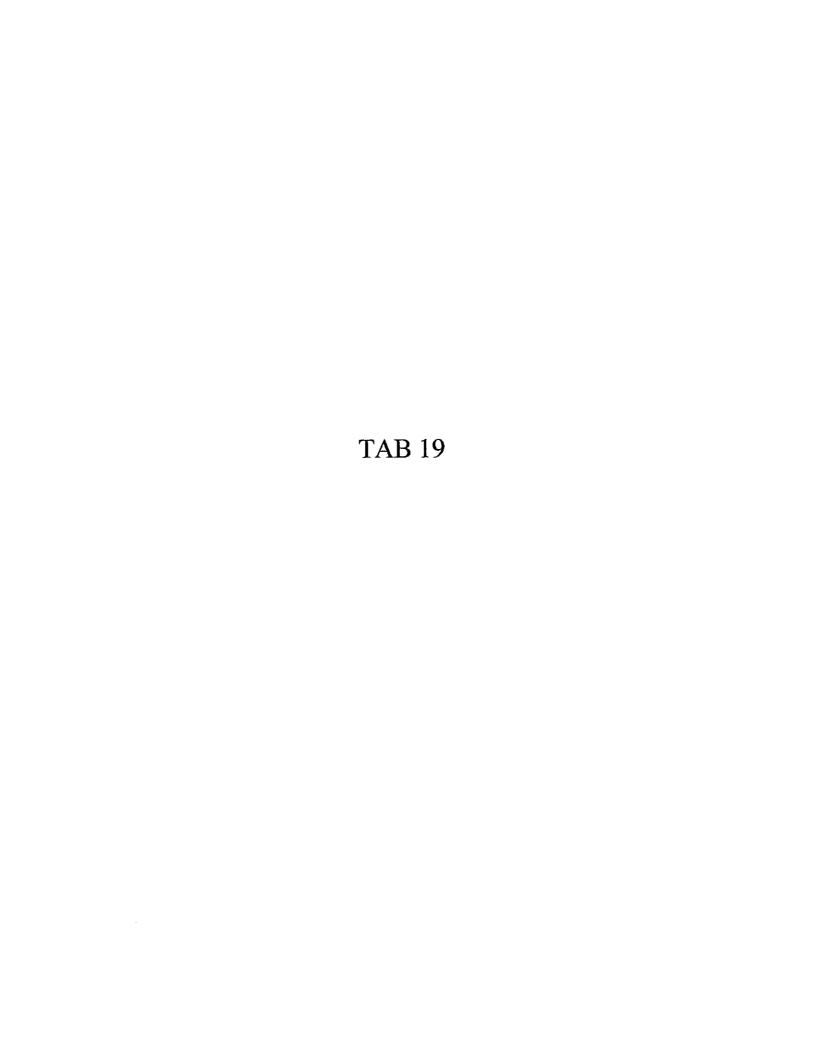
#### 4. EBT WORKING GROUPS

Compliance staff supervise the meetings of the Electricity and Natural Gas EBT Working Groups. The Electricity Working Group met twice during this period. At the September 5<sup>th</sup> meeting, a proposal (GI 820) to add billing data to the EBT Transactions and allow access to designated 3<sup>rd</sup> parties (e.g. DR aggregator) was discussed. The Working Group determined that it had no authority to make these changes at current

time. Drop Reason Codes (GI 821) were proposed to standardize the format in which reasons are appearing in the "reason text" field. Privacy concerns were raised by some utilities. A Sub-group will continue to develop the GI. Also, an update regarding utility amalgamations was provided.

During the September 19<sup>th</sup> meeting, Universal Energy advised that it had been assigned all WEG contracts. The switch from WEG to Universal will be effected through the enrol/switch process. Festival Hydro raised a question regarding the preferred treatment of a consumer that has a retail contract at one location, then opens an account at a second location without finalizing the account at the first location. It was suggested that Festival contact the relevant retailer to discuss the specific scenario and resolution. It was proposed that a process be standardized for the Invoice Settlement Detail when there is a zero Invoice Bill Ready. It was determined that such a process was not required at the current time because it did not impact many market participants, and would be a difficult challenge for some.

No issues arose for the Natural Gas EBT Working Group to discuss and therefore no meetings were held





## **Appendix E**

CONTRACTS AND APPLICATIONS FOR CONNECTING A GENERATOR TO THE LOCAL DISTRIBUTION SYSTEM

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INFORMATION IN A CONNECTION AGREEMENT FOR A LARGE EMBEDDED GENERATION FACILITY

## INFORMATION IN A CONNECTION AGREEMENT FOR A LARGE EMBEDDED GENERATION FACILITY

A Connection Agreement between a distributor and a generator in relation to a large embedded generation facility shall contain specific terms and conditions relating to connection and access to the distributor's distribution system. Such terms and conditions include, but are not limited to, the following:

- 1. Requirements for the inspection and testing of equipment.
- 2. Requirements for maintenance of the equipment.
- 3. Worker protection and safety considerations, and measures to protect the public and the environment.
- 4. Requirements for protection systems associated with the connection and the need for periodic maintenance and testing.
- 5. Requirements for reporting any change affecting connected equipment of the configuration of this equipment.
- 6. Protocols for the provision of load forecast or forecasts of information.
- Terms and conditions for disconnection and reconnection, including as to the responsibility for the payment of costs associated with reconnection.
- 8. Requirements for coordinating maintenance and operations.
- 9. Duration and termination conditions.
- 10. Details of the connection point, including the ownership of the facility.
- 11. Connection service charges and payment conditions.
- 12 Requirements for reporting changes affecting access to metering, monitoring and telemetry equipment.
- 13. Circumstances that would require re-negotiation of the Connection Agreement.
- 14. Exchange procedures for information requirements.
- 15. Communication and operating protocols between distributor and generator for routine day- to day operating matters and under emergency conditions.
- 16. Access to connection facilities.
- 17. Assignment of Controlling Authority.
- 18. Work Protection.

- next unless the Customer is at the relevant time a net metered generator
- if the Customer is an Embedded Retail Generator (see section 2.4)
  the Distributor will settle all applicable payments and charges in
  - the Distributor will settle all applicable payments and charges in accordance with the Retail Settlement Code
- 5.3 Billing and settlement activities will be conducted in accordance with the procedures set out in Schedule E.

## 6. Representations and Warranties

- 6.1 The Customer represents and warrants to the Distributor as follows, and acknowledges that the Distributor is relying on such representations and warranties without independent inquiry in entering into this Agreement:
  - (a) the Facility is fully and accurately described in the Application;
  - (b) all information in the Application is true and correct;
  - (c) the Facility is in compliance with all applicable technical requirements and laws:
  - (d) the Customer has been given warranty information and operation manuals for the Facility;
  - (e) the Customer has been adequately instructed in the operation and maintenance of the Facility and the Customer has developed and implemented an operation and maintenance plan based on those instructions;
  - (f) if the Customer is a corporation or other form of business entity, the Customer is duly incorporated, formed or registered (as applicable) under the laws of its jurisdiction of incorporation, formation or registration (as applicable);
  - (g) the Customer has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
  - (h) this Agreement constitutes a legal and binding obligation on the Customer, enforceable against the Customer in accordance with its terms;
  - (i) the Customer holds all permits, licences and other authorizations that may be necessary to enable it to own and operate the Facility; and
  - (j) any individual signing this Agreement on behalf of the Customer has been duly authorized by the Customer to sign this Agreement and has the full power and authority to bind the Customer.
- 6.2 The Distributor represents and warrants to the Customer as follows, and acknowledges that the Customer is relying on such representations and warranties without independent inquiry in entering into this Agreement:
  - (a) the Distributor is duly incorporated under the laws of Ontario;
  - (b) the Distributor has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement;
  - (c) this Agreement constitutes a legal and binding obligation on the Distributor, enforceable against the Distributor in accordance with its terms; and
  - (d) any individual signing this Agreement on behalf of the Distributor has been

duly authorized by the Distributor to sign this Agreement and has the full power and authority to bind the Distributor.

### 7. Disconnection Device at the Point of Connection

7.1 The Customer shall furnish and install a disconnection switch at the point of connection for the Facility that opens, with a visual break, all ungrounded poles of the connection circuit. The disconnection switch at the point of connection shall be rated for the voltage and fault current requirements of the Facility, and shall meet all applicable CSA standards, ESA requirements, and all other applicable laws. The switch enclosure, if applicable, shall be properly grounded. The disconnection switch at the point of connection shall be accessible at all times, located for ease of access to the Distributor's personnel, and shall be capable of being locked in the open position. The Customer shall follow the Distributor's procedures for switching, clearance, tagging, and locking.

## 8. Modifications to the Facility

8.1 The Customer shall not modify its connection assets or the Facility except in accordance with this section. Where the modification will not increase the maximum electrical output of the Facility, the Customer shall give the Distributor no less than 15 working days notice prior to the date on which the modification will be completed. Where the modification will increase the maximum electrical output of the Facility, the Customer shall submit a new application for connection to the Distributor. The Distributor shall process that application for connection in accordance with the Code. The Customer shall not commence such modification until that process has been completed.

#### 9. Insurance

9.1 Throughout the term of this Agreement, the Customer shall carry commercial general liability insurance for third party bodily injury, personal injury, and property damage in an amount as follows:

[Parties to check the applicable box below]

- if the Facility is a Small Embedded Generation Facility (see section 2.1) not less than \$1,000,000 per occurrence and in the annual aggregate
- if the Facility is a Mid-sized Embedded Generation Facility (see section 2.1)

not less than \$2,000,000 per occurrence and in the annual aggregate

Prior to execution of this Agreement, the Customer shall provide the Distributor with a valid certificate of insurance. The Customer shall provide the Distributor with prompt notice of any cancellation of the Customer's insurance by the insurer.

## 10. Liability and Force Majeure

**TAB 20** 

## **Excerpts From Retail Settlements Code**

## 3.2 Distribution Losses and Unaccounted for Energy

When determining retail settlement costs, a distributor shall adjust measured consumption at a consumer's meter for total losses. The sum of total losses for a distribution system equals the difference between wholesale energy delivered to a distributor (including supply from embedded retail generators and load transfers) and the total energy measured at all retail and wholesale consumers' meters connected to the distribution system.

A distributor shall purchase energy from an embedded retail generator within its service area where such embedded retail generator has indicated that it intends to generate electricity for delivery and sale directly to the distributor, provided that the embedded retail generator has obtained such licences from the Board as may be required.

## 12 RETAILER/DISTRIBUTOR RELATIONSHIP

A distributor shall enter into a Service Agreement with each retailer licensed by the Board who wishes to provide electricity services to consumers connected to the distributor's distribution system and who wishes to utilise retail settlement services offered by the distributor. The Service Agreement shall be in the form approved by the Board and set out in Appendix C.

#### APPENDIX C - SERVICE AGREEMENT

Article 2.4 (a):

This Agreement shall terminate on the earlier of:

- (i) the date the Retailer informs the Distributor that it no longer is operating as a retailer in the Distributor's service territory;
- (ii) the date of suspension, revocation, cancellation, or non-renewal of the Retailer's licence.

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# SERVICE AGREEMENT GAS DISTRIBUTION ACCESS RULE

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#### SERVICE AGREEMENT

This Service Agreement made this _	day of,	<u>.</u>
BETWEEN	, (the "Gas Distributor")	
AND	, (the "Gas Vendor")	
From time to time, the Gas Vendor a "Party" and collectively as the "Parti	and the Gas Distributor shall be individually referred to in thies".	his Agreement as a

WHEREAS the Gas Vendor provides or wishes to provide gas supply services to consumers in the franchise area of the Gas Distributor.

AND WHEREAS the Gas Distributor is required by Chapter 3 of the Gas Distribution Access Rule to enter into a Service Agreement with each vendor who provides or wishes to provide gas supply services to consumers in the franchise area of the Gas Distributor.

NOW THEREFORE for and in consideration of the covenants and conditions hereinafter set forth, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties mutually agree as follows:

# **Article 1 - Interpretation**

#### 1.1 Definitions

Unless otherwise defined in this Agreement, words and phrases shall have the meaning ascribed to them in the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, or the Gas Distribution Access Rule, as the case may be.

In this Agreement, unless the context otherwise requires:

"Act" means the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B;

"Agreement" means this agreement, and all exhibits and appendices referenced herein and attached hereto;

"Applicable Laws" means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, direction, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of either of the Parties;

"applicant" has the meaning given to it in section 6.3;

"bill-ready" means a form of gas distributor-consolidated billing where the Gas Vendor provides to the Gas Distributor the calculated dollar amount for the gas commodity charges payable by the customer;

"Bill-ready Date" means the date prescribed in the Rule or otherwise by the Board as the date on which the Gas Distributor is required to accommodate a bill-ready form of gas distributor-consolidated billing;

"Billing Period" in respect of a customer means each consecutive period of approximately one month established by the Gas Distributor for such customer in accordance with the Gas Distributor's customary billing procedures;

"Board" means the Ontario Energy Board;

"business day" means any day that is not a Saturday, Sunday or statutory holiday as defined in the Province of Ontario;

"Claim" means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review and all costs and expenses relating thereto;

"Collection Fee" has the meaning given to it in Appendix B;

"Confidential Information" in relation to a Party means all confidential information concerning the business, operations, financing and affairs of that Party, including without limiting the generality of the foregoing, the following:

- (a) all trade secrets and know-how of the Party;
- (b) all information relating to the Party or to any person with which the Party does business, including the credit history and consumption information pertaining to a customer of a Party;
- (c) the Party's customer list and records;
- (d) the Party's marketing, pricing and sales policies, techniques and concepts;
- (e) the habits and preferences of the Party's customers and prospective customers; and
- (f) the Party's financial records,

and, in the case of the Gas Vendor, includes Gas Vendor information to the extent that it is confidential information

as described above;

"consumer" means a person who uses gas for that person's own consumption;

"consumer information" means, in respect of a Gas Distributor, the data and/or information collected and maintained by the Gas Distributor pursuant to section 5.1 of the Rule and, in respect of a Gas Vendor, means the data and/or information about a consumer collected and maintained by the Gas Vendor;

"Defaulting Party" has the meaning given to it in section 2.6(b);

"Delivered Volume" means the volume of gas (less any Fuel Gas) delivered during a calendar month to the Gas Distributor pursuant to an agreement between the Gas Distributor and the Gas Vendor for the delivery of gas;

"Effective Date" has the meaning given to it in section 2.4;

"Enrol Request" means an STR for a change of gas supply for a consumer from system gas to the Gas Vendor or from a gas vendor to the Gas Vendor;

"EBT" means Electronic Business Transaction;

"franchise area" means the area of the Province of Ontario either for which the Gas Distributor holds a Certificate of Public Convenience and Necessity granted by the Board, or in which the Gas Distributor was supplying gas on April 1, 1933;

"Fuel Gas" means in respect of any gas to be delivered by a customer to the Gas Distributor, the fuel ratio (expressed as a percentage of the volume of such gas) in effect from time to time for gas transportation service, as established by the relevant Gas Transporter;

"gas distribution services" means the services related to the delivery of gas to a consumer, including related safety functions such as emergency leak response, line locates, inspection, and provision of safety information;

"gas distribution system" means a system used to provide gas distribution services;

"gas distributor-consolidated billing" means a method of billing whereby the Gas Distributor issues a single bill to a consumer setting out the charges for gas distribution services and the charges for the gas commodity;

"Gas Transporter" means a person, other than the Gas Distributor, with which the Gas Distributor or a customer (or the Gas Vendor on a customer's behalf) has contracted to transport gas from or to any point of acceptance;

"gas vendor-consolidated billing" means a method of billing whereby the Gas Vendor issues a single bill to a consumer setting out the charges for gas distribution services and the charges for the gas commodity;

"Gas Vendor information" means data and/or information provided by the Gas Vendor to the Gas Distributor concerning the Gas Vendor;

"Governmental Authority" means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local government, or other subdivision thereof;

"Incorporated Agreements" has the meaning given to it in section 2.1(d);

"Indemnifying Party" has the meaning given to it in section 7.2;

"Invoice" has the meaning given to it in Appendix B;

"Invoice Amount" has the meaning given to it in Appendix B;

"licence" means a licence issued by the Board;

"meter" means a device owned or controlled by the Gas Distributor and used to measure the units of gas consumption which form the basis for billing the consumer;

"Monthly Volume" in respect of a customer for a Billing Period means the volume of gas (expressed in cubic metres) delivered by the Gas Distributor to such customer during such Billing Period;

"person" means an individual, partnership, corporation, association, or other incorporated or unincorporated organization or legal entity;

"price" means the amount (expressed in cents per cubic metre) specified by the Gas Vendor in an STR in respect of, and applicable to, a customer, and which the Gas Vendor has associated with such customer;

"rate-ready" means a form of gas distributor-consolidated billing where the Gas Vendor provides to the Gas Distributor price information sufficient for the Gas Distributor to calculate the gas commodity charges payable by the customer;

"Rule" means the "Gas Distribution Access Rule" made by the Board;

"Service Transaction Request" or "STR" means a direction to the Gas Distributor as contemplated in Article 4 of the Rule or in the EBT standards and related requirements set out in Appendix D;

"split billing" means a method of billing whereby the Gas Distributor issues a bill to a consumer setting out the charges for gas distribution services, and the Gas Vendor issues a bill to a consumer setting out the charges for the gas commodity;

"system gas" means gas which is sold or available to be sold by the Gas Distributor to a consumer; and

"Terminating Party" has the meaning given to it in section 2.6(b).

#### 1.2 Sections and Headings

The division of this Agreement into Articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### 1.3 Number

Words importing the singular include the plural and vice versa.

#### 1.4 Gas Supply Services

The provision of gas supply services includes the sending or receipt of STRs by a Gas Vendor in order to have access to or to provide consumer information.

#### 1.5 Other Charges and Meaning of Split Billing

- (a) A bill issued by a Gas Distributor under gas distributor-consolidated billing or split billing shall, where applicable, include charges for gas transportation and/or gas storage in addition to charges for gas distribution services and charges for the gas commodity, and the terms "bill-ready" and "rate-ready" shall be interpreted accordingly.
- (b) A bill issued by a Gas Vendor under gas vendor-consolidated billing or split billing shall, where applicable, include charges for gas transportation and/or gas storage in addition to charges for gas distribution services and charges for the gas commodity.

(c) For purposes of this Agreement, split billing shall not include a method of billing whereby the Gas Distributor issues a bill to a consumer setting out the charges for gas distribution services (and where applicable other charges referred to in section 1.5(a)) and the Gas Vendor issues a bill to a consumer setting out the charges for the gas commodity (and where applicable other charges referred to in section 1.5(b)) in circumstances where the Gas Vendor does not require consumer consumption information from the Gas Distributor for billing purposes. Without limiting the generality of the foregoing, in such cases nothing shall require the Parties to negotiate amendments to this Agreement under section 4.1(c) to give effect to or allow that form of billing.

# Article 2 - Scope and Term

All appendices referenced in this Agreement and attached hereto shall be considered part of this Agreement and incorporated herein.

#### 2.1 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior understanding and agreements between the Parties with respect to the same.
- (b) A reference to a document or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision of that document.
- (c) The Gas Vendor acknowledges and agrees that the Gas Distributor is, subject to any exemption that has been granted to the Gas Distributor by the Board, bound at all times to comply with the Rule in addition to complying with the provisions of this Agreement.
- (d) Attached as Appendix E to this Agreement are other agreements executed between the Parties prior to the Effective Date in relation to the delivery or supply of gas to consumers (the "Incorporated Agreements") and which as of the Effective Date form an integral part of this Agreement. Neither Party shall enforce any provision of any Incorporated Agreement that is contrary to or inconsistent with the Rule or any provision of the remainder of this Agreement that has been approved or required by the Board, or apply any provision of any Incorporated Agreement in a manner that is contrary to or inconsistent with the Rule or any provision of the remainder of this Agreement that has been approved or required by the Board. For greater certainty:
  - (i) in the event of an inconsistency or conflict between a provision of an Incorporated
    Agreement and a provision of either the Rule or any provision of the remainder of this
    Agreement that has been approved or required by the Board, the provision of the Rule or
    of the remainder of this Agreement shall govern; and,
  - (ii) a provision in an Incorporated Agreement is not contrary to or inconsistent with the Rule or any provision of the remainder of this Agreement that has been approved or required by the Board simply by reason of the fact that the Rule or of the remainder of this Agreement does not expressly contemplate such provision or is silent on the matter.

#### 2.2 Relationship of the Parties

Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate or agency between the Parties. No provision contained herein shall be construed as authorizing or empowering either Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf, or in the name, of the other Party in any manner, or to make any representation, warranty or commitment on behalf of the other Party, except as shall be provided for herein.

#### 2.3 Agent or Broker Only

- (a) Where the Gas Vendor acts or offers to act as an agent or broker only and is not selling gas to any customer, Article 3 and Appendix B do not apply.
- (b) Where the Gas Vendor becomes a seller of gas after the Effective Date, the Gas Vendor shall immediately notify the Gas Distributor in writing, and the entirety of this Agreement shall thereafter apply to the Parties.

#### 2.4 Term of Agreement Effective Date

The term of this Agreement shall commence on the date of execution of this Agreement by the last Party to execute this Agreement (the "Effective Date").

#### 2.5 Existing Customers

Nothing in this Agreement shall affect any agreements in effect for the supply of gas between the Gas Vendor and customers of the Gas Vendor prior to the Effective Date. As of the Effective Date, a successful Enrol Request STR shall be deemed to have been completed in respect of each such customer.

#### 2.6 Termination

#### (a) Mandatory Termination

This Agreement shall automatically terminate on the earlier of:

- (i) the date the Gas Vendor informs the Gas Distributor in writing that it no longer is operating as a gas vendor in the Gas Distributor's franchise area;
- (ii) the date of revocation, cancellation, transfer or non-renewal of the Gas Vendor's licence, if applicable, of which the Gas Vendor shall notify the Gas Distributor in writing, if the Gas Vendor's customers are all low-volume consumers as defined in section 47 of the Act; or
- (iii) the date of revocation, cancellation, transfer or non-renewal of the Gas Distributor's right to distribute gas in the subject franchise area, of which the Gas Distributor shall notify the Gas Vendor in writing.

#### (b) Permissive Termination

A Party (the "Terminating Party") shall have the option to terminate this Agreement upon the occurrence of any one or more of the events listed in section 2.7(a) (an "Event of Default") in relation to the other Party (the "Defaulting Party"). Where an Event of Default has occurred, the Terminating Party may give notice to the Defaulting Party, in accordance with section 7.7, setting out the details of the Event of Default. Subject to section 2.7(c), where such notice has been given, this Agreement shall terminate:

- in the case of the Event of Default referred to in section 2.7(a)(iii), on the date specified in the notice; or,
- in the case of any other Event of Default, after 10 business days have elapsed from the giving of notice by the Terminating Party,

unless the Defaulting Party has, within that time period, rectified the Event of Default and has given notice, in accordance with section 7.7, that the Event of Default has been rectified. If the Terminating Party does not accept the actions taken by the Defaulting Party to rectify the Event of Default, either Party may seek a conclusive determination of the issue in accordance with Article 6.

- (c) Articles 5 and 6 and section 7.7 survive the termination of this Agreement.
- (d) Termination of this Agreement shall not affect the liabilities of either Party that were incurred or arose under this Agreement prior to the time of termination, and shall be without prejudice to the right of the Terminating Party to pursue all legal and equitable remedies that may be available to it.
- (e) Where this Agreement terminates under section 2.6(b) as a result of an Event of Default having occurred in relation to the Gas Vendor, the Gas Distributor shall notify the Gas Vendor and the Gas Vendor's customers, and shall transfer the customers to system gas according to a procedure specified by the Gas Distributor in the notice.
- (f) Where this Agreement terminates under section 2.6(a)(i) or 2.6(a)(ii), the Gas Distributor shall notify the Gas Vendor and the Gas Vendor's customers. The Gas Distributor shall transfer each such customer to system gas according to a procedure specified by the Gas Distributor in the notice unless

an STR to transfer the customer to another gas vendor is then pending.

(g) Where this Agreement terminates under section 2.6(a)(iii), the Gas Vendor shall notify its customers unless the new gas distributor for the franchise area formerly served by the Gas Distributor has provided that notification.

#### 2.7 Events of Default

- (a) Any one or more of the following constitutes an Event of Default in respect of a Party:
  - if the Party fails to provide or maintain the financial security required by this Agreement or is in breach of any of the terms or conditions of such security;
  - (ii) if the Party fails to perform or observe any material obligations under this Agreement on its part to be observed and performed and such failure shall continue unremedied following notice thereof from the Terminating Party for a period of thirty days;
  - (iii) if the Party files a petition in bankruptcy, makes application or files a petition seeking any reorganization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Party, or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Party and is not stayed, otherwise enjoined or discharged within fifteen business days;
    - (iv) if the Party ceases carrying on business in the ordinary course, commits any act of bankruptcy under the Bankruptcy and Insolvency Act or is wound up;
    - (v) if any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of the Party becomes enforceable against any property of the Party; or,
    - (vi) in the case of the Gas Vendor, if the Gas Vendor's customers are all low-volume consumers as defined in section 47 of the Act and the Gas Vendor's licence is suspended and not reinstated within ten business days.
- (b) A Party that becomes aware of the occurrence of an Event of Default in relation to itself or of circumstances that may give rise to an Event of Default in relation to itself shall promptly so notify the other Party.
- (c) Each of the above-noted Events of Default have been inserted for the benefit of the Terminating Party and may be waived by the Terminating Party in whole or in part at any time by notice to the Defaulting Party. The Terminating Party may extend the period for the remediation of any such Event of Default (if any) provided that the Defaulting Party is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Terminating Party that the steps being taken by the Defaulting Party are likely to remedy the Event of Default within a reasonable period of time.

#### 2.8 Approvals and Consents

Where this Agreement requires the approval or consent of a Party, such approval or consent shall not be unreasonably withheld or delayed.

# **Article 3 - Security Arrangements**

#### 3.1 Determination of Security Requirement

The Gas Distributor may, but is not obligated to, require security from the Gas Vendor. Should the Gas Distributor determine that security is required, the security shall be governed by the requirements of this Article 3.

#### 3.2 Allowable Forms of Security

The form of security shall be:

- (a) irrevocable letter of credit;
- (b) cash deposit;
- (c) pre-payment; or,
- (d) a combination of the above,

at the discretion of the Gas Vendor. A Gas Vendor may, with the consent of the Gas Distributor, provide security in a form other than a form identified above, including in the form of a parental guarantee. The Gas Distributor will review and satisfy itself as to the enforceability of all security documents in a timely manner prior to the processing of any Service Transaction Request submitted to it by the Gas Vendor.

#### 3.3 Interest on Cash Deposits

Compound interest shall accrue monthly on security provided in the form of a cash deposit. The interest rate shall be the Prime Business Rate as published on the Bank of Canada's website less two (2) percent. The interest accrued shall be paid out at least once every 12 months, or on return or realization of the security, whichever comes first.

#### 3.4 Determination of Amount of Security

The maximum amount of security which the Gas Distributor may require from the Gas Vendor (the "Maximum Security Amount") shall be equal to the following, subject to adjustment in accordance with section 3.5:

- (a) the maximum forecast debit banked gas account applicable to the Gas Vendor valued at the NYMEX Dawn Basis price for the applicable 12 month period; minus,
- (b) the maximum forecast amount by which the forecasted amounts collected for commodity by the Gas Distributor in respect of all customers supplied, or represented, by the Gas Vendor, exceed forecasted amounts remitted for commodity by the Gas Distributor to the Gas Vendor in respect of all customers supplied, or represented, by the Gas Vendor for the applicable 12 month period; minus,
- (c) any security deposits held by the Gas Distributor, which have been paid to the Gas Distributor by customers supplied, or represented, by the Gas Vendor.

#### 3.5 Reductions to the Maximum Security Amount

The Gas Vendor's Maximum Security Amount shall be reduced in accordance with the calculations set out below:

#### (i) Credit Rating Adjustment

The Gas Vendor's credit rating will be used to reduce the Maximum Security Amount under section 3.4, in accordance with Table 1 - Credit Rating Adjustment Table. If the Gas Vendor is only able to provide the credit rating of its parent company, the reduction to the Gas Vendor's Maximum Security Amount shall be 50% of that indicated in Table 1 - Credit Rating Adjustment Table; provided that the Gas Vendor has provided security in the form of a parental guarantee.

**TAB 22** 

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Ontario Energy Board P.O. Box 2319 26th. Floor 2300 Yonge Street Toronto ON M4P 1E4 Telephone: 416- 481-1967 Facsimile: 416- 440-7656 Toli free: 1-888-632-6273

Commission de l'Énergie de l'Ontario C.P. 2319 26e étage 2300, rue Yonge Toronto ON M4P 1E4 Téléphone; 416- 481-1967 Télécopieur: 416- 440-7656 Numéro sans frais: 1-888-632-6273



Compliance Office

# Compliance Office Quarterly Activity Report

Third Quarter 2007-08 Fiscal

The Ontario Energy Board (OEB) is committed to publishing quarterly reports on the activities of the Compliance Office. This report provides details as to the level of activity as well as an overview of matters resolved between October 1 and December 31, 2007.

The quarterly report is separated into three sections dealing with each role of the Compliance Office: compliance management, consumer dispute resolution and providing information to market participants.

A highlight of other compliance activity undertaken in the third quarter includes:

- Amendments to the Electronic Business Transaction Standards (EBT Standards) were authorized by the Board with an implementation date of January 21, 2008.
- At a quarterly meeting of all retailers and marketers, the Chief Compliance
  Officer (CCO) discussed his concerns with recent reports from consumers
  regarding retailer / marketer activity. These included allegations of agents
  misrepresenting their affiliation, agents not leaving behind a business card as
  required, inappropriate smart meter price comparisons and poor reaffirmation
  calls. The CCO advised retailers and marketers that the Compliance Office will
  be looking at what action is possible if it is proven that these practices continue.

#### 1. COMPLIANCE MANAGEMENT

Compliance Management refers to allegations of non-compliance which are reviewed to assess whether, and to what extent, a regulated energy company has breached a legal or regulatory obligation.

Table 1 shows the number of Phase 1 compliance cases under review during the third quarter, including those that have been completed and the number on-going. Phase 1 cases encompass activity up to, and including, a determination of compliance or non-compliance by the Chief Compliance Officer (CCO).

Table 1 - Compliance Cases (Phase 1)  Report for Q3 (October 1 - December 31)						
Open from Q2	1	21				
Opened in Q3	3	19				
Phase 1 Completed in Q3	1	19				
Open at end of Q3	3	21				

A synopsis of selected compliance cases underway or completed during the quarter follows. These summaries are provided to help inform regulated energy companies about their compliance obligations and potential broader application.

- A distributor agreed to resolution for several individual compliance cases involving concerns with its generation connection processes.
- The Compliance Office closed three disputed signature cases against an electricity retailer and one disputed signature case against a natural gas marketer. Both companies confirmed they would be contacting all customers enrolled by the agents against whom the allegations were made to verify the status of customers' contracts.
- The CCO was presented by an electricity retailer with an action plan for contacting over 7,500 customers for whom the retailer was unable to prove that contract terms and conditions were received. The action plan is under consideration by the CCO.
- Following a compliance review, the CCO requested an electricity distributor negotiate a fair settlement of an outstanding amount with a customer that was incorrectly billed the regulated commodity rate after signing a contract with an electricity retailer. The CCO stated it would be reasonable that any payment arrangement allow the customer to pay its share of the outstanding amount over two years, the same period of time that the billing error occurred.
- Following a review of a retailer's marketing material the Compliance Office met with the retailer to communicate its view that the material was misleading. The retailer discontinued use of the material and is in the process of reviewing new marketing material with staff in the Compliance Office.

• In a letter to a market participant, the CCO provided his view that the participant would meet the requirements for an exemption from a distribution licence, rate regulation and other distribution related statutory requirements in its provision of electricity distribution services to a nearby industrial facility. The CCO's view was informed by the fact that the distribution facilities will be located entirely land on which one of the types of buildings or facilities listed in the section are also located. In order for this exemption to be applicable, the participant must ensure that it also meets the condition that it distributes electricity for a price no greater than that required to recover all reasonable costs.

#### 2. CONSUMER DISPUTE RESOLUTION SERVICE

Consumer Dispute Resolution Service (CDRS) refers to the activity of the Compliance Office in reviewing allegations of non-compliance filed by consumers against regulated energy companies. Review of the compliant includes bringing the compliant to the attention of the regulated energy company, assessing level of compliance or non-compliance and following up to ensure any resolution of the matter is reasonable. Table 2 shows the number of new CDRS issues/complaints that were reviewed and closed in the guarter.

Table 2 – CDRS - Complaints Reviewed Report for Q3 (October 1 – December 31)							
	Natural Gas	Electricity	Business Plan Performance Metric Achievement*				
Reviewed and Closed in Q3	57	118	91%				

<sup>\*</sup> resolution for 90% of complaints facilitated within 90 days

The CDRS complaints typically involve the following types of issues:

Natural gas and electricity distributors – billing practices such as: estimation practices, meter readings, late payment charges and security deposit calculations.

Electricity retailers and natural gas marketers – contract management and processing issues as well as sales agent conduct complaints.

### 3. PROVIDING INFORMATION TO MARKET PARTICIPANTS

The Compliance Office promotes increased awareness and understanding of regulatory processes for regulated entities to help prevent market participants from unknowingly failing to meet their obligations. Market participants are encouraged to direct questions regarding legal and regulatory obligations to the Board through a dedicated Market Participant hotline and e-mail. Table 3 shows the total number of such enquiries responded to by staff within all branches of the OEB in the third quarter.

Table 3 – Market Participant Enquiries						
Report for Q3 (October 1 - December 31)						
Standard Non- Standard						
Open from Q2	11	7				
Opened in Q3	266	10				
Closed in Q3	274	15				
Open at end of Q3	3	2				

Market participants should expect a response to a standard enquiry within 5 business days. During the third quarter, the Market Participant hotline responded to 274 enquiries, 98% of which were responded to within 5 business days. Of the 15 non-standard enquiries closed during the quarter, 100% were responded within the 45 business day metric.

The principal areas of enquiry included:

- Renewable Energy Standard Offer Program and distributed generation
- 2008 IRM (Incentive Rate Mechanism) Applications
- Licensing requirements
- Smart Meters / Sub-metering



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Sent: Monday, June 08, 2009 1:14 PM

To: John Norrie

Subject:

John,

My client, when has forwarded your email of April 22, 2009 with attached form of suite meter customer agreement and summary for my review. I will provide comments by the end of the week. In the meantime, I do not see any financial or other incentive included as consideration for the developer committing to this agreement now on behalf of the unit owners and Board. Please advise whether there exists any such incentive and if so, how it is to be delivered to the developer.

Thanks,

1 First Canadian Place 100 King St. West Toronto, ON M5X 1B2 Direct Line:

Facsimile: 4

•n<mailto:

This message and any attachments are intended only for the addressee(s) and may contain privileged or confidential information. Any unauthorized disclosure is strictly prohibited. If you have received this message in error, please notify us immediately so that we may correct our internal records. Please then permanently delete the original message and any attachments and destroy any copies. Thank you.

This e-mail may contain information that is privileged, confidential and/or exempt from disclosure.

No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s).

Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify the sender and destroy all copies of this e-mail. Our privacy policy is available at

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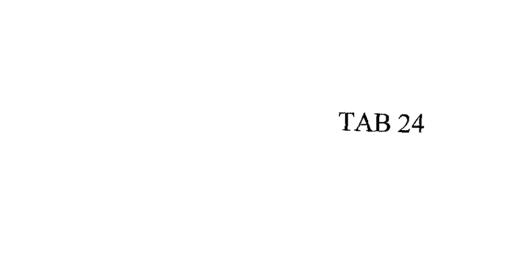
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# Individual Suite Metering Proposal

To

For

Toronto, Ontario

April 29, 2008

Company		ER INFORMATIO		Contact		
Address				Phone	-	الريوب المراجع
	To	ronto, ON		Fax		
. PROJ	ÉCT	INFORMATION				
DESCRIPT		Location	Table 1			
UNIT COU	N.T.	Residential Units	353	Comr	non Area	11
UNII COU	NI.	Townhouse Units	12	Collin	((01171202	
		Retail Units	25			·
		Total Units	390			
SCHADENE		First Occupancy			**************************************	South the same of
: 1288	3	Makins M	i i	(2) (A) (A) (A) (A) (A) (A) (A) (A) (A) (A		A THE SALES OF THE
		nmission of Interva	Meters	l S	o charge to	the Customer
		tomer for Installati			\$39,0	00.00

# 4. OBLIGATIONS OF AND THE CUSTOMER

### (a) Obligations of

Meters

- (i) Review architectural and electrical drawings to create design of individual suite metering for incorporation in final electrical drawings by customer;
- (ii) Provide installation specifications and procedures to the Customer's electrical contractor;
- (iii) Coordinate construction with the Customer, electrical contractor and host utility;
- (iv) Supply all individual suite metering and automatic meter reading components;
- (v) Commission all individual suite metering and automatic meter reading components
- (vi) Provide a payment toward the installation of the description Meters and associated components to the Customer as noted in section 3 above;
- (vii) Coordinate energization of electrical distribution system with the Customer's electrical contractor:
- (viii) Coordinate transfer of host utility account, and set up of individual occupant billing accounts with cooperation of customer as required:
- (ix) Operate and maintain specific components of the electrical distribution system;
- (x) Provide emergency response and service calls;
- (xi) Own and maintain the Meters in accordance with Measurement Canada requirements; and
- (xii) Read the share Meters, prepare monthly billing statements as per approved rates (following the format prescribed by the Ontario Energy Board) and handle all collection and settlements.

#### (b) Obligations of the Customer

- Ensure condominium disclosure documents specify individual suite metering for electricity and occupant responsibility for payment of electricity commodity and distribution charges as provided by a distributor;
- (ii) Provide a copy of the condominium disclosure documents to supplemental information to purchasers regarding if necessary;

Confidential Document Page 2 of 3

#### Individual Suite Metering Proposai

- (iii) Provide architectural and electrical drawings;
- (iv) Design, provide and construct all electrical infrastructure from the host utility point of demarcation up to and including the Meters;
- (v) Ensure all electrical infrastructure such as switch compartments, distribution panels, cabinets and other components as necessary, accommodate the installation of Meters, instrument transformers, transponders and associated components as designed;
   (vi) Install all individual suite metering, common area metering, automatic meter reading
  - Install all individual suite metering, common area metering, automatic meter reading components, associated components and power supplies according to design and specifications;
  - ii) Perform an infrared scan of electrical infrastructure upon completion of installation and repair all faults;
- (viii) Provide dedicated telephone lines as noted in the design.

#### 5. ACCEPTANCE

The financial terms referenced above in section 3 are valid for a period of 30 days from the date of this proposal. Revisions to the design required as a result of changes by the Customer or others may result in modifications to such financial terms.

Forthwith after signing this Offer, the parties agree to enter into a Utility Services and Supply Agreement (on the standard form) incorporating the terms and conditions of this proposal.

#### 6. CONFIDENTIALITY

The Customer agrees that the information contained in this proposal is confidential information. This proposal has been presented on the understanding that the Customer shall not disclose the details of this proposal to any other hydro distribution company, sub-metering service provider or other party and will disseminate the details of this Offer only to its respective directors, officers, employees, consultants, agents, advisors or representatives, if any, directly concerned with the evaluation of this proposal. The Customer agrees that all such individuals shall be made aware of this confidentiality obligation.

Per:
Name:

Name:

Name:

Name:

Date: July 2, 2008

Per:

Per:

Name:

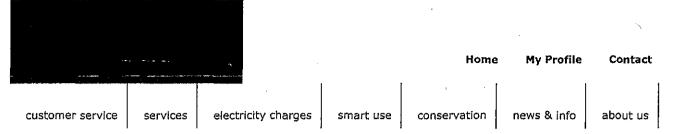
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Date: July 02, 5008

Confidential Document
Page 3 of 3

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# **Frequently Asked Questions**

#### My Account

What should I be looking for when I review my profile?

Your smart meter can help you manage the two things that have the biggest impact on your bill: peak use and consumption. If your peak use is high, consider staggering the simultaneous use of major appliances to reduce your peak hourly use and lower your monthly bill. And, once Time-of-Use pricing kicks in, consider reducing or shifting your consumption away from peak times to periods of lower demand and lower costs.

Finally, look at your base consumption of electricity. Does it seem high to you? If so, you should investigate whether you have a problem with "phantom electricity loads". A phantom load is an electric device that consumes power even when it is turned off. The average home can have up to 20 or more phantom loads including TVs, cordless phones, microwaves, washers and dryers, lighting dimmers, computers etc.

#### Where should I mail my payment?

What bill payment options are available?

In addition to mailing in their payments or enrolling in the Auto-Pay program (which withdraws monthly bill payments from a designated bank account on the due date of the bill) customers may also pay their bill at a local bank branch, via telephone or the internet. Customers who select the online options should be sure to choose the proper payee (and payments) from the available options. VISA, MasterCard and American Express credit card payments are also accepted via Paymentus. To access the Paymentus option, contact Paymentus by calling the payment of use the Pay Bill by Credit Card option which is on our website home page at

# If my power has been disconnected for non-payment, how do I get it reconnected?

calling Paymentus Services at Once your payment is made, you will need to contact the Customer Care Centre at the Customer Care Centre (Care Option Care Optio

Should you require after-hours reconnection, you will be required to pay your arrears amount, the \$115.50 disconnection fee, the \$115.50 reconnection fee and an additional \$267.50, prior to having your service reconnected.

If I get disconnected, when is the soonest I can get reconnected?

Once you have called into the Customer Care Centre with your Western Union receipt number or your Paymentus confirmation number, a reconnection can be scheduled for the next available appointment window. For same day reconnection,

#### **FAQs**

- My Account
- Cústomer Service
- Services
- Electricity Charges
- Conservation
- About Us



contact must be made to our Customer Care Centre confirming your payment no later than 11:30 AM or after-hours charges will apply.

How do I get re-connected?

To get reconnected you must make an appointment for a service visit through our Customer Care Centre. Business hour appointments are available Monday to Friday. Customers will be provided with a morning window (8:00am to 12:00pm) or an afternoon window (12:00pm to 4:00pm). There are also a limited number of after hour appointments available. Please contact the Customer Care Centre to schedule an appointment.

#### Does someone need to be home for the reconnection?

Yes – For safety reasons the occupant or a designated person must be on site at the time of the reconnection. Should no one be at the site when the service technician arrives to perform the reconnection, missed appointment charges will apply and a new appointment will need to be scheduled.

top

**Customer Service** 

Where is my smart meter located?

installs its smart meters in utility closets or electrical rooms.

Why is my smart meter not located in my unit?

installs its smart meters in utility closets or electrical rooms in order to leverage your building's electrical infrastructure in the most cost-effective manner.

Our meters are connected directly to your building's main electrical wires, and then activated to measure electricity for individual units.

How is my meter read?

Your smart meter measures and records your electricity consumption hourly, and then automatically transmits your data over your building's existing electrical wires so there is no need for a traditional meter reading.

What are the hours of your customer care centre?

We take care of all customer service inquiries through our dedicated customer care centre (1997), which operates between the hours of 8:00 a.m. and 5:00 p.m. Monday to Friday, with the exception of civic holidays, Easter Monday, Christmas Eve and New Year's Eve. We can also be reached by fax at (1997) and the core email:

Customers outside of Canada should call

How do I set up my new account?

You can set up a new account on our Website by clicking here or by calling an excustomer care representative at

How do I sign-up for Automatic Billing?

You can sign up for Automatic Billing on our Website by clicking here or by calling and customer care representative at

How do I sign-up for the Equal Payment Plan?

You can sign up for our Equal Payment Plan on our Website by clicking here or by calling and customer care representative at

How do I review my electricity usage online?

All customers can review their electricity usage online here.

How do I update my account information?

You can update your account information on our Website by clicking here.

How can I lower my electricity costs?

Try turning off appliances and lights when not in use; using appliances such as dishwashers, clothes washers and dryers with full loads; and using an appliance that uses less electricity to do the same job, for example a toaster oven uses less electricity than your range oven.

Try changing the use of your appliances by staggering the use throughout the day.



THE RESERVE

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By not using major appliances at the same time you will reduce your maximum hourly charge which will directly affect your monthly electricity bill.

# Which appliances consume the most electricity?

View our appliance chart for more information

top

#### Services

What is smart sub-metering and how does it work?

Smart sub-metering puts residents in multi-unit residential and commercial buildings in control of their own electricity costs by using a dedicated meter to measure the energy used in each individual unit. Smart sub-meters integrate time and use so that they measure not only how much electricity is used but when it is used. Any interval of time can be used however the Ontario Energy Board has set a standard of hourly use for residential consumers.

Smart sub-metering lets occupants pay only for what they use, rather than paying an unfair share based on a predetermined formula as is the case in bulk metered buildings.

What is bulk metering?

In bulk-metered buildings, one meter effectively measures all the electricity used by the building, both in individual suites and common areas. Since there is no measurement of how much power is used in each individual suite, electricity delivery and consumption charges are often built into the rent or condo fees based on square footage. As a result, occupants have no control over their costs and no incentive to save, and can easily become disconnected from their electricity usage.

# Why should owners, developers and property managers consider submetering?

Ontario now requires that existing condominium units be individually metered, and the provincial government has launched its Smart Meter Initiative, which requires that all Ontario consumers have a smart meter by December 31, 2010.

What is the process for sub-metering an existing building?

For existing buildings, installing smart meters is convenient and inexpensive. Our team of the contractors will quickly install smart meters in your building's utility closets, leveraging your existing electrical infrastructure. That means no core drilling through floors and no need to run additional communication cables through the building.

Once the meters are installed, we simply connect them to your building's main electrical wires, and then program the meters to measure how much electricity is going to each individual unit, and when.

The entire installation process takes approximately one week per 100 units, and occupants are without power for approximately three hours during the installation.

What is the process for sub-metering a new building?

For new developments, we work with the developer's existing electrical subcontractor to ensure that the installation of our smart meters is seamlessly incorporated into the overall project schedule. As with retrofits, the smart meters are installed in the building's utility closets, connected to the building's main electrical wires and then activated to meter electricity for each individual unit.

What is a smart meter?

Smart meters are state-of-the-art, interval meters equipped with automatic meter reading (AMR) capabilities that let you track how much electricity you use, and when you use it.

Smart meters will help consumers manage their demand for power by providing them with valuable information about their household consumption patterns so they can take advantage of "Time-of-Use" pricing to reduce their bills.

What are the benefits of smart meters?

Smart meters put residents in control of their own electricity costs by using dedicated meters to measure the energy used in individual suites. So rather than paying an unfair share based on a predetermined formula, occupants pay only for what they use.



How expensive are smart meters to install?

of smart meters (though there are some exceptions with complex installations). For more information on becoming

#### Who owns the meters?

The meters are owned by

What areas do you serve?

Ontario's Smart Meter Initiative rolls out in more markets, we will expand our service offering across the province.

Who supplies the electricity?

The electricity is supplied by regulated Local Distribution Companies (LDCs) licensed to distribute electricity in your area.

top

#### **Electricity Charges**

What charges does my monthly bill include?

Ontario Energy Board (OEB). All residential electricity consumers in Ontario see the same four lines on their bill:

**Electricity:** This line covers the per kilowatt cost of the electricity you consume on a monthly basis.

**Delivery:** The cost of delivering electricity from generators to your utility and then to your home or business.

This line item includes two elements: a fixed component, which is constant from month to month, and a variable component, which, for customers, changes based on your daily demand for electricity. This uses a fixed rate that is multiplied against your variable use

**Regulatory:** The costs of administering the wholesale electricity system and maintaining the reliability of the provincial grid.

**Debt Retirement Charge:** Set by the Ministry of Finance to pay down the debt of the former Ontario Hydro.

What is peak use and why does it matter?

Peak Use is the maximum amount of electricity required by your home or business during a specific time period, measured in kilowatts (kW).

Over the past several summers, Ontario has successively set new hourly records for peak use of electricity. By lowering your peak use you can directly affect Ontario's supply needs. Through conservation activities, such as reducing consumption and peak use, you can help ease the strain on Ontario's distribution system and reduce the need for additional power generation.

What is the difference between peak use and consumption?

Consumption is the amount of electricity consumed in your home or business during a specific time period, measured in kilowatt hours (kWh).

Peak Use is the peak amount of electricity required by your home or business during a specific time period, measured in kilowatts (kW).

How can customers control peak use?

If your peak use is high, consider staggering the simultaneous use of major appliances to reduce your peak hourly use and lower your monthly bill.

Doest makes a return on the cost of my electricity?

No. makes a return on the cost of delivering your electricity, not on the cost of the commodity (electricity).

What is Time-of-Use pricing and how does it work?

249

The Ontario Energy Board (OEB) has established special Time-of-Use electricity prices to provide an incentive for consumers with smart meters to shift their consumption away from periods when total consumption is high ("on-peak") to periods when demand for electricity is lower ("mid" or "off-peak"). These rates are based on pricing trends in the electricity wholesale market, and they fluctuate, as their name indicates, depending on when, during the day, electricity is consumed.

Many Local Distribution Companies across Ontario are currently in the process of implementing Time-of-Use pricing. As these utilities start to offer Time-of-Use rates, and the companies will introduce these prices to its customers.

Under the smart meters price plan, the price consumers pay for electricity will vary based on when during the day electricity is used.

For this purpose, the OEB has divided the day into three periods:

- · On-peak (highest demand for electricity);
- Mid-peak (moderate demand for electricity); and
- Off-peak (lowest demand for electricity).

These periods will be different in the summer than they are in the winter.

How can I lower my electricity costs?

Try turning off appliances and lights when not in use; using appliances such as dishwashers, clothes washers and dryers with full loads; and using an appliance that uses less electricity to do the same job, for example a toaster oven uses less electricity than your range oven.

Try changing the use of your appliances by staggering the use throughout the day. By not using major appliances at the same time you will reduce your maximum hourly rate which will directly affect your monthly electricity bill.

## Which appliances consume the most electricity?

View our appliance chart for more information

top

## Conservation

#### What is Ontario's Smart Meter Initiative?

To create a conservation culture and to help Ontarlo become a leader in energy efficiency, the government has created the Smart Meter Initiative to introduce a number of key prioritles, including:

- · introducing flexible, Time-of-Use pricing for electricity;
- targeting to reduce Ontario's energy consumption by five percent by 2007;
- committing to install a smart electricity meter in 800,000 homes and small businesses by 2007 and throughout Ontario by 2010; and
- introducing legislation to enable implementation of the government's smart metering initiative and conservation targets.

Source: Ontario Ministry of Energy

Do customers consume less electricity in smart metered buildings? Our experience shows that when buildings are converted to smart meters and residents take responsibility for paying their monthly electricity costs directly, electricity consumption can be reduced by up to 30 per cent.

How can I lower my electricity costs?

You can lower your electricity by curbing your consumption and/or shifting your usage patterns to lower your peak use. Once Time-of-Use pricing kicks in, you will also be able to lower your electricity costs by shifting your consumption away from periods when total consumption is high ("on-peak") to periods when demand for electricity is lower ("mid" or "off-peak").

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**About Us** 

What is the relationship of

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Like is an operating company owned by

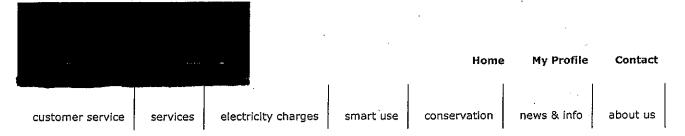
Is a licensed by the Ontario Energy Board?
Yes. As part of Ontario's Smart Meter Initiative, all smart sub-meterers are now required to be licensed by the Ontario Energy Board.

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**TAB 26** 

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## **Bill Components**

Ontario Energy Board (OEB). All residential electricity consumers in Ontario see the same four lines on their bill:

#### Electricity

This line covers the per kilowatt cost of the electricity you consume on a monthly basis. Per kilowatt costs are set by the OEB and adjusted two times every year (May 1/November 1) to reflect price changes in the electricity market.

Information on current electricity prices in Ontario can be found below.

The electricity component of the bill ensures that people pay their fair share for the electricity they consume.

#### Delivery

The cost of delivering electricity from generators to your utility and then to your home or business.

This line item includes two elements: a fixed component, which is constant from month to month, and a variable component, which changes based on your daily demand for electricity.

The fixed component covers the costs of delivering electricity from generating stations across the Province to your utility, then to your home or business. This includes the costs to build and maintain the transmission and distribution lines, towers and poles and to operate provincial and local electricity systems.

For Explanation customers, the **variable component** is calculated by multiplying your daily demand for electricity by a fixed per kilowatt charge. This per kilowatt charge varies by municipality, meaning that customers in different regions will have different delivery charges even if their daily demand is identical. This variable component ensures that people pay their fair share for the electricity they demand.

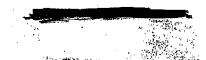
Municipality	Monthly Residential Customer Charge (flat)	Charge for System Use (/dkW/day)
Cambridge	\$12.55	\$0.2791
Kitchener	\$12.55	\$0.2455
Mississauga	\$12.55	\$0.2836
Brampton	\$12.55	\$0.2286
Oshawa		\$0.2749
Toronto	\$12.55	\$0.2931
Vaughan ,	\$12.55	TBD
Richmond Hill	\$12.55	TBD
London	\$12.55	\$0.2409

# Energy Charges & Pricing

- Bill Components
- Electricity Pricing
- FAQs



Waterloo	\$12.55	\$0.2436
Niagara Falls	\$12.55	\$0.2409



Charges above vary by municipallity

Other Charges				
SSS Administration Charge	flat	\$0.2500		
Market Service Charge	/kWh	\$0.0062		
Debt Retirement Charge	/kWh	\$0.0070		

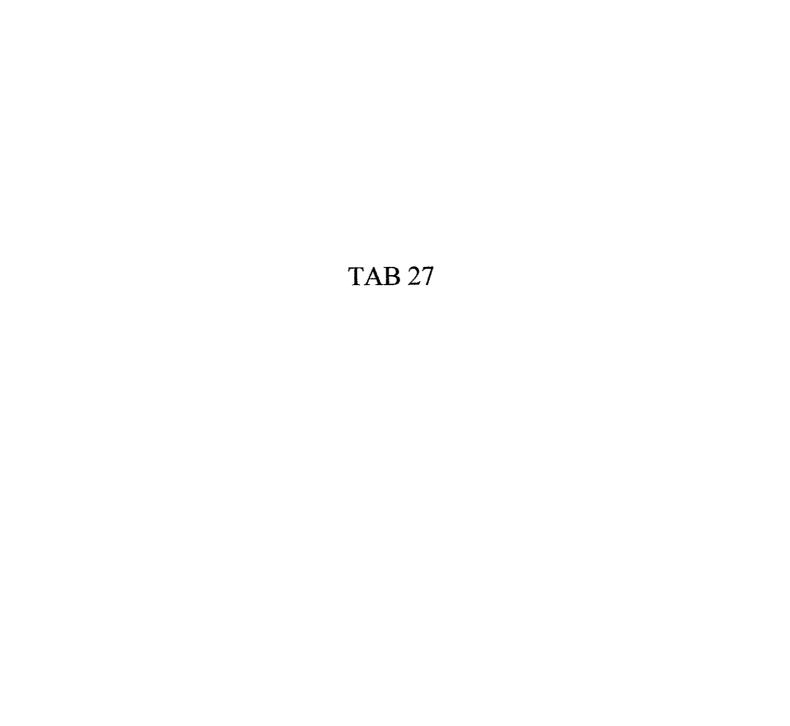
Charges above are global and apply to all municipalities

#### Regulatory

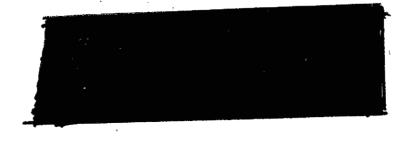
The costs of administering the wholesale electricity system and maintaining the reliability of the provincial grid.  $\,$ 

#### **Debt Retirement Charge**

Set by the Ministry of Finance to pay down the debt of the former Ontario Hydro.



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Conditions of Service

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· Words referring to a gender include any gender.

#### 1.4 AMENDMENTS AND CHANGES

These Conditions of Service shall be deemed to have been automatically amended to the minimum extent necessary to achieve compliance with the applicable laws, regulations and Codes listed in Section 1.2

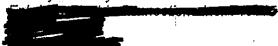
The provisions of these Conditions of Service and any amendments thereto form part of any contract between and connected Customer, or their respective agent(s),

In the event of changes to these Conditions of Service, will provide notice of the changes before they become effective, and will post the current version of the Conditions of Service on its website (www.actions). Upon request, will provide any Customer with a written copy of these Conditions of Service.

## 1.5 CONTACT INFORMATION

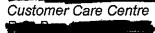
Customers may contact using one of the following methods:

- Telephone:
  - Emergency Service 24 hours a day
  - Customer Inquiries, Account Information, Billing, Monday to Friday, 8:00 a.m. to 5:00 p.m., excluding statutory holidays,
- Facsimile
- Bill Payments by Mail



Toronto, ON M5W 4K9

• Mail Correspondence



E:mail:

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## SECTION 1 INTRODUCTION

This document provides information regarding the types and levels of services offered by and the conditions associated with the supply of electrical energy to Customers.

#### 1.1 IDENTIFICATION OF

as a smart sub-meterer of electricity by the Ontario Energy Board (OEB). Competers in Ontario and installs, owns, operates and maintains its smart sub-metering systems within the buildings it services.

#### 1.2 RELATED CODES AND GOVERNING LAWS

operations are governed or guided by the latest editions of the following Codes and Acts:

- Electricity Act, 1998
- Ontario Energy Board Act, 1998
- Smart Sub-meterer License
- Ontario Electrical Safety Code
- Electricity and Gas Inspection Act
- Smart Sub-meterer Code, 2008

In the event of a conflict between this document and Acts and/or regulatory Codes issued by the OEB, the provisions of the Acts and Codes shall prevail. In the event of a conflict between a commercial agreement with a Customer and these Conditions of Service, then these Conditions of Service shall prevail.

When planning and designing for electricity service, Customers and their agents must refer to all applicable Provincial and Canadian electrical codes, and to all other applicable Federal, Provincial and Municipal laws, regulations, codes and by-laws, to ensure compliance with their requirements. Without limiting the foregoing, work shall be performed in accordance with the Ontario Occupational Health and Safety Act, the Regulations for Construction Projects, the Regulations for Industrial Establishments and the Ontario Electrical Safety Code.

## 1.3 INTERPRETATION

In these Conditions of Service, unless the context otherwise requires:

- Headings, paragraph numbers, formatting and underlining are for convenience only and do not affect the interpretation of these Conditions of Service;
- Words referring to the singular include the plural and vice versa;

Security deposits will be refunded when the account is closed or when the Customer has maintained an acceptable payment record with for a minimum period of one (1) year for residential Customers or five (5) years for commercial Customers. Interest shall accrue monthly on security deposits commencing upon receipt of the total deposit required. The interest rate on the cash security deposits shall be at the average over the period of the prime lending rate set by the Bank of Canada less 2 percent. Commercial security deposits will be refunded only when the account is closed.

Upon final billing of an account, cash security deposits with interest will be applied to the final bill, and any remainder will be refunded to the Customer. Non-cash security deposits (i.e. letter of credit) will be applied after the final bill due date, if full payment is not received from the Customer.

## 2.2 BILLING CYCLE PERIOD

may, at its option, render bills to its Customers on either a two months, quarterly or annual basis. Bills for the use of electrical energy ron either a metered rate or a flat rate, as determined by	
The Customer may dispute charges shown on the Customer's bill or other me contacting and advising the contacting and advising the customer of the reason for the dispute. Will promptly investigate all disputes and advise the Customer of the results.	
Dispute Resolution Procedure is set out in Section 2.4 of these Co Service.	aditions of

#### 2.3 PAYMENT REQUIREMENTS

Bills are rendered for energy services provided to the Customer. Bills are payable in full by the due date; otherwise, overdue interest charges will apply. Where a partial payment has been made by the Customer on or before the due date, the interest charge will apply only to the amount of the bill outstanding at the due date.

Outstanding bills are subject to the collection process and may ultimately lead to the Customer's electricity service being discontinued. Service will be restored once satisfactory payment has been made. Discontinuance of service does not relieve the Customer of the liability for arrears.

shall not be liable for any damage on the Customer's premises resulting from such discontinuance of service. A reconnection charge will apply where the service has been disconnected due to non-payment.

The Customer will be required to pay additional charges for the processing of non-sufficient funds (N.S.F.) cheques.

Customers may be required to pay special charges and deposits, on request, including (without limitation) those charges set out in Section 3.5 of these Conditions of Service.

## SECTION 2 SMART SUB-METERING CODE REQUIREMENTS

## 2.1 SECURITY DEPOSIT PROCEDURE

Except for Customers who meet the deposit waiver conditions described below, all Customers are required to either pay a security deposit or provide a guarantee to for payment of all amounts owing.

Security deposits must be in the form of (i) cash; (ii) cheque; or (iii) an irrevocable (standby) letter of credit, a bond or a letter of guarantee from a chartered bank, trust company or credit union; or (iv) a letter of guarantee from a reputable third party (i.e. parent company).

The amount of the security deposit will be based on the billing factor times the estimated monthly bill based on the Customer's average monthly load during the most recent 12 consecutive months within the past two years. Where there is no established historical electricity consumption for the service premises, a reasonable estimate will be made using information from a like property used for similar purposes.

The billing factors are as follows:

- 2.5 for monthly billed Customers
- 1.75 for bi-monthly billed Customers

If the Customer has no payment history with the determine the amount of the deposit based on the estimated electricity consumption or the electricity consumption for similar residential or commercial Customers. The minimum security deposit in all cases shall be \$160.00. Security Deposits may be paid over 4 installments.

Security deposits or guarantees may be waived for residential Customers if the following conditions are met:

- a) The Customer applies for the Automatic Payment Plan and provides a void cheque;
- b) The Customer has satisfied **previous** five (5) years with another utility, including gas, water, telephone or cable, in the form of a letter of reference from the utility; and
- c) The Customer provides an acceptable credit reference from a recognized credit agency.

Security deposits or guarantees are required for all commercial Customers even if they have a good credit history. A letter of credit from a bank may be provided in lieu of a cash security deposit.

Security deposits shall not constitute payment of an outstanding account, in whole or in part, and shall only be applied to amounts owing on an account when the account is closed.

Failure of the Consumer or Customer to comply with a directive of makes for purposes of meeting its license obligations; Overdue amounts payable to for the distribution of electricity: Customer request; Electrical Interference caused by Customer equipment or discovery of a hazardous condition that is not corrected in a timely fashion; Unauthorized energy use: and Any other conditions identified in these Conditions of Service. also reserves the right to disconnect the supply of electrical energy to a Customer for causes not limited to energy diversion, fraud or abuse on the part of the Customer. Such service may not be reconnected until the Customer rectifies the condition including all costs incurred by and provides full payment to rising from unauthorized energy use, including inspections, repair costs and the cost of disconnection and reconnection. 2.5.1 Disconnection Due To Non-Payment bills are to be paid in full by the due date specified on the bill. If the bill is still unpaid 15 calendar days after the due date, the still unpaid 15 calendar days after the due date, Notice of Disconnection to the Customer. Notice of Disconnections will be in writing and if given by mail shall be deemed to be received on the third business day after mailing. If the overdue amount is still unpaid 10 calendar days after the Notice of Disconnection is issued, the service may be disconnected and not restored until payment arrangements satisfactory to have been made, including costs of reconnection. Reconnection requests must be made by the Customer to Customer Care Centre with proof of payment. The Customer will be given an appointment window for the reconnection. The Customer or an authorized representative must be present at Customer's residence at the time of reconnection. Where disconnects a Customer for non-payment, will leave a Fire Safety Notice and any other available related public safety notices at the premises of the disconnected Customer. Such discontinuance of service does not relieve the Customer of the liability for arrears or other applicable charges for the balance of the term of contract, nor shall be liable for any damage to the Customer's premises resulting from such discontinuance of service. 2.5.2 Disconnection Requested By Customer Upon receipt of a disconnection request by a Customer, disconnect the supply of electricity and/or remove connection assets at the Customer's costs. 2.5.3 Disconnection Due To Unauthorized Energy Use reserves the right to disconnect the supply of electricity to a building

or property where the building or property has, or appears to have, been used for unlawful purposes, including energy diversion or theft of power. The supply of electricity to the building or property may not be reconnected for the existing

## 2.4 DISPUTE RESOLUTION PROCEDURE

In addition to other approaches that may be pursued to resolve disputes or other specific dispute resolution processes set out in agreements with Customers, provides the following informal dispute resolution process:

- Step 1 To register a complaint, a Customer must e-mail the Care Centre at Province a letter to:
- Step 2 If the matter is not satisfactorily resolved in Step 1, the Customer may refer the matter to the Chief Operating Officer, who will address the matter in consultation with the applicable Manager and Department Head.
- Step 3 If the matter is not satisfactorily resolved in Step 2, the Customer may refer the matter to the OEB's Consumer Relations Centre.

shall keep a record of all complaints, whether resolved or not, including the name of the complainant, the nature of the complaint, the date resolved or referred, and the result of the dispute resolution.

## 2.4.1 Meter Dispute Testing

Metering inaccuracy is an extremely rare occurrence. Most billing inquiries can be resolved between the Customer and without resorting to the meter dispute test.

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Canada to resolve a measurement dispute. If the Customer initiates the dispute, will charge the Customer a meter dispute fee. If the meter is found to be in-accurate and Measurement Canada rules in favour of the Customer, will refund the fee.

### 2.5 DISCONNECTIONS AND RECONNECTIONS

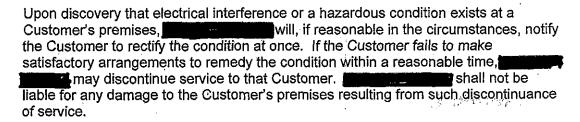
reserves the right to disconnect the supply of electrical energy for causes including, but not limited to:

- Contravention of the laws of Canada or the Province of Ontario;
- Adverse effect on the reliability and safety of the smart sub-metering system;
- Imposition of an unsafe worker situation beyond normal risks inherent in the operation of the smart sub-metering system;
- A material decrease in the efficiency of the smart sub-metering system;
- A materially adverse effect on the quality of distribution services received by an existing connection
- Inability of the second second to perform planned inspections and maintenance;

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Customer until		receives full	payment fro	om the existing Customer of
				arising from the
				repair costs, commodity
costs, disconne	ction costs, and	i reconnection	costs.	
		•	•	•

## 2.5.4 Disconnection Due To Electrical Interference



## SECTION 3 OTHER PROVISIONS

#### 3.1 CUSTOMER RIGHTS AND INFORMATION

A Customer has the right to be provided with meter data information applicable to their consumption.

Customer information is collected subject to privacy regulations. Customers and authorized agents of Customers have the right to access current and historical usage information and data.

will provide information appropriate for operational purposes that has been aggregated sufficiently, such that an individual's Consumer information cannot reasonably be identified, at no charge to another distributor, transmitter, the IESO or the OEB.

may charge a fee for all other requests for aggregated information.

## 3.2 RIGHTS

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rights include, but are not limited to, the following:

## 3.2.1 Access to Customer Property

shall have access to Customer property with the same rights as a distributor under Section 40 of the Electricity Act, 1998.

#### 3.2.2 Safety of Equipment

The Customer will comply with all aspects of the Ontario Electrical Safety Code with respect to insuring that equipment is properly identified and connected for metering and operating purposes. The Customer will take whatever steps necessary to correct any deficiencies, in particular cross wiring situations, in a timely fashion. If the Customer does not take such action within a reasonable time, may disconnect the supply of power to the Customer.

The Customer shall not build or maintain or cause to be built or maintained any structure that would or could affect the safety, reliability, or efficiency of meters and meter components.

## 3.2.3 Operating Control

The Customer will provide a convenient and safe place, satisfactory to the for installing, maintaining and operating its equipment in, on, or about the Customer's premises. It is assumes no risk and will not be liable for damages resulting from the presence of its equipment on the Customer's premises or approaches thereto, or action, omission or occurrence beyond its control, or negligence of any persons over whom

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No person shall remove, replace, alter, repair, inspect or tamper with equipment of except an employee or agent of a so another person lawrully entitled to do so.
Customers will be required to pay the costs of repairs or replacement of:  equipment that has been damaged or lost by the direct or indirect act or omission of the Customer or its agents.
3.2.4 Repairs of Defective Customer Electrical Equipment
The Customer will be required to repair or replace any equipment owned by the Customer that may affect the integrity or reliability of meters and meter components. If the Customer does not take such action within a reasonable time, may disconnect the supply of power to the Customer.  3.2.5 Repairs of Customer's Physical Structures
Olaio (topalio di dadicitto) di injuita di adia, da
Construction and maintenance and repairs of all structures housing and/or supporting the electrical infrastructure and Meters are the responsibility of the Customer.
The Customer is responsible for the maintenance and safe keeping conditions of its electrical, structural and mechanical facilities located on private property.
the second se
3.3 CUSTOMER CONTRACTS
Standard Form of Contract — Supply and Services Agreement in a form acceptable to
Implied Contract – In all cases, despite the absence of a written Electricity Supply and Services Agreement, the taking of electricity from and by any Customer or Consumer constitutes the acceptance of the terms of Conditions of Service, as amended from time to time, and applicable charges as established by Such acceptance and use of electricity shall be deemed to be the acceptance of a binding contract with the succeptance of applicable standard form of Electricity Supply and Services Agreement.
Market Commence of the Commenc
3.4 CONVEYANCE OF ELECTRICITY
3.4.1 Interruptions to Supply
Although it is policy to minimize inconvenience to Customers, it is necessary to occasionally interrupt a Customer's supply to allow work on the meters or meter components. Supply will endeavor to provide the Customers with reasonable notice of planned power interruptions. Notice may not be given where

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work is of an emergency nature involving the possibility of injury to persons or damage to property on equipment.

Customers requiring a higher degree of security than that of normal supply are responsible to provide their own back-up or standby facilities. Customers may require special protective equipment on their premises to minimize the effect of momentary power interruptions.

## 3.4.2 Power Quality

If an undesirable system disturbance is being caused by Customer's equipment, the Customer will be required to cease operations of the equipment until satisfactory remedial action has been taken. If the Customer does not take such action within a reasonable time, may disconnect the supply of power to the Customer. The customer may seek reimbursement for the time spent in investigating the problem.

It is the responsibility of the Customer to provide protection from voltage variations and transient operations.

## 3.4.3 Back-up Generators

Customers with portable or permanently connected emergency generation capability shall comply with all applicable criteria of the Ontario Electrical Safety Code and, in particular, shall notify in all cases where Customer emergency generation provides supply to individual suites or units metered by

#### 3.4.4 Metering

will supply, install, own and maintain all meters, instrument transformers, ancillary devices and secondary wiring required for revenue metering. It is the Customers responsibility to provide a convenient, unobstructed and safe location for the installation of the metering equipment acceptable to

## 3.4.4.1 General

No person, except those authorized by may remove, connect, alter, or otherwise interfere with meters, wires or ancillary equipment.

The Customer will be responsible for the care and safekeeping of meters and equipment on the Customer's property. If any equipment installed on the Customer's property is damaged, destroyed, or lost, the Customer will be liable to pay the customer will be liable to pay the cost of repairing the same.

The metering location provided by the Customer shall be for the exclusive use of No equipment, other than that provided and installed for or by may be installed in any part of the work-space.

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The Customer will be responsible to provide a proper power supply for all metering devices and components as per the When a disconnect device has been locked and tagged in the "OFF" position by under no circumstances shall anyone remove the lock and tag and energize it without first receiving approval from **Metering Services Identification** The Customer shall permanently and legibly identify each metered service with respect to its specific address, including unit or apartment number. The identification shall be applied to all service switches, circuit breakers, meter cabinets, and meter mounting devices. 3.4.4.3 **Working Space** Clear working space shall be maintained in front of all equipment and from all side panels in accordance with the Ontario Electrical Safety Code. 3.4.4.4 Meter Access The Customer must provide or arrange free, safe and unobstructed access to for the purpose of meter any authorized representative of reading, meter changing, meter inspection, meter repair, disconnection or reconnection.

# 3.4.4.5 Removal of Meter Upon Termination of Contract

The Customer must provide or arrange free, safe and unobstructed access to allow for the removal of metering equipment upon the termination of a contract

## 3.4.4.6 Final Meter Reading

When a service is no longer required, the Customer shall provide sufficient notice of the date the service is to be discontinued so that can obtain a final meter reading as close as possible to the final reading date. The Customer shall provide access to the final meter reading is not obtained, the Customer shall pay a sum based on an estimated demand and/or energy for electricity used since the last meter reading.

## 3.4.4.7 Faulty Registration of Meters

Metering electricity usage for the purpose of billing is governed by the federal *Electricity and Gas Inspection Act* and associated regulations, under the jurisdiction of Measurement Canada. Frequired to comply with the accuracy specifications established by the regulations under the above Act.

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In the event of incorrect electricity usage registration, will determine the correction factors based on the specific cause of the metering error and the Customer's electricity usage history. The Customer shall pay for all the energy supplied a reasonable sum based on the reading of any meter formerly or subsequently installed on the premises by the company with due regard being given to any change in the characteristics of the installation and/or the demand. In circumstances involving Measurement Canada, if Measurement Canada determines that the Customer was overcharged, will reimburse the Customer for the amount incorrectly billed as directed by Measurement Canada.

#### 3.5 TARIFFS AND CHARGES

Charges for distribution services are made as set out in the Schedule of Charges available from These charges are subject to change from time to time. Information about changes will also be mailed to all Customers with the first billing issued with revised charges.

In addition to the monthly service charge for distribution services and charges related to the supply of electricity, miscellaneous charges include, but are not limited to:

- New account set-up fee;
- Security deposit;
- · Returned cheque;
- Lawyers Letter Charge;
- · Meter Dispute Charge (where no defect found);
- Meter Removal Charge;
- Statement of Account;
- Disconnection charge
- · Reconnection after hours charge;
- · Reconnection during regular hours charge;
- Damage Charges;
- Arrears certificates;
- Credit check fee:
- Late penalty; and
- Service calls

## 3.6 ELECTRICITY SUPPLY DISRUPTIONS

Notwithstanding any other provision in these Conditions of Service, in the event of a disruption in the supply of electricity, shall not be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption loss, loss of contract or loss of goodwill or for any direct, indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, whether any of the said liabilities, losses or damages arise in contract, tort or otherwise.

## 3.7 FORCE MAJEURE

Neither second any of its obligations or covenants to the other party during any period when such party is prevented from such performance by reason of a strike, lock-out, labour disruption, unavailability of materials, by operation of law, bankruptcy or insolvency of contractors, fire, civil insurrection, flood, act of God, act of terrorism or any other condition which is beyond the control of such party and any period stipulated for the performance of any such obligation or covenant shall be extended accordingly. For clarity, financial inability shall not constitute a force majeure event.



## SECTION 4 GLOSSARY OF TERMS

"Board" or "OEB" is the Ontario Energy Board;

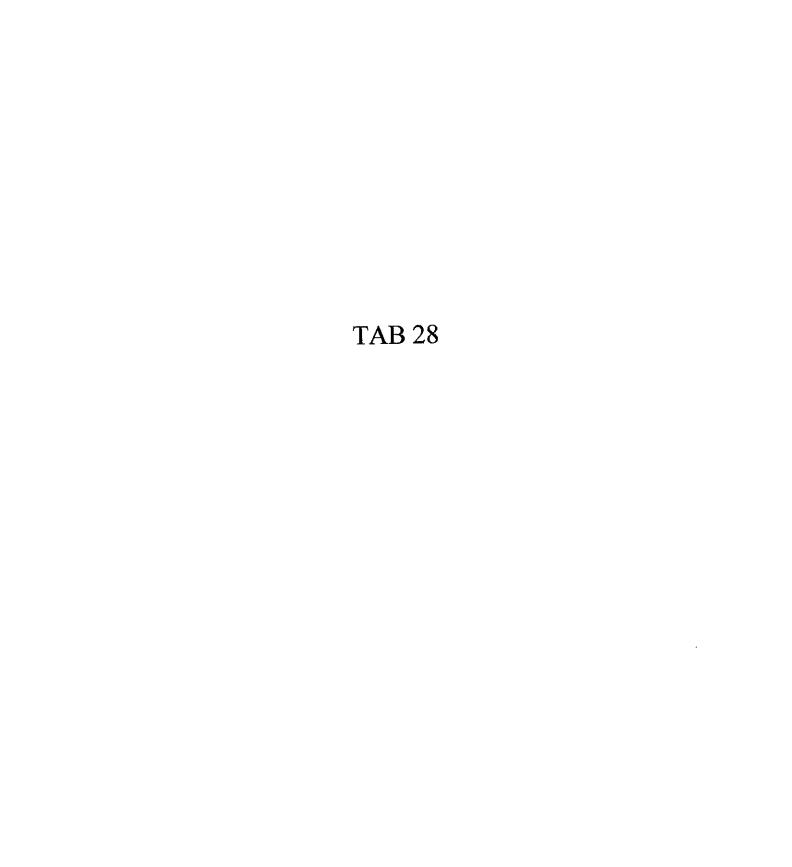
"Consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate;

"Customer" means a person that has contracted for or intends to contract for the individual metering of a unit(s) within a condominium or rental property. This includes condominium corporations or property owners;

"Disconnection" means the deactivation of connection assets that result in cessation of distribution services to a Consumer or Customer;

"Emergency" is any abnormal system condition that requires remedial action to prevent or limit loss of a distribution system or supply of electricity that could adversely affect the reliability of the electricity system;







## **BRIEFING NOTE**

## COMPLIANCE CASE BRIEFING NOTE

Toronto Hydro Metering Policies & Restricting Smart Sub-metering

July 15, 2009

## **COMPLIANCE ISSUE**

Toronto Hydro Electric System Ltd ("THESL") has implemented policies that require that individual units in all new condominiums be directly metered by THESL. As a result, developers and condominium corporations do not have the choice of having the individual units in the building metered solely by a licensed smart sub-meter provider.

## EVIDENCE AND ALLEGED NON-COMPLIANCE

A number of licensed sub-meter providers and developers have provided Compliance staff with anecdotal stories of instances where they have been informed by THESL that the installation of a sub-metering system by a licensed sub-meter provider would not be allowed.

The Compliance Office has confirmed two incidents where a developer has requested that THESL provide an offer to connect that contemplates the project being smart submetered and specifically that THESL install a bulk meter. In response to both requests, THESL informed the developers that THESL does not offer a connection agreement that contemplates a bulk meter / sub-metering configuration.

It is the view of the Compliance Office that THESL's actions are a violation of a distributor's obligation to connect a building upon request, as per section 28 of the *Electricity Act, 1998.* Additionally, THESL's actions are a violation of a distributor's obligation to provide an interval meter upon request, as per section 5.1.5 of the Distribution System Code.

## THESL RESPONSE

THESL has argued that it has not and will not refuse to connect new condominiums to the distribution system. They have stated that it is their standard practice to provide a bulk meter to a building under construction which is used to bill electricity after the main switchboard is energized and prior to which energy is supplied on a temporary service basis.

THESL has also argued that there are no regulatory requirements that would restrict a distributor from imposing a policy that all individual units in a condominium must be metered by the distributor or that restrict a distributor to installing smart metering only at the request of the customer.

THESL have also submitted that their policy allows developers to hire alicensed submeter provider as long as the sub-metering system does not interfere with THESL's own metering system.

Most recently, THESL submitted to Howard Wetston that in light of the Green Energy Act, the Board should address the issue of metering new condominiums on broader policy basis rather than on a compliance or enforcement basis. THESL suggests that a distributors ability to meet the demands of implementing the smart grid, connecting renewable generation and reaching conservation targets, is affected by the provision of smart metering to condominium unit holders. Therefore, the Board should promote the use of distributor metering.

## COMPLIANCE STAFF ASSESMENT

It is staff's view that THESL's response that they will provide a connection to all new condominiums is in contradiction to the statements made by THESL to developers that THESL will not provide an Offer to Connect that contemplates a bulk meter / submetering configuration. THESL may provide a temporary bulk meter and connection but they admit that they will not provide the connection configuration requested by the customer.

It is Compliance staff's opinion that refusing to connect in the configuration requested by the customer is the equivalent of refusing connection outright. Based on THESL's demand that all units be metered by the distributor, staff also believes it is likely that THESL will breach section 28 of the *Electricity Act*, 1998, by refusing to continue to connect a customer if the customer does not allow the distributor to install individual unit metering.

Additionally, THESL's actions are denying developers the rights set out in O. Reg 442/07, which states that a condominium building may choose to install either smart meters or a smart sub-metering system. THESL's suggestion that a developer has the right to install a sub-metering system in addition to the distributor's metering is

impractical and does not take into account that there would be no benefit to the developer to install a sub-metering system in a scenario where individual units are already metered by the distributor.

In regards to THESL's desire to have a broader policy discussion, Compliance staff submit that the Board has already held such discussions during the proceedings which issued the Smart Sub-Meter Provider licenses, the Smart Sub-Metering code, and amended the DSC to require distributors install individual unit meters upon request of the customer. At no point in these proceedings did THESL or any other distributor present an argument that individual units must be smart metered by the distributor rather than smart sub-meter providers. It is staff's view that the issuances of new licenses and codes, plus the amendment to the DSC is evidence that the Board anticipated that condominium developers would have the option of hiring private contractors to install and operate smart sub-metering systems rather than have distributor smart meters installed. When asked for guidance, the members of the Electricity Distribution Committee strongly supported Compliance staff's view.

Compliance staff also submit that all of THESL's arguments that sub-metering would hinder the goals of the *Green Energy Act* are without merit. THESL's idea that there will be renewable generation projects on an individual condominium unit level appears to unrealistic. Also, conservation is driven by customer choice regardless of who bills them for electricity. THESL's contention that sub-meter providers would interfere with conservation efforts is unfounded as a sub-meter provider's revenue is not based on a customer's usage.

Staff note that it was the Ministry of Energy itself who established both the *Green Energy Act* and the regulation that allows for people other than distributors to install and operate smart sub-metering systems. As recently as May 21<sup>st</sup>, Minister Smitherman told the Toronto Star that he intends to introduce new legislation that will allow landlords to install smart sub-metering systems in residential apartment buildings. It seems apparent that contrary to THESL's arguments, the Ministry believes that smart sub-metering can play an important role in achieving the green energy goals. To accept Toronto Hydro's policies would, in staff's view, be a reversal of the intention of the Board and the Ministry of Energy in establishing a smart sub-metering licensing regime.

It is important to note that Compliance staff have been informed by other distributors that they too have an interest in the outcome of this dispute. Therefore, whatever decisions the Board arrives at will likely impact the activities on all distributors in the province.

## BRIEF BACKGROUND OF CASE PROGRESS

In July 2008, the Compliance Office received complaints from sub-meter providers about Toronto Hydro's ("THESL") policy regarding the metering of new condominiums. The Compliance Office began an investigation which resulted in a series of

correspondence between THESL and Compliance staff. Details of this communication are outlined later in this note under the section "Detailed Background."

This correspondence determined that THESL has implemented a policy that requires individual units in all new condominiums to be directly metered by THESL. A developer or Condominium Board may install its own additional sub-metering system provided that there is no interference with THESL's smart metering system. However, it is THESL's policy that ultimately each residential and commercial unit in a new condominium must be a direct customer of THESL. THESL has based this policy on its belief that there are no regulatory provisions which prohibit its policy and/or require that a distributor install smart metering only at the request of the condominium.

The OEB Compliance Office expressed its that view that to the extent that THESL's policies require smart metering of new condominiums and that each unit must be a direct customer of THESL, such policies are inconsistent with the Board's smart submetering licensing regime.

It is also the concern of the Compliance Office, that if a customer were to refuse to accept individual unit metering by Toronto Hydro, it appears that THESL would refuse to connect the customer. This concern has become real with the filing of a new compliant with the Board. On April 25, 2009, the Compliance Office was provided with two letters from THESL to developers informing the developers that THESL will not prepare an Offer to Connect that provides for the installation of a bulk meter/sub-metering configuration. It is the view of the Compliance Office that such actions are non-compliant with a distributor's obligation to connect as set out in section 28 of the Electricity Act, 1998 and the obligation to install an interval meter when requested to do so as set out in section 5.15 of the Distribution System Code.

The question of whether a distributor can require that customers be directly metered by the distributor will have an impact on more than just THESL's policies. The Compliance Office has received complaints from the smart sub-metering industry regarding the metering activities of other distributors. Compliance staff is also aware that other distributors are closely following the discussions between THESL and Compliance staff, including one distributor who has stated its refusal to discuss their metering activities with staff until the Board has taken a position on THESL's policies.

A meeting was held on April 17th between Board and THESL staff. In this meeting THESL reaffirmed its commitment to its policy and requested a Board hearing on the matter. OEB staff stated that we would request guidance from the Board as to its intention in regards to sub-metering activities and then determine next steps.

On May 1<sup>st</sup>, Compliance staff meet with the members of the Electricity Distribution Committee. Staff sought guidance on whether a new condominium owner has the right to install a smart sub-metering system rather than be required to have distributor smart metering be installed? The Committee members were all in agreement that a distributor

may not require a developer to have distributor meters installed for each unit. The Members also felt that the existing legislation was sufficiently clear on this matter.

On May 20<sup>th</sup>, THESL sent a letter to Mr. Wetston requesting that the Board initiate a policy consultation on this matter rather an enforcement hearing. THESL submits that the ability of a distributor to install smart meters in individual condominium units is essential to meet their obligations under the *Green Energy Act*.

## **OPTIONS**

- A. Pursue enforcement action against Toronto Hydro under section 112.3 of the OEB Act for non-compliance with section 28 of the Electricity Act (obligation to connect), and section 5.1.5 of the DSC (obligation to provide interval meter).
- PRO An enforcement proceeding will allow the Board the opportunity to fully consider the arguments of both Toronto Hydro and staff. A decision will also provide the opportunity for the Board to formally issue its position on the matter.

A formal Board order on this matter will eliminate any misconceptions that may exist in all regions of the province, not just within the Toronto Area.

An enforcement action will reinforce the Board's Compliance process and will demonstrate that the Board is willing to take action against a distributor who has been alleged to be non-compliant with its obligations.

An enforcement proceeding does not preclude the option, if deemed necessary, of implementing a proceeding to amend any relevant code to clarify the Board's intention.

CON – An enforcement proceeding may take an extended time period to fully complete. Such a schedule may not provide timely assistance for licensed smart sub-meter providers who claim to be suffering economic hardship due to the actions of distributors.

An enforcement proceeding may need to be focused on the alleged breach (ie: refusal to connect) and may not provide the opportunity for the Board to directly express its intentions in regard to the ability for new condominium customers to choose to be sub-metered.

Toronto Hydro has expressed its desire to have a broad policy proceeding on this matter rather than enforcement proceeding.

- B. Amend the DSC, or other relevant codes to make it clear that distributors must provide customers with the right to have a bulk meter installed by the distributor and individual unit meters installed by a smart sub-meter provider.
- PRO A Code amendment proceeding will allow the Board the opportunity to fully consider the arguments of Toronto Hydro, staff and other interveners. A decision will also provide the opportunity for the Board to formally state its position on the matter.

A Code amendment will send a clear message to all parties involved and will eliminate any misconceptions that may exist in all regions of the province, not just within the Toronto Area.

CON – A Code amendment proceeding will take an extended period to fully complete. This schedule may not provide timely assistance for licensed smart sub-meter providers who are suffering economic hardship due to the actions of distributors.

Amending a Code in response to a dispute involving the interpretation of existing Board materials may send the message that distributors can avoid the consequence of non-compliant behaviour by demanding an amendment to clarify an intention that Compliance Office believes is clearly outlined in the Board's documents.

Opening this issue to a Notice and Comment process would provide interveners with the opportunity to re-raise and re-argue prior disagreements relating to smart sub-metering issues. Such commentary may move the initiative away the scope of the issue and expend unnecessary time and effort debating "old" issues.

- C. The Board initiates, on its own motion, a written or oral hearing to review the question of whether distributors should have the right to impose individual distributor unit metering on customers and if so, under what circumstances.
- PRO Such a proceeding will allow the Board the opportunity to fully consider the arguments of Toronto Hydro, staff and other interveners. A decision will also provide the opportunity for the Board to formally state its position on the matter.

This proceeding may also allow the Board to determine the effect of the *Green Energy Act*, on certain Board's policies.

CON – It could be argued that government regulations allow for the use of smart submetering systems. There will likely be questions as to the Board's authority to supersede legislation.

The Board is currently engaged in a hearing (EB-2009-0111) to determine whether unlicensed distributors should be authorized to conduct discretionary metering activities in residential tenancies and other industrial and commercial properties. If the Board determines in EB-2009-0111 that unlicensed distributors can engage in discretionary metering activities, that decision may be in conflict with any consideration that distributors should be able to impose individual distributor unit metering on customers. Ultimately the Board could find itself in a position where it has ruled that unlicensed distributors have the right to install sub-metering systems but then rule that distributors have the right

to effectively restrict unlicensed distributors from installing sub-metering systems.

The Board has recently established a licensing and code regime for smart submeter providers. Issuing a decision to allow distributors to impose a requirement for customers to have distributor smart meters would effectively eliminate the business opportunities of smart sub-meter providers.

## **RELEVANT REGULATORY & LEGAL REFERENCES**

## **Distribution System Code**

- 5.1.5 A distributor shall provide an interval meter within a reasonable period of time to any customer who submits to it a written request for such meter installation, either directly, or through an authorized party, in accordance with the Retail Settlement Code ...
- 5.1.9 When requested by either:
  - (a) the board of directors of a condominium corporation; or
  - (b) 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

a distributor shall install smart metering that meets the functional specification of Ontario Regulation 425/06 – Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the Electricity Act).

## Electricity Act, 1998

- 28. A distributor shall connect a building to its distribution system if,
- (a) the building lies along any of the lines of the distributor's distribution system; and
- (b) the owner, occupant or other person in charge of the building requests the connection in writing.
- a distributor and any other person licensed by the Board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart submetering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation, in a property or class of properties prescribed by regulation at a location prescribed by regulation and for consumers or classes of consumers prescribed by regulation at or within the time prescribed by regulation.

## Ontario Regulation 442/07

- 2. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed classes of property:
  - A building on land for which a declaration and description have been registered pursuant to section 2 of the Condominium Act, 1998.
  - 2. A building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the Condominium Act, 1998.
  - 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.
- 3. For the purposes of subsection 53.17 (1) of the Act, the following are prescribed circumstances:
  - The approval by the board of directors to install smart meters or smart sub-metering systems, in the case of a building that falls into a prescribed class of property described in paragraph 1 or 2 of section 2.
  - 2. The installation of smart meters or smart sub-metering systems, in the case of a building that falls into a prescribed class of property described in paragraph 3 of section 2.
- 4. (1) For a class of property prescribed under section 2 and in the circumstances prescribed under section 3, a licensed distributor, or any other person licensed by the Board to do so, shall install smart meters or smart submetering systems of a type, class or kind,
  - (a) that are authorized by an order of the Board or by a code issued by the Board; or
  - (b) that meet any criteria or requirements that may be set by an order of the Board or by a code issued by the

# **Smart Sub-Metering Code**

- 2.2.1 A smart sub-metering provider shall ensure that either:
  - (c) the board of directors of a condominium corporation; or

(d) 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.

has requested, and a distributor has installed, a master meter that is an interval meter before beginning to provide smart sub-metering services.

Notice of Proposal to Amend a Code and Notice of Proposal to issue a New Code, dated January 8, 2008, page #2.

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.

The Board uses the term "smart sub-metering" to describe the situation in which a licensed distributor provides service to the condominium's bulk (master) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system. In this scenario, the condominium continues to be the customer of the licensed distributor and will receive a single bill based on the measurement of the bulk (master) meter.

# Section 112.3(1) of the OEB Act, 1998 states:

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.

## Section 112.4 of the OEB Act, 1998 states:

(1) If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence.

(2) This section applies to contraventions that occur before or after this section comes into force.

## Section 112.5 of the OEB Act, 1998 states:

(1) If the Board is satisfied that a person has contravened an enforceable provision, the Board may, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order for each day or part of a day on which the contravention occurred or continues.

## **DETAILED BACKGROUND**

## CUSTOMER CONTACT

In July 2008, Carma Industries and Intellimeter have complained to the Compliance Office regarding what they see as unfair business practices by Toronto Hydro.

In December 2008, a group of private sub-meter providers known as the Smart Sub-Metering Work Group also submitted a compliant that electricity distributors are abusing their market power and as a result hindering the growth of the smart sub-metering industry in the province. The complaint specifically identifies the following utilities:

Toronto Hydro, Enersource, Oakville Hydro, PowerStream

The alleged activity includes the following:

- Building owners/developers are told that only the LDC may install meters and provide individual suite metering.
- Where a building owner/developer has expressed an interest in smart submetering, the LDC refuses to provide an Offer to Connect, refuses to install a bulk meter or advises that such a choice would result in other causes of delay. The LDC's inform the developers that none of these events would occur if the LDC is permitted to do the metering.
- Certain Offers to Connect are being provided without the LDC undertaking an economic evaluation and as a result either inadequate or no financial contributions are being requested.

# REVIEW OF COMPLIANCE OFFICE ACTIVITY

On July 16, 2008 and July 25, 2008, the Compliance Office received complaints from Carma Industries and Intellimeter.

On July 24, 2008, Compliance staff requested Toronto Hydro provide a response to questions relating to the distributor's policies regarding metering of multi-unit properties.

On July 29, 2008, Toronto Hydro responded to staff questions and provided the following positions.

- THESL requires distributor smart meters be installed in new facilities. However, it does allow customers to install these meters through alternative bid and then be transferred to the distributor.
- THESL's position is that unit holders and common areas (either residential or commercial) in new condominiums are individual residential or general service customers of THESL, the same as new customers in single detached homes.
- THESL believes that the Board supports this view since it has stated in its June 10<sup>th</sup> Notice for the Sub-Metering initiative that Smart Metering is a distribution activity and that only licensed distributors are allowed to undertake smart metering in condominiums.

On October 22, 2008, the Chief Compliance Officer issued a determination to Toronto Hydro stating that its policy is inconsistent with its regulatory obligations. The CCO stated the following views:

 THESL's policies are inappropriate in light of the legal and regulatory framework applicable to the metering of new condominiums as set out in section 53.17 (1) of the Electricity Act, 1998 which states

"a distributor and any other person licensed by the Board to do so shall, ..., install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation." (emphasis added)

- The availability of the smart sub-metering option is clear from the materials issued by the Board when it amended the Distribution System Code (the "DSC") and created the Smart Sub-Metering Code. Section 5.1.9 of the DSC itself also clarifies that a distributor must install smart metering only when requested to do so by the condominium corporation or the developer.
- Under section 28 of the Electricity Act, 1998, a distributor must connect a building on request. The DSC sets out a list of the reasons that may justify a refusal to connect. However, the desire of a customer to install smart sub-metering is not one of those reasons.

On November 12, 2008, Toronto Hydro responded to the CCO's letter. THESL stated that it does not accept the opinions that were set out in the letter and would not change its metering policies. THESL presented the views that:

 It is incorrect to conclude that their policies preclude the installation of a submetering system; should a customer wish to install an additional sub-metering system, they are at liberty to do so provided there is no interference with THESL's smart metering system. In any case, each distinct residential or commercial unit (including common areas) would remain as a direct customer of THESL.

- Section 53.17 of the Electricity Act is irrelevant to this issue, since it does not require a non-distributor to provide sub-metering, nor prohibit a distributor from installing smart metering, but goes to the requirement that equipment be of a type required by regulation. Furthermore, it clearly does not establish a right on the part of any person to install sub-metering equipment.
- The thrust of Section 5.1.9 is clearly to require that the metering installed meet the functional specification of Ontario Regulation 425/06.

On January 29, 2009, the CCO sent a follow up letter to Toronto Hydro stating that after considering THESL's arguments, he remains of the view that their policies are inappropriate. The CCO stated the following views:

- Cannot agree with THESL's characterization of section 53.17 of the Electricity
   Act, 1998 as being either irrelevant to this issue, or as speaking only to the
   nature of the equipment to be installed.
- Cannot agree with THESL's characterization of section 5.1.9 of the Distribution System Code as having, as its thrust, to require that the metering installed meet the specifications in regulation. Section 5.1.9 also makes it clear that the person responsible for a new condominium has the ability to choose between having a licensed distributor install smart meters or having a licensed smart sub-metering provider install smart sub-meters.
- THESL's position that each individual unit must be become a direct customer of THESL is incompatible with the Board's approach to smart sub-metering. As described by the Board, smart sub-metering clearly involves (a) a licensed distributor that bills its customer the condominium corporation based on the measurement of a bulk meter; and (b) a separate person the licensed smart sub-metering provider that bills the individual units and common areas based on the measurement of a smart sub-metering system.
- The provisions of the Board's Smart Sub-Metering Code make it clear that smart sub-metering as a competitive licensed activity goes beyond merely the installation of the meters.
- There are no regulatory provisions that provide licensed distributors with the authority to implement a requirement that each unit and common area in a new condominium must become a direct customer of the distributor.

On February 9, 2009, Toronto Hydro responded to the CCO's letter and restated its view that the CCO's interpretations are incorrect. THESL presented the views that:

- Section 5.1.9 of the DSC does not mention smart sub-metering, nor contain any statement that expressly 'makes it clear' that a distributor may only install smart metering upon the request of a person in charge of a condominium. The unstated premise of your argument appears to be that the Section begins with the word 'Only', which it does not.
- In THESL's view that there are no regulatory provisions which prohibit its smart metering policy.
- Furthermore, the DSC states at Section 5.1.6:

"A distributor shall identify in its Conditions of Service the type of meters that are available to a customer, the process by which a customer may obtain such meters and the types of charges that would be levied on a customer for each meter type."

This statement is not conditioned by any further obligation on the part of distributors concerning smart sub-metering in new condominiums.

On February 27, 2009, Compliance staff sent information request letters to Enersource, Powerstream and Oakville Hydro enquiring about their policies in regards to metering individual units in condominiums. Response to these enquiries has indicated that in the case of Enersource and Powersteam, they do not implement policies that require all customers in new condominiums be directly metered by the distributor. Oakville Hydro has stated that it will no longer communicate with staff on this issue until the Board settles the dispute with Toronte Hydro.

On April 17, 2009 OEB staff and THESL staff meet to discuss the dispute. THESL reaffirmed its previous position that individual customers in new condominiums should be customers of the distributor. They also acknowledged their policy is to not install a bulk meter even when requested by the customer and submitted that they have no regulatory obligation to do so. THESL expressed its willingness to participate in an enforcement proceeding in order for this matter to have a hearing before the Board. OEB staff informed THESL that they would request guidance from the Board regarding interpretation of the legal requirements. Among the results of this guidance could be a Board statement on the interpretation, an enforcement proceeding and/or a code amendment.

On April 24, 2009, the Sub-metering Working Group provided copies of letters from THESL to two property managers in which THESL states that they do not offer a connection configuration based on a bulk meter/sub-metering configuration. As a result THESL would not prepare an Offer to Connect on that basis.

A meeting was held on April 17th between Board and THESL staff. In this meeting THESL reaffirmed its commitment to its policy and requested a Board hearing on the matter. OEB staff stated that we would request guidance from the Board as to its intention in regards to sub-metering activities and then determine next steps.

On May 1<sup>st</sup>, Compliance staff meet with the members of the Electricity Distribution Committee. Staff sought guidance on whether a new condominium owner has the right to install a smart sub-metering system rather than be required to have distributor smart metering be installed? The Committee members were all in agreement that a distributor may not require a developer to have distributor meters installed for each unit. The Members also felt that the existing legislation was sufficiently clear on this matter.

On May 20<sup>th</sup>, THESL sent a letter to Mr. Wetston requesting that the Board initiate a policy consultation on this matter rather the an enforcement hearing. THESL submits that the ability of a distributor to install smart meters in individual condominium units is essential to meet their obligations under the *Green Energy Act*.

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