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BY EMAIL AND COURIER

December 21, 2009
File No. 100519.1011

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

Dear Ms. Walli:

**Re: Compliance Counsel Interrogatories
Board File No: EB 2009-0308**

We enclose copies of Compliance Counsel Interrogatories on the Pre-Filed Evidence of Toronto-Hydro Electric System Limited ("THESL").

It is Compliance Counsel's position that portions of THESL's Pre-Filed Evidence are not relevant to the issues in this proceeding, including the answers labelled A.6 and A. 19 to A. 41. Compliance Counsel's Interrogatories related to those portions of the evidence are not an admission of the relevance that evidence. Compliance Counsel reserves its right to object to the adoption of this evidence at the hearing or alternatively argue that the evidence should be given no weight.

Yours truly,


Patrick G. Duffy

/mas

cc: George Vegh, *Counsel to THESL*
Maureen Helt, *OEB*
Patrick Duffy, *Stikeman Elliott*
Dennis O'Leary, *Counsel to SSMWG*
Andrew Taylor, *Counsel to EDA*

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ONTARIO ENERGY BOARD

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.

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

December 21, 2009

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THESL INTERROGATORY 1 - Suite Metering Policies for New Condominiums

Reference: Written Direct Evidence of Colin McLorg and Christopher Tyrrell, pp. 2 to 5

1. Why does THESL distinguish between new and existing condominiums for the purposes of its suite metering policies for condominium buildings? What is the rationale? Specifically:

- (a) Why does THESL offer bulk metering connections as an end-state configuration for existing condominiums, but not for new condominiums?
- (b) Explain why THESL's concern about "contravention of law" by exempt distributors and/or sub-meter providers are not applicable in the case of existing condominiums or all the other opportunities for smart sub metering that are described by THESL in A.6.

2. Why does THESL use the date of February 29, 2008 to distinguish between new and existing condominiums? In particular, was there a legislative or regulatory change or some other circumstance that caused THESL to change its policy and amend section 2.3.7.1.1 of its Conditions of Service as of that date?

3. Does THESL's policy of not providing bulk-metered connections as an end-state configuration for new condominiums depend upon whether its communications and/or dealings are with a condominium developer or a condominium board of directors? If THESL's communications or dealings for a new condominium were with a condominium board as opposed to a developer, would it maintain its policy of refusing to offer a bulk-metered connection as an end-state configuration? If so, explain why.

4. Explain why, as referenced in A.5, THESL believes it has the right to require the installation of meters for individual units in a new condominium and not for the individual units in a campus style multi-facility development.

THESL INTERROGATORY 2 - Avonshire and Metrogate

Reference: Written Direct Evidence of Colin McLorg and Christopher Tyrrell, pp. 5 to 7

1. What was the date of Avonshire's request for a connection referenced at A.7?
Please produce Avonshire's request for connection and all related documentation in THESL's possession, including the plans dated January 22, 2008.
2. What was the date of Metrogate's request for a connection referenced at A.7?
Please produce Metrogate's request for connection and all related documentation in THESL's possession, including the plans dated April 1, 2008.
3. Why did THESL not offer Metrogate the same type of amended offer to connect that it offered to Avonshire on November 27, 2009 (referenced at A.9)? Specifically, if the purpose of the "self certification" conditions (as described by THESL at A.24) is "to foreclose the possibility of charging unlawful mark-ups", why would THESL not make the same offer to Metrogate (or other new condominiums)?

THESL INTERROGATORY 3 – Marking-Up Distribution Services and s. 3.1.1(a) of the Distribution System Code

Reference: Written Direct Evidence of Colin McLorg and Christopher Tyrrell, pp. 11 to 22

THESL states in its pre-filed evidence that:

- 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”. (A.19)
- “... [THESL] 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.” (A.23)
- “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.” (A.26)
- “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” (A. 26)
- “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.” (A.30)

With regards to the foregoing evidence:

1. Did THESL ever lodge a complaint or otherwise inform the Board (or any other authority) that it had concerns that condominium developers and/or sub-meterers were contravening the law in a manner set out in THESL’s pre-filed evidence? If it did, please

provide the particulars and the relevant documents.

2. Did THESL ever submit a complaint or otherwise inform the Board or any other authority) about any concerns it had with Avonshire or Metrogate (or SSM providers with whom Avonshire or Metrogate were dealing) acting in a way that contravened the law in a manner set out in THESL's pre-filed evidence? If so, please provide the particulars and the relevant documents.

3. With regards to THESL's evidence that:

“... [THESL] 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.” (A.23)

Did THESL ever inform the Board that its suite metering policy had been designed to prevent unlawful profiting by unlicensed distributors and/or did it seek Board authorization for this policy? If so, please provide the particulars and relevant documentation.

4. When did THESL first decide to base its condominium metering policy of refusing to provide bulk-metered connections as an end state configuration for new condominiums on the grounds that doing so would or could facilitate or cause a contravention of law as set out in THESL's pre-filed evidence? More specifically, was this concern for “contravention of law” a foundation or component of THESL's condominium metering policy prior to the Board's April 2008 investigation of THESL with regards to Avonshire and Metrogate? Please provide documentation evidencing when this became a component of THESL's condominium metering policy.

5. THESL's April 22, 2009 letters to Avonshire and Metrogate refusing to provide bulk metering configurations do not reference THESL's concern for contravention of laws (as set out in THESL's evidence) as grounds for its refusal. When, if at all, did THESL first inform Avonshire and Metrogate that its refusal was, at least in part, based on these grounds?

6. What information, if any, did THESL have on or about April 22, 2009 when it refused Avonshire's and Metrogate's requests for bulk metering configurations that

Avonshire or Metrogate were acting in contravention of the law in the manner set out in THESL's pre filed evidence or in any other way?

7. With regards to the statement that "[f]or 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", what evidence or other information does THESL have to support this inference? In particular, what information, if any, does THESL have about Metrogate or Avonshire, and their business practices and arrangements, to support this inference *vis-à-vis* Metrogate and Avonshire?

8. With regards to the statement that "[s]econd, 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", what evidence or other information does THESL have to support that this statement? In particular, what information, if any, does THESL have about Metrogate or Avonshire, and their business practices and arrangements, to support this assertion *vis-à-vis* Metrogate and Avonshire?

9. The evidence states that while THESL does not have any more documented examples (i.e., of sub-meterers offering payments to condominium developers), "as an industry participant, [Mr. McLorg] can advise that this practice is a matter of common knowledge" (A.28). Identify what evidence Mr. McLorg has to support his assertion that it is "common knowledge").

10. With regards to the statement that "[i]t 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", what evidence or other information does THESL have about Metrogate or Avonshire, and their business practices and arrangements, to support this assertion *vis-à-vis* Metrogate and Avonshire?

11. Identify what evidence, if any, THESL has that Avonshire and/or Metrogate were to receive a per unit payment from a sub-metering provider, and file it with the Board if that evidence is not already contained in the evidence filed to date.

12. Please confirm that the email and offer to sub-meter (referenced at A.26 and A.27) do not relate to either the Avonshire or Metrogate projects.
13. The evidence identifies one sub-meterer that has posted its billing determinants as an example (A.31). Please confirm that the evidence does not relate to either the Avonshire or Metrogate projects.

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