

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 AND COURIER

January 13, 2010
File No. 100519.1011

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

Dear Ms. Walli:

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

We acknowledge receipt of THESL's counsel's letter dated January 13, 2010 filing further submissions on the mootness issue.

It was our understanding that the panel granted Compliance Counsel a right to reply on the issue of mootness, which was raised by THESL for the first time at the hearing on January 7, 2010; we did not believe this included a right for THESL to file sur-reply. Further, much of what is contained in THESL's response is not in the nature of a reply, but rather raises new submissions on the issue. Nevertheless, Compliance Counsel will not object to the filing of these further submissions, subject to our brief comments below.

In its response, THESL proposes the appointment of a facilitator to assist THESL and Compliance Counsel in agreeing on terms to avoid prejudice to Avonshire and Metrogate if the Board decides to stay its decision. It is our view that this proposal is inappropriate in a proceeding of this nature, which concerns whether THESL contravened or is likely to contravene the enforceable provisions and the appropriate remedy for any contravention.

As Compliance Counsel has repeatedly stated, this proceeding is being undertaken in the public interest and Compliance Counsel does not represent Avonshire or Metrogate. THESL is free to discuss the connection of the Avonshire and Metrogate projects with those parties directly if it wishes and has been free to do so throughout these proceedings. The outcome of any discussions, however, does

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

not affect the determination of whether THESL contravened the enforceable provisions in April 2009 when it refused to connect Avonshire and Metrogate or whether THESL is likely to continue to contravene those provisions under its current connection policy and Conditions of Service.

Further, Compliance Counsel reiterates that there may be other customers within THESL's distribution service area that have sought or are seeking a connection based on a smart sub-metering configuration. The process suggested by THESL will not ensure that these parties are able to obtain the connection to which they are entitled under the applicable legislation and regulatory provisions.

Yours truly,


Glenn Zacher

GZ/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*