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Delivered by e-mail to: BoardSec@oeb.gov.on.ca

December 16, 2009

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

Dear Ms. Walli:

**Re: Notice of Hearing on Order for Compliance against
Toronto Hydro-Electric System Limited
Board File: EB-2009-0308**

I am writing in my capacity as legal counsel for the Residences of Avonshire Inc. ("**Avonshire**") and Metrogate Inc. ("**Metrogate**"). My clients' energy/metering consultant has been provided with the Materials for Motion on Interrogatory Responses filed with the Ontario Energy Board ("**OEB**") by Toronto Hydro-Electric System Limited ("**THESL**").

I understand that the OEB has issued a Procedural Order that permits Avonshire and Metrogate to file a response to THESL's motion by today.

In short, Avonshire and Metrogate object to any requirement to provide further responses to the Interrogatories at issue.

In order for Compliance Counsel to respond to these Interrogatories, the requested documents and information will first have to be provided to Compliance Counsel by Avonshire and Metrogate. I understand that the OEB has already considered a similar issue, when THESL sought broad disclosure of documents from parties other than Compliance Counsel, through a Notice of Motion dated September 4, 2009. The OEB denied most of THESL's motion and stated that its discretion to order third parties to produce documents is an "unusual step to be taken only when the documents identified are clearly relevant and no prejudice or undue burden on the third parties results from the disclosure".

My clients submit that THESL's latest request for disclosure does not meet the foregoing test.

The OEB's Notice of Intention to Make an Order for Compliance relates to THESL's refusal to offer connections for Metrogate and Avonshire based on a bulk meter/sub-metering configuration. That refusal is evidenced by letters from THESL dated April 22, 2009. If THESL's position is that its refusal to connect is justified "as an effective means of ensuring compliance [with] OEB licencing and exemption requirements that prohibit unauthorized mark-ups on distribution services", then one must

assume that THESL had all the information that it needed to evaluate Metrogate and Avonshire at the time that THESL refused the requested connections. Therefore, it cannot be relevant or appropriate for THESL to require disclosure of that information now, simply to justify a decision made many months ago.

There is another reason why the information and documents sought are not relevant. In the writer's respectful opinion, it is not THESL's role to be the regulator or referee of whether smart sub-metering services are compliant with all relevant legislation. That is the OEB's role. If customers have issues with these services, they can complain to the OEB. THESL is not a regulator. I understand that THESL competes with others who provide smart sub-metering services. Given that it's not THESL's proper role to regulate regarding which new condominium projects can be smart sub-metered, it follows that the documents and information requested are not relevant.

Avonshire and Metrogate also assert that THESL's latest disclosure request would cause them prejudice. In effect, THESL's request requires disclosure of commercially sensitive financial arrangements with a smart sub-meterer, in order that THESL can decide whether to allow its competitor to participate in the marketplace. Again, this sets up THESL as the regulator of an industry in which it is a participant. If Avonshire and Metrogate are required to provide such information in response to this motion, then it is most likely that THESL will require such information from all developers on a go-forward basis, in respect of any projects where a developer or owner seeks to have suite metering installed by any party other than THESL. One can expect that if such disclosure was required, then in an effort to avoid the costs of disclosure (and to avoid sensitive commercial information being disseminated), my clients would quickly find that they had no option other than THESL for the provision of suite metering services.

We have two other comments in respect of THESL's motion.

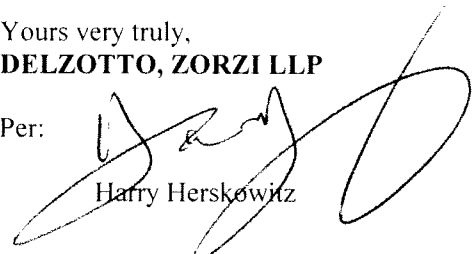
First, several of the Interrogatories for which THESL seeks a response were posed directly to Avonshire in a letter dated November 27, 2009. Our December 9th, 2009 response to THESL's letter is not included with the motion materials, however we have attached a copy of same hereto for your ease of reference. Therefore, I attach to these submissions a copy of my December 9, 2009 letter which sets out the reasons why Avonshire is not prepared to provide the information and documents requested.

Second, we note that THESL has very recently filed evidence in this proceeding, which includes documentation (such as Conditions of Service) from a smart sub-metering provider. That documentation does not relate to any smart sub-metering provider with whom my clients have conducted business, and has nothing to do with Avonshire and Metrogate.

We trust that these submissions are of assistance to the OEB. We do not plan to attend at the hearing on Monday, December 21st, as we expect that Compliance Counsel will be making comprehensive oral submissions in response to THESL's motion.

Yours very truly,
DELZOTTO, ZORZI LLP

Per:


Harry Herskowitz



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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 sub-meterers" 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.
2. 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.
5. 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

Per:



Harry Herskowitz