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BY EMAIL AND COURIER

February 17, 2009

File No.: 100519.1011

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

Dear Ms. Walli:

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

We write to advise the Board that Compliance Counsel and Toronto Hydro-Electric System Limited ("THESL") have reached agreement on the terms of a proposed order for the Board's consideration. A copy of the proposed order is enclosed.

Compliance Counsel submits the proposed order is in the public interest and serves the purposes of the Board's remedial jurisdiction under subsection 112.3(1) of the *Ontario Energy Board Act, 1998*, which grants the Board broad authority to order compliance, remedy past contraventions, or prevent future a contraventions of the enforceable provisions. The proposed order meets these objectives as it, *inter alia*, includes provisions that:

- require THESL to comply with the regulatory scheme by amending section 2.3.7.1.1 of its Conditions of Service;
- remedy past contraventions buy providing revised offers to connect to Avonshire and Metrogate and notifying other potentially affected parties of the Board's decision and their right to smart sub-metering; and
- prevent further contraventions by requiring THESL to inform all condominium corporations and developers of the right to a bulk meter connection and obligating THESL to connect their buildings if the customer requests a bulk meter connection.

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

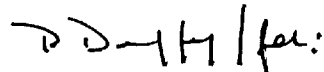
LONDON

SYDNEY

The proposed order also includes a reporting requirement that will assist Board staff in monitoring compliance. The reporting requirement is consistent with previous orders made by the Board in proceedings under section 112.3. with the terms of the Order.

Compliance Counsel will be filing written submissions later today and is prepared to speak to the terms of the proposed order at the remedy phase of hearing on February 18, 2010.

Yours truly,


Glenn Zacher

GZ/rah
enclosures

cc: George Vegh, *Counsel to THESL*
Maureen Helt, *OEB*
Patrick Duffy, *Stikeman Elliott*
David Stevens, *Counsel to SSMWG*
Kelly Friedman, *Counsel to EDA*

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.

ORDER

WHEREAS the Ontario Energy Board (the “Board”), by its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the “Act”), intended 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;

AND WHEREAS the Board provided THESL with a Notice of Intention to Make an Order for Compliance under Section 112.3 of the *Ontario Energy Board Act, 1998* dated August 4, 2009 (the “Notice of Compliance”) and THESL requested on August 17, 2009 that the Board hold a hearing on these matters;

AND WHEREAS the Board’s Compliance Counsel and THESL filed pre-filed evidence and responses to interrogatories with the Board, and presented the evidence of the witnesses and the submissions of counsel at a hearing before the Board on January 5 and 7, 2010;

AND WHEREAS the Board issued a Decision and Order dated January 27, 2010 finding that THESL had breached section 28 of the *Electricity Act, 1998* (the “Electricity Act”) and sections 2.4.6, 3.1.1 and 5.1.9 of the Distribution System Code (the “DSC”) and inviting submissions on the appropriate remedy relating to the breaches of the enforceable provisions;

AND WHEREAS the Board received written submissions from Compliance Counsel and THESL, as well as the intervenors the Smart Sub-Metering Working Group and the Electricity Distributors Association, and heard the submissions of counsel relating to remedy on February 18, 2010;

AND WHEREAS the Board has issued a Decision and Order addressing the issue of remedy on this date;

THE BOARD ORDERS THAT:

Definitions

1. In this order:
 - (a) “condominium corporation” means a corporation created or continued under the *Condominium Act, 1998*;
 - (b) “condominium developer” means 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*;
 - (c) “smart metering” means the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter; and
 - (d) “smart sub-metering” means 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.

Amendment of THESL's Conditions of Service

2. THESL shall amend section 2.3.7.1.1 of its Conditions of Service by deleting the entirety of the current section and replacing it with the language set forth in Schedule "A" to this Order.
3. THESL shall file with the Board a copy of its amended Conditions of Service within 10 days of the date of this Order.

Revised Offer to Connect for Avonshire

4. Within 10 days of the date of this Order, THESL shall provide a revised offer to connect to the Residences of Avonshire Inc.'s ("Avonshire") project at Highway 401 and Sheppard Avenue that contemplates a bulk-metered connection to THESL's distribution system so that individual condominium units will be smart sub-metered by a licensed smart sub-metering provider.
5. The offer to connect provided by THESL under paragraph 4 of this Order shall be subject to THESL's standard terms and conditions and, subject to paragraph 4, shall not include any additional terms or conditions, or require any representations or warranties from Avonshire, that addresses a smart sub-metering system or the actions of Avonshire in relation to a smart sub-metering system.
6. If Avonshire accepts the offer to connect provided under paragraph 4 of this Order, THESL shall, in a timely manner consistent with Avonshire's construction schedule, provide for the metering configuration specified in the executed offer to connect.

Revised Offer to Connect for Metrogate

7. Within 10 days of the issuance of this Order, THESL shall provide a revised offer to connect to Metrogate Inc.'s ("Metrogate") project in Scarborough that contemplates a bulk-metered connection to THESL's distribution system so that individual condominium units will be smart sub-metered by a licensed smart sub-metering provider.

8. The offer to connect provided by THESL under paragraph 7 of this Order shall be subject to THESL's standards and conditions and, subject to paragraph 7, shall not include any additional terms or conditions, or require any representations or warranties from Metrogate, that addresses a smart sub-metering system or the actions of Metrogate in relation to a smart sub-metering system.

9. If Metrogate accepts the offer to connect provided under paragraph 7 of this Order, THESL shall, in a timely manner consistent with Metrogate's construction schedule, provide for the metering configuration specified in the executed offer to connect.

Other Requests to Connect

10. Within 30 days of the date of this Order, THESL shall provide all condominium corporations and developers that requested an offer to connect from THESL after February 28, 2008 with a letter in the form attached as Schedule "B" and a copy of this Order.

11. THESL shall include the statement set forth in Schedule "C" to this Order in all offers to connect provided to a condominium corporation or developer. When requested to do so by the board of directors of a condominium corporation or by the developer of a condominium building, THESL shall provide an offer to connect based on a bulk meter configuration to facilitate sub-metering in accordance with THESL's Conditions of Service and its standard terms and conditions.

12. Any offer to connect provided by THESL under paragraph 11 of this Order shall be subject to THESL's terms and conditions and, subject to paragraph 11, shall not include any additional terms or conditions, or require any representations or warranties from the customer, that addresses a smart sub-metering system or the actions of the customer in relation to a smart sub-metering system.

13. If a condominium corporation or developer accepts an offer to connect provided under paragraph 11 of this Order, THESL shall, in a timely manner consistent with the

customer's construction schedule, provide for the metering configuration specified in the executed offer to connect.

Monitoring and Reporting

14. Within 45 days of the date of this Order, THESL shall file with the Board a sworn affidavit listing all of the condominium corporations and developers that requested an offer to connect from THESL after February 28, 2008. The affidavit shall identify the customers that were provided with the letter required under section 10 and for any customer that did not receive a letter, provide a detailed explanation as to why the customer did not receive such a letter. THESL shall, upon the request of the Board, provide copies of any such letters and proof of delivery.

General

15. In the event of a dispute over the terms of this Order, including the interpretation of any of the provisions of this Order, THESL or Compliance Counsel may apply to the Board to adjudicate the dispute.

16. Nothing herein is intended to limit any rights or remedies that a person, including a condominium corporation or developer, may have with respect to the matters in this proceeding.

17. A failure to comply with the provisions of this Order by THESL shall be deemed to be a breach of an enforceable provision under Part VII.1 of the Act and may result in the commencement of enforcement proceedings by the Board.

18. This order applies to the successors and assigns of THESL.

DATED at Toronto, ●, 2010.

SCHEDULE "A"

2.3.7.1.1 Metering Requirements for Multi-Unit Residential Rental Buildings and Condominiums

Developers of new multi-unit residential rental buildings and condominiums (collectively, "MURBs"), or boards of directors of condominiums, may choose to have Toronto Hydro install smart suite metering, or to have Toronto Hydro install a bulk interval meter for the purpose of enabling smart sub-metering by a licensed sub-metering service provider.

Installation of Smart Metering by Toronto Hydro

Upon the request of a MURB developer or a condominium board of directors, Toronto Hydro will install smart metering that meets the functional specification of Ontario Regulation 425/06 - Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (suite metering). In that case, each separate residential and commercial unit, as well as common areas, will become direct individual customers of Toronto Hydro, with the common area accounts held by the developer, condominium corporation or the landlord as the case may be.

The MURB developer or condominium board of directors may choose an Alternative Bid for the installation of suite metering. In that case, the MURB developer, landlord or condominium board of directors is required to:

- (i) select and hire a qualified contractor;
- (ii) ensure all contestable work is done in accordance with Toronto Hydro's technical standards and specifications; and
- (iii) assume full responsibility for the installation and warranty all aspects for a period of 2 years from date of commissioning.

Where the MURB developer or condominium board of directors transfers the metering facilities installed under the alternative bid option to Toronto Hydro, and provided Toronto Hydro has inspected and approved the facilities installed, Toronto Hydro shall pay the condominium corporation, landlord or developer a transfer price. The transfer price shall be the lower of the cost to the MURB developer or condominium board of directors to install the metering facilities or Toronto Hydro's fully allocated cost to install the metering facilities.

Common Area Metering

Where units in a MURB are to be suite metered, the responsible party (MURB developer, condominium board of directors, or landlord) shall enter into a contract with Toronto Hydro for the supply of electrical energy for all common or shared services. Common or

shared services typically include lighting of all common areas shared by the tenants, or unit owners, and common services such as heating, air conditioning, water heating, elevators, and common laundry facilities. In such cases, consumption for all common areas will be separately metered.

Installation of Bulk Interval Metering by Toronto Hydro

Where bulk interval metering is supplied by Toronto Hydro to an exempt distributor for the purpose of enabling sub-metering, the responsible party (i.e., the developer, condominium corporation, or landlord, but not the sub-metering provider) shall enter into a contract with Toronto Hydro for the supply of electrical energy to the building.

SCHEDULE "B"

Dear [Sir/Madam]:

RE: Ontario Energy Board Proceeding EB-2009-0308.

I write to you in respect of [customer's] request for an offer to connect to Toronto Hydro's distribution system for a condominium building at [address].

At the time of your request for an offer to connect, section 2.3.7.1.1 of Toronto Hydro's Conditions of Service provided that each unit in the building be individually metered by Toronto Hydro and that each unit owner become a separate customer of Toronto Hydro. The offer to connect provided to you by Toronto Hydro dated [date] was based on this configuration.

The Ontario Energy Board in proceeding EB-2009-0308 determined that Toronto Hydro's policy did not meet certain requirements of the *Electricity Act, 1998* and the Board's *Distribution System Code*. The Ontario Energy Board has ordered Toronto Hydro to amend section 2.3.7.1.1 of its Conditions of Service. A copy of the Board's Order attaching the amended section 2.3.7.1.1 is enclosed.

Under the amended section 2.3.7.1.1, the customer has a right to choose whether to have individual units of an existing or new multiunit condominium building individually metered by Toronto Hydro or smart sub-metered by an alternative licensed service provider.

If Toronto Hydro has not yet installed smart meters for each unit and you wish to have your building smart sub-metered by an alternative service provider, please contact Toronto Hydro at [contact details]. Toronto Hydro will provide you with a revised offer to connect based on a bulk metered configuration that will allow you to retain an alternative service provider to smart sub-meter individual units in the building, subject to Toronto Hydro's standard terms and conditions.

Yours truly,

-
- , Toronto Hydro-Electric System Limited

SCHEDULE "C"

Under section 2.3.7.1.1 of Toronto Hydro's Conditions of Service, the customer may choose to have Toronto Hydro install smart suite metering, or to have Toronto Hydro install a bulk interval meter for the purpose of enabling smart sub-metering by a licensed sub-metering service provider.

This offer to connect has been prepared on the basis of **[individual metering by Toronto Hydro / smart sub-metering by an alternative licensed service provider]**.

DRAFT

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

EB-2009-0308

AND IN THE MATTER OF a Notice of Intention to Make an
Order for Compliance against Toronto Hydro-Electric System Limited.

ORDER

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