EB-2009-0139

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

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010

ARGUMENT OF THE SMART SUB-METERING WORKING GROUP ("SSMWG")

Introduction

1. The Smart Sub-metering Working Group ("SSMWG") consists of the following licensed smart sub-metering ("SSM") providers: Carma Industries Inc., Enbridge Electric Connections Inc., Hydro Connection Inc., Intellimeter Canada Inc., Provident Energy Management Inc., Stratacon Inc., and Wyse Meter Solutions.[1] The SSMWG represent the majority of private-sector non-electricity distribution company owned SSM providers. As the Ontario Energy Board ("OEB" or the "Board") has noted previously on a number of occasions, SSM providers operate in a competitive market and compete not only amongst themselves, but also with electric local distribution companies (LDCs) and affiliates of LDCs that are licensed SSM providers.[2]

2. Toronto Hydro-Electric System Limited ("THESL") has itself admitted that suite metering in condominiums is competitive, as noted in the Project Plan it prepared for its Suite Metering Program in EB-2007-0680, which is filed in this proceeding as part of SSMWG Interrogatory No. 15. Specifically, THESL states:

[1] Of the 19 licensed SSM providers, 8 are owned by or affiliated with the SSMWG, several are affiliated with electric LDCs, and one operates under licence with Toronto Hydro
[2] The Board has said SSM is a competitive market in its Notice of Proposal to Amend a Code and Notice of Proposal to Issue a New Code (EB-2007-0772), January 8, 2008, p. 3; Notice of Revised Proposal to Amend a Code and Notice of Revised Proposal to Issue a New Code (EB-2007-0772), June 10, 2008, p. 4; and OEB Majority and Minority Decisions with Reasons, July 27, 2009, EB-2008-0244 (PowerStream), pps. 5 and 11, respectively; OEB Decision and Order, January 27, 2010 (Compliance Proceeding) EB-2009-0308, pps. 13, 16

> " ... To be competitive with other metering service providers, Toronto Hydro will need to provide individual unit integrated metering at no cost to the developer or condominium corporation."[3]

3. The SSMWG submits that the fact that THESL's Suite Metering Program operates within a competitive market imposes on THESL a much higher standard to demonstrate that its program complies with all applicable regulatory and rate design standards. This also imposes a duty on THESL to not exercise its powers as a regulated monopoly in a manner which is anti-competitive and detrimental to the small, but important, SSM-provider competitive market.

4. The evidence in this proceeding confirms that THESL's Suite Metering Program is merely an extension of the anti-competitive policy adopted by THESL in February 2008 to not provide bulk meters to new condominiums. The OEB, in its Decision in the THESL compliance proceeding (EB-2009-0308), specifically noted that:

> "What happened here is Toronto Hydro unilaterally decided in February 2008 to take action which has the effect of removing the competitors completely from one aspect of the smart metering business."[4]

THESL's Suite Metering Program is, plain and simple, a further attempt to thwart the existence of a competitive SSM industry.

5. The record demonstrates that THESL has done nothing to consider whether or not its Suite Metering Program is being cross-subsidized by other ratepayers. THESL has done nothing to consider whether its Suite Metering Program is appropriate in a competitive marketplace. It has not asked the Board for an exemption from the requirements of the *Distribution System Code* ("DSC") in terms of the required economic evaluations. THESL, therefore, has failed to demonstrate that its rates are just and reasonable. The *Ontario Energy Board Act, 1998* ("OEB Act"), at ss. 78(8), places the onus on THESL to demonstrate that its rates are just and reasonable. In respect of the Suite Metering Program, it has clearly failed to satisfy this onus.

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[3] SSMWG IR No. 15 (Ex. R1/T10/S15) and Attachment "*Draft – Project Plan for Individual Suite Metering in Condominium Buildings",* EB-2007-0680, Ex. R1/T6/S9, Appendix A, filed 2007 Nov 12, p. 8
[4] Decision and Order, January 27, 2010, EB-2009-0308, p. 19, para. 59

Historical perspective

6. In EB-2007-0680, THESL applied for approval of a program which would ultimately involve the rate basing of its capital expenditures on integrated electronic metering systems. THESL did not ask for an increase in the standard connection charge for residential ratepayers which is embedded in rates. The request was specific to condominiums, and THESL forecasted that the program would be directed predominantly at conversions, all in the name of conservation.

7. The SSMWG was not a participant in the EB-2007-0680 proceeding, and there was little examination of THESL's proposal. Board counsel did question why THESL should be proposing a program to be funded by ratepayers broadly when there were sub-metering companies that were prepared to pay for the capital cost of the meters and thereby save other ratepayers the cost.

8. The Board, in its Decision dated May 15, 2008, recognized the spawning of an important issue and indicated that "at this time" it would not consider issues about the creation of a residential sub-class or directing financial contributions. The Board, in this Decision, suggested that a generic proceeding would be appropriate directed towards rate design and cost allocation issues.[5]

9. Despite the Board giving clear warning to THESL that the issues were live and despite the passage of two years, THESL's current rate application barely touches upon these outstanding concerns. Importantly, THESL did not highlight the fact that new condominium developers financially benefit from THESL's installation of space-saving integrated Quadlogic meters (as opposed to the traditional socket-type meters installed elsewhere by THESL). THESL did not indicate that it would not be including the higher cost meters in the economic evaluations required under the DSC. As admitted by THESL witness Mr. McLorg, it did not seek an exemption from the DSC.[6]

10. The SSMWG submits that while THESL's Suite Metering Program was proposed as being directed towards the conversion of existing condominiums and was draped in promises of conservation, this was done to mask the true intent of the program, namely,

[5] Decision, May 15, 2008, EB-2007-0680, p. 20
[6] Tr. 3, p. 48

to find a means to gain a competitive advantage over the SSM community in respect of the real market which exists today – new condominiums.

THESL's current practice

11. It is important to carefully examine THESL's practice in respect of new and converted condominium units.

12. In respect of potential conversion units, THESL offers, at no cost to the condominium corporation, the installation of integrated Quadlogic meters. There is not even a pretence of requiring any capital contribution from the condominium corporation. No economic evaluation is undertaken, and no attempt is made to determine if future revenues will ever recover the capital costs of the equipment being installed, even though THESL admits that by converting a building from a bulk situation to a smart metered situation, the overall bill for the building will decline.[7] In other words, THESL will invest hundreds of thousands of dollars in a privately-owned building and have no certainty of the recovery of the costs.

13. When one adds to this situation the fact that THESL's agreements with the condominium corporations that it will remove the equipment in as little as three years "at THESL's expense",[8] it is even more clear that this is a case of a regulated utility taking advantage of its position in a competitive marketplace. Offering to install equipment for free, with virtually no certainty of financial recovery is plainly, on its face, commercially unreasonable. When asked how a SSM provider can compete with a regulated utility offering commercially unreasonable and unsustainable terms, THESL's response through its witness, Mr. McLorg, was:

> "That is not my issue. That is up to you to determine."[9]

14. In respect of new condominiums, there can be no confusion about what is occurring. Condominium developers and the condominium corporations which ultimately assume control over completed buildings are not being asked to contribute under any circumstance to the cost of the integrated Quadlogic suite meters. There is no attempt

[7] Tr. 3, pp. 29 and 31
[8] THESL Smart Meter Installation and Service Agreement, para. 12.5, SSMWG IR# 7 (Ex. R1/T10/S7)
[9] Tr. 3, February 8, 2010, p. 23, line 25

to determine if revenues from a new project will ultimately recover such capital costs. From THESL's perspective, there is no need for the economic evaluation to include the cost of meters, as THESL will look instead to clear to rate base $5.3 million in capital costs by the end of 2010.[10]

15. The standard form THESL Smart Meter Installation Agreement which THESL produced in response to SSMWG No. 7 couldn't be more clear. Integrated suite meters will be installed in new projects (and conversions) at no cost. The costs are not included in the economic evaluation; hence developers are being told that choosing THESL to suite meter the buildings is free. Again, this is a commercially unreasonable and unsustainable term unless, of course, you have the ability to look to hundreds of thousands of other customers to cover the cost.

16. Mr. Quesnelle had a discussion with THESL witnesses about what capital costs THESL includes in its economic evaluation. THESL responded that the costs to connect a building and provide the required load are no different whether THESL suite meters the building or THESL installs a bulk meter.[11] The SSMWG accepts that the costs upstream of the meters may not vary, but this misses the point. THESL is excluding from its analysis the capital costs of the suite meters, which are very significant. By doing this, the only variant which changes are the forecast revenues, and this leads to the absurd result that developers are asked to make a capital contribution where THESL installs only a bulk meter, and they are not asked for a capital contribution where THESL installs suite meters with a value, in the case of the Avonshire Project, in excess of $500,000.[12] THESL is passing these costs along to its other ratepayers, which allows it to therefore "compete" unfairly with SSM providers.

17. The SSMWG submits that THESL's practice of recovering these capital costs from other ratepayers rather than from the developer or condominium corporation responsible for creating the costs in the first place is an incorrect application of the requirements of the DSC. The DSC was never intended to grant a rate-regulated utility the ability to operate in a competitive market in a manner that is detrimental to that competitive market.

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[10] SSMWG IR No. 7 (Ex. R1/T10/S7), Ex. K6, Tab 4, p. 51
[11] Tr. 3, pp. 64-65.
[12] Ex. K6, Tab 7

No justification for "business as usual" in a competitive market

18. THESL justifies its Suite Metering Program on the basis that it does not charge individual members of the residential rate class for the cost of meters but rather embeds the meter costs in rates. The SSMWG submits that the fact that THESL has recovered in rates the cost of residential meters in uncontestable markets is no justification for continuing a practice that, on its face, will harm the competitive market for the smart metering of condominiums and in future, apartment buildings. If THESL was not competing for business from the same developers and condominium corporations as are members of the SSMWG, then the SSMWG would not be intervening in this proceeding and the earlier PowerStream rates proceeding. The SSMWG would not have complained to the Board about THESL's practice, which has now been determined as unlawful, of refusing to provide a bulk meter to new condominiums, thereby denying a developer of the opportunity to smart sub-meter a building.

19. While there may be variations in the business model and the technologies used by SSM providers, the functional result is the same whether each suite in a building is smart metered using traditional socket-type smart meters, suite metered by THESL using integrated Quadlogic meters, or smart sub-metered by one of the members of the SSMWG. Indeed, some members of the SSMWG use exactly the same Quadlogic metering technology as THESL. Accordingly, THESL and members of the SSMWG are in direct competition.

20. As noted by the SSMWG's cost allocation rate design expert, Mr. Philip Q. Hanser of The Brattle Group, the incumbent LDC likely starts with an advantage[13] relative to new market entrants. The regulated utility in a cost of service situation has a further distinct advantage of being able to pass along price discounts to someone else, whereas competitive market firms reduce prices at the sacrifice of a portion of profitability. In Mr. Hanser's experience, these advantages are "either modified or attenuated, or even prohibited in many regulated environments."[14]

21. A clear example of THESL exercising its advantages in an anti-competitive way is the situation where THESL does not require a capital contribution from the developer if

[13] Tr. 3, p. 74
[14] Tr. 3, p. 75

THESL suite meters the building, but a capital contribution is required if it installs a bulk meter.[15] While THESL attempts to justify such anti-competitive conduct by referencing the impact on revenues moving from a wholly general service type customer to a combination of general service and residential configuration, its argument conveniently fails to acknowledge that in the THESL suite metering offer to connect, none of the costs of the meters are included in its analysis.

22. So while THESL's practice to not charge residential customers for meters in a regulated monopolistic market may be appropriate, the suite metering market is competitive, and the advantages Mr. Hanser noted must be attenuated or prohibited. It is noteworthy that THESL did not try and justify its practices continuing in a competitive market. It did not deny that its practices do harm the market. The SSMWG submits that such practices should be prohibited.

Residential ratepayers are cross-subsidizing the Suite Metering Program

23. The SSMWG retained Mr. Hanser, an expert in cost allocation and rate design. Mr. Hanser was asked to analyze THESL's evidence and opine as to whether or not its Suite Metering Program is consistent with long-standing and accepted regulatory principles. As noted in Mr. Hanser's pre-filed evidence and as stated in his oral evidence, one fundamental principle of rate regulation is that of cost causality. Stated simply, this principle means:

> "By using 'cost of service' as the basis for rates is meant that the rates that utilities charge for the services they provide should hew as closely as possible to the costs incurred for providing the services. This is also known as the standard of cost causation."[16]

24. In Mr. Hanser's expert opinion, the future revenues generated by new and converted buildings, under almost every scenario (low cost and high cost suite meters) generate a revenue deficiency. Using the assumption of 450 kW/hmonth of average consumption per customer given by THESL,[17] Mr. Hanser has calculated a revenue deficiency of between $340,000 to $500,000 in 2010, and between $725,000 and 1,070,000[18] over the several years that the Suite Metering Program has been operating (2007 to 2010).

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[15] SSMWG IR #18, 2nd para. (Ex. R1/T10/S18); Tr. 3, pp. 49/50
[16] Pre-filed Evidence of the SSMWG, 2009-12-15, p. 3
[17] BOMA IR 5 (Ex. R1/T3/S5)
[18] Pre-filed Evidence of the SSMWG, Updated 2010-02-03, p. 10, Table 2

This figure is generated from only 8564[19] customers. With, according to THESL's estimate, 160,000[20] condominium units to be converted and about an equal number of rental buildings, plus the thousands of new condominium units that are coming online each year, this cross-subsidy has the prospect of becoming enormous, unless checked. Extrapolated over 300,000 units[21], the potential cross- subsidy runs into the tens of millions of dollars.

25. Mr. Hanser further confirmed the existence of a subsidy in two additional ways. First, using the Avonshire Project as an example, Mr. Hanser confirmed that where the costs of suite meters are not included in an economic evaluation, yet a capital contribution is still required, this necessarily means that future revenues generated by the project would not fully cover the capital costs of suite meters had they been included in the economic evaluation in the first instance.[22] The result is a lower capital contribution required from the developer and resulting higher revenue requirement. Had the suite meters been included in the economic evaluation, as required by Section 3.2.1 of the DSC, the capital contribution required of the developer would have been higher, thereby reducing the revenue requirement. Using the Avonshire Offer to Connect[23] as an example, if the capital cost of the 748 units was included in the economic evaluation, the capital contribution required from that developer would have increased by the following amounts (dependent upon the capital cost of the meter):

$550 x 748 = $411,400

$618 x 748 = $462,264

$747 x 748 = $558,756

26. There is clearly a cross-subsidy in that other residential ratepayers are paying for the suite meters, and the revenue requirement is higher by reason of the failure by THESL to recover the appropriate capital contribution from condominium developers.

27. A second confirmation of cross-subsidy is self-evident on its face. For THESL to advertise, promise, and contractually agree that it will install in every new and existing

[19] SSMWG IR No. 1 (Ex. R1/T10/S1)
[20] SSMWG IR No. 10 (Ex. R1/T10/S10), p. 2(d)
[21] SSMWG IR No. 15 (Ex. R1/T10/S15) p. 2(c)(i)
[22] Tr. 3, pp. 84-85.
[23] Ex. K6, Tab 7, p. 1

condominium a suite metering system "at no cost" proves that the principle of cost causality has been abandoned. THESL has produced no evidence that it has undertaken any analysis which confirms that in all new and conversion-project scenarios that it will recover all capital and future OM&A costs from every project's future revenues.

28. Under cross-examination, Mr. Hanser also confirmed that it is both reasonable and expected that THESL will incur incremental O&M in respect of expensive Quadlogic meters beyond the $210 OM&A average across all residential customers. For instance, the Quadlogic system is subject to catastrophic failure.[24] Mr. Hanser noted that because its capital costs are much higher, the Quadlogic systems are "likely to have a higher O&M in maintenance expense."[25] This is true of commercial customer peak meters, the maintenance expense is known to be significantly higher and these costs are collected separately.[26]

Suite Metering Program is not needed

29. THESL's Project Plan for the Suite Metering Program[27] forecasted significantly higher volumes of conversions than new condominium units. Indeed, THESL was forecasting that its program would predominantly focus on conversions by a ratio of 2 to 1. The reality has been quite the opposite.

30. Of the 8,564 suite meter customers forecast by the end of 2010, 5,554 are new units. Only 3,010 are conversion units[28] which is only 28.45 percent of the total. In 2010, THESL is forecasting only 864 conversions[29]. Out of the estimated 160,000 units which exist in 550 bulk-metered buildings[30], this represents less than one-half of one percent.

31. Add to this the fact that Ontario Regulation 442/07 under the *Electricity Act* mandates that all new condominiums be suite metered or smart sub-metered, it is clear that there is no need for THESL's program. Building developers are required, as a matter of law, to install smart meters or smart sub-meters. They could choose to install the same

[24] Tr. 3, p. 115, lines 6/7
[25] Tr. 3, p. 115, line 9
[26] Tr. 3, p. 117, lines 1-4
[27] SSMWG IR No. 15, Attachment (Ex. R1/T10/S15)
[28] SSMWG IR No. 1 (Ex. R1/T10/S1)
[29] SSMWG IRs No. 10 and 12 (Ex. R1/T10/S10 and 12)
[30] SSMWG IR No. 10 (Ex. R1/T10/S10, p2)

smart meters which THESL has now installed on hundreds of thousands of homes, all at a cost significantly less than the cost of the integrated Quadlogic meters. Traditional smart meters would promote conservation as effectively as the integrated Quadlogic meters. The reason for the Suite Metering Program in respect of new condominiums is not the promotion of conservation, but rather to provide an economic benefit to developers. As confirmed by THESL's witness, Mr. Grant, condominium developers prefer the space savings that integrated Quadlogic meters provide because it allows the developer to either reduce floor space (and therefore costs) and/or sell space that would otherwise be devoted to the installation of the standard smart meter.[31]

32. The fact is that developers and existing condominiums could choose to install the less expensive standard smart meters. Undoubtedly, they prefer the space-saving benefits of the integrated Quadlogic meters; however, there is no need for other ratepayers to subsidize this preference and bestow such benefits upon developers and existing building owners. Of course, developers will always choose a more expensive system if it is offered for free, but there is no "need" for this to occur.

THESL fails to satisfy the onus

33. The concerns of the SSMWG about potential cross-subsidies and conduct harming the competitive market for smart metering within multi-unit high rise buildings are well known. The Settlement Agreement[32] accepted by the Board states that the SSMWG takes the position that THESL's Suite Metering Program should not be included in the revenue requirement. It identified concerns about cost allocation and the possible creation of a sub-rate class as a means to address the cross-subsidy and anti-competitive implications of the Suite Metering Program. As the Applicant, THESL was obligated to put its best foot forward and demonstrate that the concerns of the SSMWG are unfounded. Section 78(8) of the OEB Act confirms this evidentiary onus.

34. The SSMWG submits that the onus does not, and indeed cannot, rest upon an intervenor to demonstrate that a cross-subsidy or conduct harmful to a competitive market is occurring. As a practical matter, the intervenor does not have access to all of the necessary information and data. For example, the SSMWG could not undertake a

[31] Tr. 3, pp. 12/13
[32] Settlement Proposal, January 22, 2010, pp. 15/16

fully allocated cost study to determine the fully burdened actual cost for THESL to serve multi-unit high rise customers. In this proceeding, not only has THESL failed to put its best foot forward, it has failed to reasonably respond to the SSMWG's requests for relevant information. In respect of the information THESL did produce, it confirmed under cross-examination that the record was not complete.

35. Examples of THESL's failings include:

(a) Mr. David Grant was produced as a witness for cross-examination. His CV indicates he is the Manager of Meter Operations, Customer Services. Under questioning by Vice Chair Kaiser, Mr. Grant admitted that he did not have responsibility for the Suite Metering Program.[33] Given his inability to respond to certain questions, it was apparent that THESL called the wrong person.

(b) THESL was asked, through a series of interrogatories by the SSMWG, about costs associated with the Suite Metering Program and its forecast numbers. In cross-examination, Mr. Grant admitted that the record does not contain the total number of suite meter installations (revenue and non-revenue producing).[34]

(c) There is no information on the record which substantiates the implication in THESL's evidence that the total capital cost to install suite meters is $444 per meter point.[35] To the contrary, a view of all relevant circumstances overwhelming supports a much higher capital cost.

(d) THESL was asked for the O&M associated with its Suite Metering Program in 2010. It provided a response to the SSMWG and CCC[36] which indicated O&M costs of $300,000. It became clear in cross-examination, though, that these O&M costs are not incremental to the $210 per unit cost associated with every residential customer.[37] In other words, THESL does not associate a higher O&M cost with customers under its Suite Metering Program. For the reasons set out in

[33] Tr. 3, pp. 59-60.
[34] Tr. 3, p. 44
[35] Pre-filed Evidence of the SSMWG, 2009-12-15, p. 8 (para. 16) – citing the evidence filed by THESL at Ex. D1/T8/S3/pg 3.
[36] SSMWG IR No. 5 (Ex. R1/T10/S5(b) and CCC IR No. 42 (Ex. K6, pp. 9 and 114)
[37] Tr. 3, pp. 53-54.

paragraph 28, above, the SSMWG asserts that this position is not consistent with the real level of associated costs.

(e) THESL was asked for the fully allocated costs for the Suite Metering Program, but it did not provide any such information.[38] As noted by Mr. Hanser under cross-examination by THESL's counsel, his inability to determine the fully burdened costs of the Suite Metering Program was "not from lack of asking…"[39]

(f) The credibility of THESL's position in this matter is strained when its witnesses fail to acknowledge the obvious, such as the requirement under the Regulations that units in all new condominiums be individually smart metered. THESL witness Mr. McLorg refused to accept this conclusion and incorrectly also added that in some circumstances, THESL is "required to do suite metering from within the regulated utility"[40] when the installation of a standard smart meter, of the socket variety, fully meets all functional requirements set by Regulations and the Board.[41] There is no regulatory obligation to install the expensive Quadlogic systems. There is no regulatory requirement that ratepayers cross-subsidize suite meters installed by THESL.

(g) THESL's Project Plan notes the obvious – converting existing buildings is more complicated and expensive than new installations.[42] This only stands to reason, yet THESL is currently suggesting that this is not the case. The SSMWG submits that given the lack of substantiating evidence on this point, it is quite probable that the full costs of installation are not being identified.

36. The SSMWG submits that it does not lie in the mouth of THESL to first frustrate requests for information from an intervenor and then turn around and say the information relied upon by the intervenor is incomplete or inaccurate. The best evidence in this proceeding is that of the SSMWG expert, Mr. Hanser. It demonstrates a strong probability of a cross-subsidy occurring. Common sense confirms that there is anti-competitive conduct.

[38] SSMWG IR No. 4 (Ex. R1/T10/S4)
[39] Tr. 3, p. 97, line 13
[40] Tr. 3, p. 7, lines 20/21
[41] Tr. 3, p. 10, lines 11-23
[42] SSMWG IR #15, Project Plan, p. 4 (Ex. R1/T10/S15)

Transfer of THESL's Suite Metering Program to an Affiliate

37. Mr. Hanser identified in evidence examples of regulated utilities entering competitive markets in the United States and the response of U.S. regulators where this occurs. He specifically highlighted in his oral testimony the Resolution of the National Association of Regulatory Utility Commissioners.[43] The specific focus of this Resolution was to reduce the potential of regulated utilities imposing an undue burden where the utilities attempt to compete in non-regulated markets. The Resolution specifically calls for the allocation of costs on a fully allocated basis. THESL has not only failed to confirm that it is recovering all of its suite metering costs on a fully allocated basis from the customers that have generated the costs, THESL has admitted that it has not even attempted to undertake such an analysis.[44]

38. Given THESL's failure to even attempt to confirm that its foray into the competitive market is fully recovering all of its Suite Metering Program costs, Mr. Hanser, relying upon relevant precedents in the United States, and given the protections of the *Affiliate Relationships Code*, suggested that THESL's Suite Metering Program be undertaken through an affiliate.[45] The program would then compete on an equal footing with SSM providers.

39. It is important to note that by requiring THESL to undertake its Suite Metering Program through an affiliate, such a requirement in no way prevents THESL from offering to provide and install traditional smart meters to new and existing condominiums seeking conversion. There is no statutory or regulatory requirement for THESL to provide the much more expensive integrated Quadlogic metering systems to condominiums. THESL would fully satisfy all legal requirements, including Section 5.1.9 of the DSC if it offered to install the much less expensive traditional smart meters. It is THESL that has chosen to offer to install meters that are perhaps up to five times more expensive.

40. Should the Board permit THESL to install the traditional socket-type meters, the SSMWG submits that the meters should not be installed "for free". These costs should be recovered from developers and condominium corporations because, as Mr. Hanser

[43] Tr. 3, p. 75, lines 23-28 ; p. 76 lines 1-19
[44] SSMWG IR No. 4, Ex. K6, pp. 6/7 and SSMWG IR No. 5, Ex. K6, pp. 8/9
[45] Tr. 3, p. 98, lines 22-27

noted in a response to Vice Chair Kaiser, collecting the $160 for "plain vanilla" meters in rates would not solve the competition problem.[46]

Relief Sought

41. As explained herein, THESL has failed to provide sufficient information to approve the inclusion of its Suite Metering Program in rates for 2010.

42. There are a number of options available to the Board to address THESL's failure to justify the inclusion in rates of the costs of its Suite Metering Program.

43. The SSMWG submits that the appropriate remedy in this case is to exclude the program unless and until a Fully Allocated Cost (FAC) Study has been completed that justifies associated costs and convincingly demonstrates to the Board that there is no cross subsidization. As noted, THESL could still satisfy its regulatory obligations, including Section 5.1.9 of the DSC, by offering to install the much less expensive traditional smart meters, and including all associated costs in determining whether a capital contribution is required from a developer, building owner or condominium corporation.

44. Another option is for the Board to simply order that THESL's Suite Metering Program be transferred to an affiliate, thereby removing the need to address the cross-subsidization issue.

(a) This could be combined with the SSMWG's suggested remedy, so that THESL could continue with the Suite Metering Program through an affiliate, in compliance with the Affiliate Relationships Code, until such time as THESL demonstrates that the program is not being cross-subsidized.

(b) THESL itself could continue to offer to install the traditional socket-type smart meter but would be required to include the $160 cost in its economic evaluation undertaken for new developments. This is consistent with the suggestion made by Mr. Hanser that one answer to the competition and cross-subsidy problem would be to allow THESL to offer two levels of service: one with the $160 smart

[46] Tr. 3, p. 123, lines 1-126

meters, and the other with the $400 to $700 meters. Mr. Hanser further noted the importance of allocating costs to such service on a fully allocated basis.[47]

45. A third option to address the cross-subsidization issue is to require THESL to create a residential multi-unit high rise sub-rate class. The rates for service to these customers would be determined on the basis of the fully allocated costs of service. That would require the creation and approval of FAC study. This approach is appropriate for several reasons.

(a) As noted by Mr. Hanser, because suite metering is a different kind of service that requires a significant capital investment, the creation of a separate rate class might be advisable.[48]

(b) In addition, because suite metering is a competitive business activity, it is appropriate that the amounts charged by a regulated participant in that field should not be subsidized by that participant's other activities. Otherwise, the other players in that market will not be able to fairly compete. The Board has recognized the importance of a competitive suite metering industry in two recent decisions, stating:

> "Installation of smart meters in individual condominium units offers significant gains in energy conservation. The Legislature has signalled the advantage of competing suppliers and specifically allowed regulated utilities to engage in the service directly. Implicit in this direction is a belief that competing suppliers will promote price competition and improve service quality. It is also significant that this is a new market with new competitors. It would be unfortunate (and contrary to the public interest) if competitors were disadvantaged or even eliminated in the early days of this market…"[49]

(c) Finally, such an approach would protect other THESL customers by ensuring that they are not being required to fund THESL's competitive suite metering activities through the rates that they pay.

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[47] Tr. 3, pp. 123/124
[48] Tr. 3, p. 121
[49] 2009 PowerStream rate proceeding decision – EB-2008-0244, dated July 27, 2009, at pp. 16-17. This passage is reproduced and relied upon in the January 27, 2010 Decision in the Compliance Proceeding against THESL (EB-2009-0308), at pp. 12-14.

46. The SSMWG submits that a generic hearing, as suggested by THESL in its argument, is not required for several reasons. First, the evidence adduced by the SSMWG confirms the existence of a cross-subsidy and anti-competitive conduct. This should be addressed immediately. Second, as THESL admitted, its service territory is by far the largest new and conversions market, and therefore the most important.[50] Many LDCs have no comparable program to THESL because they have few or no multi-unit high rises. Third, any concern about cross-subsidies occurring in other service territories can be addressed by the Board signalling in this proceeding that it will, in future, require every LDC that seeks approval for a suite metering program to first file a FAC study which identifies all of the costs to install, operate, maintain the systems, and provide service to the suite metered customers.

All of which is respectfully submitted.

"Dennis O'Leary"

Dated: February 19, 2010

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[50] Tr. 3, p. 8, lines 5 - 18