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 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, 2011

NOTICE OF MOTION

THE MOVING PARTY, the Smart Sub-metering Working Group ("SSMWG") will make a motion to the Ontario Energy Board ("OEB" or "Board") on a date, time and place, and in a manner to be determined by the Board.

THE MOTION IS FOR:

1. An order requiring Toronto Hydro-Electric System Limited ("THESL") to forthwith provide full and complete answers to the Interrogatories of the SSMWG, which THESL refused or neglected to answer, or only partially answered. These Interrogatories are contained in Appendix "A" to this Notice of Motion.

2. An order amending the timetable for all future procedural matters and the oral hearing in respect of issues arising out of the Interrogatories of the SSMWG to allow the SSMWG such further time as is appropriate to receive THESL's answers to the subject Interrogatories, to prepare for and participate in a Technical Conference, prepare and file evidence, and attend and participate in an oral hearing in respect of such issues.

3. The SSMWG requests that this motion be heard orally.

4. Its costs of this motion.

5. Such further and other relief as counsel may advise and the Board deems just.

THE GROUNDS FOR THE MOTION ARE AS FOLLOWS:

1. The SSMWG is a working group consisting of the majority of Ontario's private-sector (i.e., not municipally owned) licensed unit sub-metering companies (formerly smart sub-metering). These companies compete with each other and with those electric LDCs which offer a similar electronic metering configuration, namely, the installation of Quadlogic-type electronic metering systems in multi-unit residential and commercial buildings. Members of the SSMWG did not, and have not, competed against LDCs in their roll out of their respective Smart Meter Programs as part of the Province's Smart Meter Initiative. The Board has, on numerous occasions, confirmed that unit sub-metering is a competitive market activity. [1]

2. THESL offers two metering programs to existing and prospective multi-unit residential customers, which need to be distinguished. THESL has undertaken a Smart Meter Program, which has been the subject of the consideration of the Board and intervenors for several years and has involved the installation of smart meters in over 600,000 residences in Toronto, including, it appears, about 110,000 units in multi-unit residential buildings. THESL's Smart Meter Program, like similar programs of many other LDCs, has been the subject of detailed scrutiny by the Board and the establishment of a Smart

[1] OEB Majority and Minority Decision, July 27, 2009, EB-2008-0244 (PowerStream); OEB Decision and Order, January 27, 2010 EB-2009-0308 (Compliance Proceeding); and Decision, April 9, 2010, EB-2009-0139 (THESL); Notice of Amendment of Code, December 16, 2010, EB-2010-0321

Meter Rate Adder which assists in the recovery of costs associated with the program. The SSMWG has not intervened and participated in any LDC rate case in respect of any issues relating to that LDCs' Smart Meter Program. This includes THESL. To be clear, the SSMWG took no position in respect of any issue associated with THESL's Smart Meter Program in THESL's 2010 Rate Case (EB-2009-0139).

3. In contrast, THESL also offers condominium and apartment building developers and existing bulk-metered, multi-unit residential buildings an opportunity, under its Suite Metering Program, to engage THESL to install Quadlogic electronic metering systems.[2] As the SSMWG has submitted on previous occasions, these systems have a much higher capital and O&M cost than smart meters. These metering systems are easily distinguishable from smart meters in that the electronic systems house meters for 10 or more units in one small panel, thereby reducing significantly the amount of space that a developer or building owner must devote to electric meters. These electronic metering systems were not approved by the Board for the purposes of THESL's Smart Meter Program as part of the Province's Smart Meter Initiative.

4. In many instances, the electronic metering systems used by THESL as part of its Suite Metering Program are identical to those being offered and used by members of the SSMWG. Indeed, it is often also necessary for THESL to include a bulk master meter in some configurations (as is required in all sub-metering configurations) to capture the usage by all or some of the common elements of a building. Members of the SSMWG, therefore, compete directly with THESL to attract new and existing building developers

[2] In its 2010 Rate Case, EB-2009-0139, at D1/T8/S8-9, p. 2 of 3, THESL acknowledges that its Suite Metering Program is based on the Quadlogic metering systems.

and owners as customers. This competition, in Toronto, is between THESL's Suite Meter Program and privately-owned unit sub-meter providers.

5. In each of the past three rate cases, THESL has asked for approval to expend specific amounts of money on its Suite Metering Program. These requests are unrelated to and independent of the expenditures by THESL on its Smart Meter Program. The SSMWG intervened in THESL's 2010 Rate Case (EB-2009-0139) because of its concern about THESL's practice of not charging developers or existing buildings desiring conversion for the costs to install the Quadlogic electronic metering system. Instead, THESL looks to recover these costs through its revenue requirement. The SSMWG is concerned that THESL is undertaking activities in a competitive market and cross-subsidizing such activities which provides it with an unfair and anti-competitive advantage. The SSMWG has made it abundantly clear in all of its previous interventions in OEB proceedings that its interests relate to THESL's Suite Metering Program, which is, specifically, the installation of Quadlogic-type electronic metering systems. The costs of these systems are distinct from those costs incurred in respect of the installation of smart meters, including smart meters installed in multi-unit residential buildings, the costs of which are included in a deferral account which will be reviewed for prudence in a subsequent proceeding.

6. THESL's evidence in this proceeding is that it installed 3,889 suite meters in 2008, 5,534 in 2009, for a total of 9,423 actual suite meters installed by the end of 2009 (Exhibit D1, Tab A, Schedule 7, page 5, Table 2). In its 2010 Rate Case, THESL forecast that it would install 5,400 suite meters in 2010 (EB-2009-0139, D1/T8/S7, p. 3 of 3). As a result of concerns expressed by the SSMWG and the evidence adduced by its expert, Professor Phil Hanser, during THESL's 2010 Rate Case (EB-2009-0139), the Board, in

its Decision with Reasons, was of the opinion that the potential for cross-subsidization is ongoing. As a result, the Board ordered THESL (at page 29 of the Decision) to "undertake a cost allocation study related to its provision of suite metering services". Clearly, the cost allocation study which the Board ordered requires THESL to assess the costs related to providing services to its "suite metered customers". If the study period remains the end of 2009, then it should examine the costs to install, serve, and maintain the 9,423 units served by Quadlogic suite metering systems as of the end of 2009. Alternately, if the cost allocation study is to be more up to date, it must relate to the 19,494 "suite metered customers" that THESL has forecast for 2011 (as set out in response to SSMWG Interrogatory No. 6 in this proceeding – Ex. R1, Tab 10, Schedule 6).

7. Instead, THESL undertook a cost allocation study comparing the cost to serve virtually the entire universe of multi-unit residential customers with the cost to serve the balance of the residential rate class. In BDR's report, the sub-metering rate class consists of 119,947 units[3] of which about 110,000 are units that are being served by smart meters– not Quadlogic electronic metering systems.[4] The sub-class which THESL has used for its cost allocation study is therefore of no relevance to the concerns raised by the SSMWG and cannot assist the Board in determining whether there is any cross-subsidy in respect of THESL's Suite Metering Program.

8. Recognizing this, the SSMWG asked in Interrogatory No. 13 (Second Round), filed December 23, 2010, for THESL to recast the definition of the suite metered sub-class for the purposes of the cost allocation study and to limit it to only those 9,423 customers of

[3] *Cost of Service Study for Individually Metered Suites in Multi-Unit Residential Buildings,* BDR, November 29, 2010, at p. 7, Table 4.1 (EB-2010-0233)

[4] SSMWG IR #12, Second Round, Ex. R1/T10/S25, p. 2 of 2

THESL's Suite Metering Program as at the end of 2009. THESL refused to redo the study and denies that the cost allocation study does not meet the requirements of the Board's directive from its Decision in the EB-2009-0139 proceeding.

9. The SSMWG also asked for a working Excel spreadsheet which would allow its expert consultants to examine the cost allocation model. In the event that the Board orders THESL to complete the cost allocation as required by the Board directive, the SSMWG requests that the Board order THESL to provide a working copy of its Excel spreadsheet arising out of the further cost allocation study.

10. THESL has also either refused to answer, partially answered, or in some instances, completely ignored questions asked by the SSMWG during the First Round of Interrogatories. SSMWG Interrogatory No. 1, on November 19, 2010 (First Round), asked a number of questions which relate to THESL's statement in EB-2010-0233, (THESL's Application for a Smart Sub-metering Licence), that it intended to start providing services pursuant to the Licence on January 1, 2011. The SSMWG asked a series of questions, all of which are grounded in issues in this proceeding. THESL refused to fully respond. The SSMWG seeks an Order requiring THESL to fully respond to such questions.

11. The SSMWG asked in its interrogatories filed November 19, 2010 (First Round), Interrogatories No. 11, 12 and 13. THESL did not respond in any manner to any of these interrogatories. As each is clearly related to issues in this proceeding, the SSMWG seeks an Order compelling THESL to provide full and complete answers to each of these Interrogatories. The SSMWG submits that by reason of THESL not

providing any reason for not responding, THESL has waived any right to challenge the validity of such Interrogatories.

THE EVIDENCE that will be used on this motion includes:

(a) Relevant portions of evidence filed in THESL's 2008 Rate Application, EB-2007-0680;

(b) Relevant portions of evidence filed in PowerStream's 2009 Rate Application, EB-2008-0244;

(c) Relevant portions of evidence filed in THESL's 2010 Rate Application, EB-2009-0139;

(d) Relevant portions of evidence filed in this proceeding;

(e) Such further and other material as counsel may advise and the Board may permit.

Date: January 14, 2011

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TO: The Applicant and Intervenors, EB-2010-0142

APPENDIX "A"

First Round Interrogatories of the SSMWG, filed November 19, 2010

Interrogatory #1

Reference : EB-2010-0233 and Issues 7.2 and 7.3

THESL, in Board File EB-2010-0233, filed an Application for a Licence to "engage in the commercial offering or commercial provision of smart sub-metering systems, equipment and technologies, and any associated equipment, systems and technologies". THESL indicates in its Application that it is not currently providing these services and intends to start providing them on January 1, 2011.

(a) Please confirm that this Application signals THESL's intention to offer competitive unit sub-metering and to compete directly with private sector smart sub-meter providers.

RESPONSE:

THESL does not accept the citation of a separate proceeding as the only reference forming the basis for this interrogatory and does not accept that the question pertains to any approved issue in this proceeding. THESL therefore declines this interrogatory.

(b) If THESL only intends to use a smart sub-metering licence in order to acquire existing unit sub-metering providers, then please confirm that intention and explain how the time period during which unit sub-metering will be provided (rather than unit smart metering) will be minimized.

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(c) If THESL intends to use a smart sub-metering licence to carry on business beyond acquiring an existing unit sub-metering provider and immediately converting all customers to unit sub-metering, please provide examples of situations where THESL intends to undertake unit sub-metering, rather than unit smart metering (i.e. its current suite metering program).

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(d) If THESL intends to use a smart sub-metering licence to carry on business beyond acquiring an existing unit sub-metering provider and immediately converting all customers to unit sub-metering, please explain how THESL's unit sub-metering activities will differ from its unit smart metering activities, including:

(i) What customers will be targeted;

(ii) What customers will be served;

(iii) How will the pricing be different?

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(e) If THESL intends to use a smart sub-metering licence to carry on business beyond acquiring an existing unit sub-metering provider and immediately converting all customers to unit sub-metering, please explain in detail all of the services that THESL's unit sub-metering business will offer to prospective customers of the business.

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(f) Please explain why it is appropriate for THESL to undertake unit sub-metering activities, even if only by way of acquisition, within the utility rather than through an affiliate when those activities are already offered in the competitive marketplace.

RESPONSE:

THESL does not accept the premise of the question, which is that THESL would carry on sub-metering activities within the utility.

(g) What is the methodology which THESL's unit sub-metering business will use for the purposes of calculating unit sub-metering rates or charges?

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(h) Please explain in detail how the costs and revenues of THESL's unit sub-metering activities will be determined, tracked and allocated.

RESPONSE:

To the extent that THESL undertakes non-utility sub-metering activities, it will maintain separate financial records of those activities and employ standard fully-allocated costing methodologies to separate non-utility costs from utility costs.

(i) Please indicate whether THESL intends to include unit sub-metering assets in its rate base. If the answer is Yes, please explain why this is appropriate in light of the OEB's findings in the Enbridge Gas Distribution EB-2009-0172 Decision (December 22, 2009) that assets that support a utility's activities in a competitive marketplace should not be included in rate base.

RESPONSE:

THESL does not intend to include sub-metering assets in its utility ratebase.

(j) Please explain in detail what steps, processes and/or rules will be implemented to address the following concerns:

(i) THESL's electric distribution business cross-subsidizing its unit sub-metering business;

(ii) Protecting the confidentiality of information collected by either of the electrical distribution business or the unit sub-metering business;

(iii) Ensuring that prospective customers of the unit sub-metering business do not have preferential access to electricity distribution services;

(iv) Preventing the electricity distribution business from acting in a manner than provides an unfair business advantage to the unit sub-metering business;

(v) Preventing customer confusion that may arise from the relationship between the electrical distribution business and the unit sub-metering business.

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(k) Please provide all references in THESL's 2011 rate application (EB-2010-0142) that discuss or relate to its unit sub-metering activities, including the financial impact of those activities (including rate base, expenses and revenue requirement impact). If there are no direct references to THESL's planned unit sub-metering activities in the rate application, please explain why and please provide references to where the financial impacts of the planned unit sub-metering activities are aggregated with other activities.

RESPONSE:

THESL will not undertake sub-metering activities within the regulated utility and therefore there are no direct references, financial or otherwise, to THESL's planned unit sub-metering activities in this rate application.

(l) Please advise if the proposed unit sub-metering business will be providing any services to the electricity distribution business. For the purposes of your response to this question, please also identify any services that the electricity distribution business is currently providing which will be assumed by the unit sub-metering business.

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

(m) Please provide all documents related to THESL's plans for its unit sub-metering activities, including (but not limited to):

(i) Strategic plans

(ii) Budgets

(iii) Minutes from any management or Board of Directors meetings where this was discussed

(iv) Marketing materials

(v) Internal communications (memos, emails etc.);

(vi) Business Case Analysis.

RESPONSE:

THESL declines this interrogatory for the reasons given in response a).

INTERROGATORY #11

Reference: Issues 2.1, 3.1, 4.1, 4.2, 7.2 and 7.3

In EB-2007-0680, THESL produced a business plan for its Suite Metering Program, entitled "Draft - Project Plan for Individual Suite Metering in Condominium Buildings". A copy of this business plan was filed on November 12, 2007, in response to VECC Interrogatory 9 in EB-2007-0680.

Please advise as follows:

(a) Has this business plan been updated, or has THESL prepared a new or revised business case or plan in respect of condominium suite metering? If so, please produce copies of same.

(b) Does THESL contemplate undertaking suite metering in any *Residential Tenancy Act* buildings (new and/or to be converted) in 2011? If so, how many, and what is THESL's forecast of the total cost to suite meter these buildings? Does THESL seek recovery or plan to capitalize and request approval to clear to rate base any amounts associated with the installation and operation of suite meters in *Residential Tenancy Act* buildings in 2011?

RESPONSE:

[THESL did not respond to this Interrogatory]

INTERROGATORY #12

Reference: Issues 3.1 and 4.2 and C1/T1/S1 (Conditions of Service)

THESL is currently taking the position that the treatment and calculation of the amount of the expansion deposit paid by a condominium developer, which THESL is required to return under the *Distribution System Code* ("DSC") to the condominium developer, is dependent upon whether THESL suite meters the condominium or whether the condominium is sub-metered by a licensed smart sub-meter provider.

More specifically, THESL is advising condominium developers, on or about the time that they are provided with an Offer to Connect, that if THESL suite meters the building, the expansion deposit will be returned in an amount equal to the percentage of the actual connections which are ultimately constructed. In other words, if a condominium developer forecasts 199 residential units and 1 common elements meter, and the condominium developer constructs a building with such connections, the developer will receive 100% of the expansion deposit.

In contrast, THESL is advising condominium developers that if the condominium is smart sub-metered by a licensed smart sub-metering provider, the expansion deposit will be returned only to the extent that actual demand meets the forecast incremental demand in the developer's request to connect. Stated differently, if a developer forecasts a demand of 500 kW, and the actual demand which the building achieves in its first year of existence is 400 kW, the condominium developer will be refunded only 80% of the expansion deposit.

Clause 3.2.23 of the DSC provides as follows:

> "Once the facilities are energized and subject to sections 3.2.22 and 3.2.24, the distributor shall annually return the percentage of the expansion deposit in proportion to the actual connections (for residential developments) or actual demand (for commercial and industrial developments) that materialized in that year (i.e., if twenty percent of the forecasted connections or demand materialized in that year, then the distributor shall return to the customer twenty percent of the expansion deposit). This annual calculation shall only be done for the duration of the customer connection horizon as defined in Appendix B. If at the end of the customer connection horizon the forecasted connections (for residential developments) or forecasted demand (for commercial and industrial developments) have not materialized, the distributor shall be allowed to retain the remaining portion of the expansion deposit."

Given the above, please respond to the following questions:

(a) Does THESL acknowledge that a residential condominium development remains a residential development regardless of who meters the building?

(b) Does THESL acknowledge that a significant portion of the demand load of every large multi-residential condominium is generated by the common elements of the building and is a commercial rate customer even when THESL meters the building?

(c) Does THESL treat the demand load generated by the common elements of a building any differently for the purposes of returning an expansion deposit to the condominium developer in situations where THESL suite meters the building?

(d) Please provide any analysis, justifications, studies, or other basis for treating residential condominium developers differently under Clause 3.2.23 of the DSC, by reason of their engaging a licensed smart sub-metering provider versus THESL for the purposes of metering the building.

(e) Has THESL forecast the additional expansion deposit revenues that it will retain as a result of the above expansion deposit policy which it has adopted?

(f) Please reference and attach copies of THESL's Conditions of Service which it relies upon for the purposes of adopting the above-stated expansion deposit return policy and please advise when, if ever, those provisions of the Conditions of Service have been the subject of any review or discussion by the OEB.

RESPONSE:

[THESL did not respond to this Interrogatory]

INTERROGATORY #13

Reference: Issues 3.1 and 4.2 and C1/T1/S1 (Conditions of Service)

In respect of THESL's expansion deposit return policy, and the different application of that policy to developers who obtain suite metering from THESL rather than from smart sub-metering providers, please provide copies of all internal memoranda, notes, communications, business plans, executive management team minutes, emails, and all correspondence with third parties which relate to this issue.

RESPONSE:

[THESL did not respond to this Interrogatory]

Second Round Interrogatories of the SSMWG, filed December 23, 2010

INTERROGATORY #1

Reference: *Cost of Service Study for Individually Metered Suites in Multi-Unit Residential Buildings*, prepared by BDR, dated November 29, 2010 (the "Cost of Service Study")

Please file, in Excel format, the Cost of Service Study for individually metered suites in multi-unit residential buildings showing the formulas, inputs, and assumptions used in the model.

RESPONSE

THESL'S Cost of Service Study uses the Board's Cost Allocation Model. This model has been specifically designed by the Board to "roll-up" detail and removes formulas prior to filing. Any party can obtain the working model without LDC specific data from the Board's website to see the model formulas and logic. The excel sheets provided in the filed material contain the input data and assumption used (see sheets I1 to 19).

INTERROGATORY #13

Reference : Exhibit D1, Tab 8, Schedule 7, page 5, Table 2; and the Cost of Service Study

THESL's evidence is that it installed 3,889 smart suite meters in 2008, and 5,534 in 2009, for a total of 9,423. THESL is seeking approval for a $2.6 million capital investment in suite meters, for 2011, which relates to the installation of Quadlogic electronic metering systems installed primarily by a third party services provider at no cost to a new condominium developer or the owner of an existing building that wishes to convert from a bulk metered configuration. These meters and costs are the suite metering program which was the subject of the SSMWG's involvement in THESL's 2010 rate case (EB-2009-0139) and which were taken to hearing. The SSMWG submitted and adduced evidence to the effect that these suite metering program customers were being cross-subsidized by other THESL residential rate class customers. The concerns about cross-subsidization were clearly directed only at the customers of THESL's suite metering program, which totalled 9,423, as of the end of 2009.

The cost allocation study ordered by the Board stated the following:

> "For the reasons that follow the Board finds that THESL should undertake a cost allocation study related to its provision of suite metering services. The study shall include an analysis of the implications of creating and maintaining a separate rate class for those customers served in this manner. The Board is of the opinion that the potential for cross-subsidization is ongoing and that there may be merit in the establishment of a separate rate class for multi unit-resident customers that are served directly by THESL through its suite metering provision. This should be filed as part of the next cost of service application, which THESL intends to file later this year, but in any event no later than six months from the date of this Decision.

> ...
>
> The Board believes that continual delay is not useful. It is significant that the Board recently completed an extensive compliance proceeding against THESL [EB-2009-0308 (January 27, 2010)] which, amongst other things, required THESL to alter its Conditions of Service and to make it clear that condominium developers and unit-holders are able to choose between THESL as a suite metering supplier and a smart sub-metering regime that includes competing suppliers for these services. In other words, the Board has clearly stated that a utility does not hold a monopoly for individual metering in multi-unit buildings. It would defeat the purpose of that exercise to allow cross-subsidization, (if it exists), to exert a negative impact on competition."

It is clear from both the position of the parties, the evidence adduced, and the Decision of the Board that THESL was required to undertake a cost allocation study comparing the costs to serve THESL's suite metering program customers to the costs to serve other residential rate class customers. The Cost of Service Study prepared by BDR instead compares a suite metered class of multi-unit buildings which consists of almost 120,000 units, more than 90 percent of which are not suite-metering program customers.

(a) Please recast the definition of the suite metered sub-class for the purposes of the cost allocation study to include only those 9,423 customers which were customers of THESL's suite metering program as of the end of 2009. Please take those customers that are removed from the suite metered sub-class definition in the Cost of Service Study for the purposes of this interrogatory, and add them to the residential net of suite metered customer class, and redo the cost allocation study using the Board's approved methodologies.

(b) Please provide, in Excel format, this revised cost of service study showing the formulas, inputs and assumptions used in the model.

(c) Please provide a breakdown of all of the capital costs incurred in respect of the primary and secondary infrastructure required (excluding the Quadlogic metering systems) to serve the 5,534 suite meter customers added in 2009. For clarity, this request includes all upstream connection, expansion and/or reinforcement costs incurred and any costs incurred by a developer or building owner for expansion facilities that were subsequently transferred (or where the transfer is pending) to THESL. Please confirm that these costs have not been reduced by any expansion deposit collected by THESL which may be returnable to the developer(s) or owner(s) in question.

RESPONSE:

THESL declines this interrogatory on the basis that it does not accept the premise of the interrogatory and on the basis that the information requested could not be produced within the timeline directed by the Board for responding to interrogatories.

THESL disputes the premise of the question, which is that the cost allocation study undertaken and filed by THESL does not meet the requirements of the Board's directive. It does meet those requirements. The Board's directive clearly refers to multi-residential

buildings either served or potentially served by THESL through its suite metering program, as distinct from being served as bulk-metered commercial customers. The Board has defined the term 'suite metering' and the meaning of 'multi-residential' is clear in this context; it must refer to buildings that a least have the potential to be served either under bulk metering or suite metering arrangements.

It is not open now to the SSMWG to redefine the Board's direction to THESL or to change the accepted meanings of terms to suite its own purposes.

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