

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

AND IN THE MATTER OF an Application by Toronto Hydro-Electric System Limited for an Order or Orders approving and fixing just and reasonable distribution rates and other charges related to Smart Meter investments, effective November 1, 2007.

**AFFIDAVIT OF COLIN J. McLORG
SWORN AUGUST 28, 2007**

I, COLIN J. McLORG, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1. I am the Manager of Regulatory Affairs for Toronto Hydro-Electric System Limited (“THESL”), the Moving Party in the motion in support of which this affidavit has been sworn, and I was a witness for THESL in the proceeding to which this motion relates, and as such I have knowledge of the matters hereinafter deposed to.

Introduction:

2. On March 23, 2007, THESL filed an application (the “Supplementary Application”) with the Ontario Energy Board (the “Board”), which sought rate adjustments to be effective in the 2007 rate year related to CDM programs and Smart Meter activities. Subsequently, the Board notified THESL that it would sever the Supplementary Application and determine the parts of that application related to 2006 Smart Meter activities in a separate proceeding initiated on the Board’s own motion, namely the Combined Smart Meter Proceeding, EB-2007-0063 (the “Combined Proceeding”).
3. The relief sought by THESL and considered by the Board in the Combined Proceeding consisted of:
 - a) Clearance of the 2006 Smart Meter Deferral Account (“SMDA”) credit balance to customers by way of a temporary rate rider effective for one year from May 1, 2007;

- b) Inclusion in 2007 ratebase of the 2006 year end net book value of the smart meter assets, amortized and averaged over 2007; and
 - c) Adjustment of 2007 distribution rates, effective May 1, 2007, to reflect and recover the incremental revenue requirement stemming from the 2007 ratebase adjustment for 2006 Smart Meter assets.
4. In view of the timing of the Combined Proceeding, THESL amended the relief it sought with respect to rate implementation. Specifically, the amended relief was for rate implementation commencing November 1, 2007 for the permanent adjustment to distribution rates, as well as for two six-month temporary rate riders commencing on that date to clear the 2006 SMDA balance and to recover the permanent distribution revenues foregone in the first six months of the 2007 rate year.
5. Prior to and during the course of the oral hearing in the Combined Proceeding, THESL filed further written evidence concerning its Smart Meter activities and costs according to prescribed filing requirements for that proceeding, and provided oral testimony under direct and cross-examination as well as responses to undertakings arising out of that testimony. In its motion, THESL relies upon and incorporates by reference its pre-filed and supplementary written evidence, its oral testimony, and its undertaking responses into the Motion Record, subject to the Board's previous directions on confidentiality in the Combined Proceeding, and with the Board's findings on confidentiality as set out in the Decision.
6. On August 8, 2007, the Board issued its Decision in the Combined Proceeding, and in Appendix A to that Decision, set out the Smart Meter-related amounts that would be allowed for inclusion in THESL's 2007 revenue requirement and corresponding rates.

Errors of Fact in the Decision:

7. Having reviewed the Decision, including Appendix A and the notes thereto, I verily believe that the Board erred in fact in four ways in its determination of the allowed amounts shown in Appendix A.

Disallowance of Amounts Held to be Funded Through '3rd Tranche' Conservation and Demand Management ("CDM") Funding:

8. First, I believe that the Board misapprehended THESL's evidence and has incorrectly concluded that THESL's Smart Meter capital costs, as filed and claimed in this proceeding, included amounts for meters that had already been funded through THESL's Board-approved '3rd Tranche CDM' plan. In the notes to Appendix A, for cell C8, the Board cites THESL's Response to Undertaking K4.7 as the basis for the disallowance.

9. In fact, K4.7 indicates precisely the opposite, and states expressly:

"Toronto Hydro's total expenditures on Smart Meters (and related equipment) that was funded from the "third tranche" CDM pool of funds was, \$2,055,773 in 2005 and \$288,516 in 2006, as reported in Toronto Hydro's 2005 and 2006 CDM Annual Report filed with the OEB.

Toronto Hydro confirms that none of these expenditures have been included in the Smart Meter deferral account balance for 2006." (Emphasis added)

10. THESL's evidence in this proceeding was based on its financial records and reflected only those expenditures recorded in the Smart Meter accounts, as distinct from the CDM accounts. The statement that none of the CDM-funded Smart Meter expenditures were included in the SMDA means precisely that those expenditures were not included in the Smart Meter accounts and were not reflected in the amounts claimed by THESL in this proceeding. I believe that by making the adjustment referred to in the notes to cell C8 in Appendix A, the Board has in effect removed THESL's Smart Meter-related 3rd Tranche CDM expenditures a second time.

11. THESL's prefiled evidence in this proceeding principally concerned its capital and operating expenditures made in 2006 for Smart Meter activities taking place in 2006. However, through the course of the proceeding and the oral hearing, THESL was cross-examined on the historical context and prelude to its 2006 Smart Meter activities, and in particular on Smart Meter pilot activities conducted in 2005 under the auspices of 3rd Tranche CDM spending.

12. As the hearing unfolded, two distinct but related themes of discussion emerged. The first concerned THESL's pilot program activities, which THESL undertook in a number of phases, and which were designed to provide field information, confirmation of operational feasibility, testing of technology scaling, and other similar items.
13. The second theme concerned the sources of, and accounting for, funding for Smart Meter expenditures, particularly including pilot programs.
14. THESL's evidence was that over the entire history of its Smart Meter activities, pilot programs took place in both 2005 and 2006, and that the early pilots were CDM-funded while the later pilots were accounted for as Smart Meter expenditures.
15. During the initial, exploratory stages of THESL's implementation of its Smart Meter rollout, the first pilots conducted by THESL were funded through 3rd Tranche expenditures. For financial and regulatory reporting purposes, these expenditures were recorded in THESL's 3rd Tranche CDM accounts.
16. While the categories of 'Pilot programs' and 'Funding Mechanisms' intersect, THESL's evidence clearly indicated the following:
 - a) If a program were CDM-funded, it was a 2005 pilot.
 - b) If a program were Smart Meter-funded, it was a 2006 pilot.
 - c) It is invalid to infer that if a program were a pilot program, it was CDM-funded. While the reverse inference (i.e., if a program were CDM-funded, it was a pilot) is sound, the first conclusion is false.
17. By making the adjustment referred to in the notes to cell C8 in Appendix A, the Board has in effect removed THESL's "3rd Tranche CDM" expenditures a second time.
18. Second, for the same reasons, the Board has erred by deducting 1,000 meter units from the total number of meters eligible for cost recovery to reflect those undertaken as part of CDM-funded Smart Meter pilots. As with the 3rd Tranche CDM-related Smart Meter

expenditures, these units were not originally included in the totals reported in THESL's evidence, and it would have been an error if they had been included, since the corresponding costs were excluded. As in the case of the 3rd Tranche CDM expenditures, the Board has in effect removed THESL's 1,000 meters a second time.

Improper Use of Forecast Unit Costs:

19. Third, the Board has erred with respect to the applicable unit meter cost used to calculate the adjusted allowed capital cost. Specifically, the calculations underpinning the figures set out in Appendix A assume a forecast average of Smart Meter unit costs over 2006 and 2007, which according to THESL's evidence had not yet been realized, and certainly was not the 2006 actual, invoiced, and paid unit cost.
20. The calculations in Appendix A are therefore incorrect and inconsistent with the body of the Board's Decision, in which the Board states at page 15:

"In accepting the costs outlined in Appendix "A" for the thirteen utilities the Board has relied on a number of findings. ...Third, the costs allowed relate to meters installed (i.e., the costs incurred) as opposed to forecasted costs."

21. At no time did THESL indicate that it sought any recognition or rate adjustment for forecast costs, or in fact any actual Smart Meter costs incurred after December 31, 2006. The costs presented by THESL for recovery through the proposed rate adjustment represented its actual costs incurred in 2006. The figure for unit meter costs used by the Board to derive the allowed Smart Meter capital amounts (and the other amounts depending on that) is, on THESL's evidence, very clearly a forecast and averaged figure that depends for its realization on certain volumes of Smart Meter purchases by THESL taking place after 2006. These volumes have not yet been achieved, and in any event, if they are achieved, there will not be a retroactive adjustment of the prices previously paid by THESL and reported in the Combined Proceeding. The volumes will only affect unit prices on future purchases. This potential future averaged cost is not a cost that can properly be attributed to units purchased by THESL in 2006, and such an attribution clearly involves an improper multiplication of forecast average unit costs by a quantity

reflecting only historical 2006 purchases. In the result, total 2006 costs and the consequential revenue requirements for 2006 and 2007 are materially and unduly understated.

22. THESL's deliberate approach to framing its request for relief in this area where developments have been rapid and difficult to forecast, and in a rate year for which THESL is not filing a full forecast test year application, has been to limit its application to verifiable historical costs.
23. Had THESL filed for rebasing with respect to Smart Meters based on a *forecast* of Smart Meter capital and operating expenditures to the end of 2007, it would have submitted a forecast of unit meter costs that would have been subject to the usual degree of testing and scrutiny that applies to such forecasts. However, it did not. THESL's requested relief refers only to *historical* costs realized in 2006, and this is entirely consistent with the Board's Decision that only actual (i.e., realized, not forecast) costs would be approved for inclusion in revenue requirements through this proceeding.
24. Furthermore, the Board clearly stated in its Decision that the costs incurred by THESL and the other subject utilities for procurement of the Smart Meter units were prudently incurred, and were arrived at through a professional and diligent purchasing process. The Board has made no finding that any part of the historical costs incurred was imprudent and should be disallowed for that reason.
25. The effects of the Board's using a forecast average unit cost of Smart Meters are to produce a residual unrecovered debit balance in the 2006 SMDA which will continue to accrue interest at the cost of ratepayers, therefore inflating the eventual amount needing to be recovered, and to unduly understate the actual 2007 rate base. Again, this approach will simply lead to a higher amount being recovered at a later time, exacerbating rate impacts in the future.
26. As it stands, the Decision in this proceeding fails to conform to express Provincial policy which is to hold THESL and other utilities financially harmless with respect to the

Provincial Smart Meter Initiative, since the Decision does not provide for full and timely recovery of costs actually and prudently incurred. Furthermore, the Decision makes no explicit reference to the unrecovered amounts and provides no assurance or direction concerning their recovery in future years.

Inclusion of AMCC Costs:

27. Fourth, the Board has incorrectly included an amount of \$598,000 related to technology costs for the AMCC. THESL presented this information for the purpose of conforming to the Board's Combined Proceeding filing requirements. However, THESL's testimony was that this amount was not sought for recovery, having already been provided for by the Board in its decision on 2006 rates for THESL.

28. At transcript vol. xx, page 78, I stated:

MR. McLORG: It just concerned the \$3 million that you were enquiring about that was the subject of the Board's 2006 EDR decision. I wanted to clarify, if I could, that that amount is excluded from the supplementary application and we are not seeking recovery of that amount.

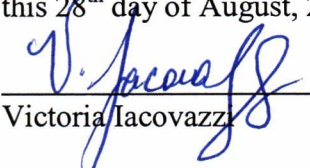
However, elements of that amount are reported at tab G, page 1. And the first element is, 1.1.3, work force automation, and that \$1.7 million there that you see, 1.698, has been capitalized; that's related to our mobile work force management system.

The second element you would say \$600,000 or – well, \$598,000 thousand dollars, at line 1.3, relates to items pertaining to the AMCC. That amount we've reported here pursuant to the minimum filing requirements, but that amount is in capital work in progress, CWIP, we call that, and so I hope that that clarifies the disposition of those two elements of the \$3 million.

29. To assist the Board in its review, I have prepared a spreadsheet setting out the Smart Meter-related dollar amounts and meter unit quantities originally requested by THESL in the Combined Proceeding, those allowed by the Board in its Decision, and the revised amounts and quantities reflecting the relief requested by THESL in its motion for the review and variance of the Decision. The spreadsheet constitutes Exhibit "A" to this

Affidavit. Exhibit "A" is being filed in confidence in accordance with the Board's previous directions on confidentiality in the Combined Proceeding, and with the Board's findings on confidentiality as set out in the Decision.

30. THESL requests that the Board approve the revised determinations of the revenue requirements related to Smart Meters (i.e., for 2006 with respect to clearance of the 2006 SMDA, and for 2007 with respect to 2007 incremental ratebase and consequential rates and riders), reflecting the inclusion of costs and units previously disallowed as having been already CDM-funded, reflecting the exclusion of the amounts related to AMCC, and reflecting the actual 2006 unit cost incurred, as set out in the 'Per Motion' columns of Exhibit "A" to this affidavit, pursuant to its authority under Sections 21 and 78 of the Act, and pursuant to Rule 42 of the Board's *Rules of Practice and Procedure*.
31. I make this affidavit in support of THESL's motion for Review and Variance of the EB-2007-0063 Decision as it relates to THESL, and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Toronto in the Province of Ontario))
this 28th day of August, 2007))
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_____))
Victoria Iacovazzi)
A Commissioner, etc.



Colin J. McLorg