



**EB-2009-0308**

**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.

**BEFORE:** Gordon Kaiser  
Presiding Member and Vice Chair

Cynthia Chaplin  
Member

### **COMPLIANCE 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 on remedy from Compliance Counsel and THESL, as well as the intervenors the Smart Sub-Metering Working Group (“SSMWG”) and the Electricity Distributors Association, heard the submissions of Compliance Counsel and counsel for THESL and the SSMWG relating to remedy, and made an oral decision on February 18, 2010;

**AND WHEREAS** Compliance Counsel and THESL have consented to the terms of this Order;

## **THE BOARD ORDERS THAT:**

### **Application of the Order**

1. The Order shall bind THESL as well as each and every of the present and future affiliates, directors, owners, officers, shareholders, agents and employees of THESL, and any of THESL’s successors, subsidiaries, assignees and their agents, employees and other persons acting for or on behalf of THESL with respect to any matter referred to in this Order.

### **Definitions**

2. 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**

3. 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.
4. 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**

5. 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.
6. The offer to connect provided by THESL under paragraph 5 of this Order shall be subject to THESL’s standard terms and conditions and, subject to paragraph 5, shall not include any additional term or condition, or require any representation or warranty from Avonshire, that addresses a smart sub-metering system or the actions of Avonshire in relation to a smart sub-metering system.
7. If Avonshire accepts the offer to connect provided under paragraph 5 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**

8. 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.

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

10. If Metrogate accepts the offer to connect provided under paragraph 8 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**

11. 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.

12. 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.

13. THESL shall not refuse to provide an offer to connect to a condominium corporation or developer on the basis of any concerns that THESL has about the practices or conduct of the customer in relation to smart sub-metering or of a licensed smart sub-metering provider. Any offer to connect provided by THESL under paragraph 12 of this Order shall be subject to THESL's terms and conditions and, subject to paragraph 12, shall not include any additional term or condition, or require any

representation or warranty from the customer, that addresses a smart sub-metering system or the actions of the customer in relation to a smart sub-metering system.

14. If a condominium corporation or developer accepts an offer to connect provided under paragraph 12 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**

15. 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 11 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.

16. Within 45 days of the date of this Order, THESL shall implement a Compliance Program which will provide all relevant employees with a copy of this Order and written instructions regarding the new corporate policies to implement the Order. The President and CEO of THESL shall, within 45 days, provide written certification to the Board indicating that the Compliance Program has been implemented as directed by the Order.

### **Publication**

17. Within 10 days of the date of this Order, THESL shall publish this Order, without the Schedules attached hereto, in The Globe & Mail and the Toronto Star under the heading "Notice to Condominium Corporations and to the Developers and Owners of Multiunit Residential Buildings." The notice shall state that a full copy of the Order can be obtained from the Board's website ([www.oeb.gov.on.ca](http://www.oeb.gov.on.ca)) and also provide a contact person and phone number at THESL from which a full copy of the Order can be obtained.

### **Costs**

18. THESL shall reimburse Avonshire and Metrogate, the SSMWG and the Board for all costs relating to their participation in proceeding EB-2009-0308, which costs will be borne by THESL's shareholder and not the ratepayer.

**General**

19. 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.

20. 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.

21. 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.

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

**DATED** at Toronto, February 22, 2010.

ONTARIO ENERGY BOARD

*Original signed by*

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Gordon Kaiser  
Presiding Member and Vice Chair

*Original signed by*

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Cynthia Chaplin  
Member

## **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 new and existing 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]**.