



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.

**NOTICE OF INTENTION TO MAKE AN ORDER FOR
COMPLIANCE UNDER SECTION 112.3 OF THE *ONTARIO
ENERGY BOARD ACT, 1998***

The Ontario Energy Board (the "Board"), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (the "Act"), intends 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. The Board also intends to make an Order under section 112.3 of the Act requiring THESL to take such action as the Board may specify to remedy the contravention that has occurred or prevent a contravention or further contravention of the enforceable provisions. This Notice and Order concerns THESL's conduct relating to smart metering and smart sub-metering in new condominiums. For the purposes of the Order, the enforceable provisions are: section 28 of the *Electricity Act, 1998* (the "Electricity Act"); section 53.17 of the Electricity Act; section 2.4.6 of the Distribution System Code (the "DSC"); section 3.1.1 of the DSC; and section 5.1.9 of the DSC.

The particulars of non-compliance are set out below.

1. THESL's Conditions of Service, specifically section 2.3.7.1.1, states that THESL "will provide electronic or conventional smart suite metering for each unit of a new Multi-unit site, or a condominium." By way of letters dated April 22, 2009, THESL informed Metrogate Inc. ("Metrogate") and Avonshire Inc. ("Avonshire")

that despite Metrogate and Avonshire's request that THESL prepare a revised Offer to Connect for condominiums based on a bulk meter / sub-metering configuration, THESL would not offer that connection for new condominiums and would not prepare a revised Offer to Connect on that basis.

2. THESL's refusal to connect on that basis is contrary to the requirement of a distributor to connect a building to its distribution system as per section 28 of the Electricity Act and is contrary to section 3.1.1 of the DSC. The Board is also satisfied that THESL is likely to contravene section 28 of the Electricity Act and section 3.1.1 of the DSC in the future by continuing to refuse to connect buildings with a smart sub-metering system to its distribution system.
3. THESL's practice is also contrary to section 5.1.9 of the DSC which states that distributors must install smart meters *when requested to do so* by the board of directors of a condominium corporation or by 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*. [emphasis added]
4. THESL's practice is also contrary to section 53.17 of the Electricity Act (and Ontario Regulation 442/07—*Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums* (made under the Electricity Act)) which contemplates a choice between smart metering and smart sub-metering.
5. THESL's Conditions of Service are therefore contrary to section 2.4.6 of the DSC which states that Conditions of Service must be consistent with the provisions of the DSC and all other applicable codes and legislation.

THEREFORE TAKE NOTICE that THESL may request, within fifteen days after receiving this Notice, that the Board hold a hearing on these matters. If no request for a hearing is made within this time period, the Board may proceed to make an Order that THESL comply with any of the enforceable provisions listed in this Notice. The Board may also make an Order requiring THESL to take such action as the Board may specify, including but not limited to an Order to THESL to amend its Conditions of Service, to remedy the contravention that has occurred or prevent a contravention or further contravention of any of the enforceable provisions.

FURTHER TAKE NOTICE that if a hearing is requested, the Board is not bound by the proposed above noted action and has discretion, upon finding a contravention(s) of the enforceable provision(s), to make any order it deems appropriate under sections 112.3, 112.4 or 112.5 of the Act. THESL is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should THESL fail to attend, the hearing may be conducted in its absence and THESL will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, THESL must file 6 copies of their request with the Board Secretary at the following address:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4
Attention: Board Secretary

Email: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273
Fax: 416-440-7656

If a hearing is requested, it will proceed before a Panel of the Board, at the offices of the Board (address listed above), on a date to be set by the Board.

DATED at Toronto, August 4, 2009.

Original signed by

Kirsten Walli
Board Secretary