



Advocacy Centre for Tenants Ontario
Centre ontarien de défense des droits des locataires

February 6, 2008

Ms Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St., 27th floor
Toronto, Ontario M4P 1E4

Dear Ms Walli,

Re: **Smart Metering and Smart Sub-metering Systems in Condominiums
(EB-2007-0772)**

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) to provide comments for consideration in the above-mentioned proceeding with respect to low-income consumers in the multi-residential rental market and the Ontario Energy Board's proposed Smart Sub-metering Code ("SSM Code").

ACTO is a specialty legal aid clinic with a province-wide mandate, funded by Legal Aid Ontario to engage in test case litigation and law reform advocacy to improve the housing situation of the province's low-income residents. ACTO is also a founding member of the Low-Income Energy Network (LIEN), formed in 2004 to raise awareness of the impact of rising energy prices on low-income consumers and to work with policymakers and the utility sectors on solutions to energy poverty.

ACTO is very concerned about the impact of Smart Meters, smart sub-metering and time-of-use rates on housing affordability for low-income tenants who now pay for electricity service in their rent and struggle to pay for other basic necessities such as food, clothing, transportation and medicine. Having utilities included in rent is a fundamental and valuable term in residential rental contracts, providing tenants with some degree of certainty with respect to expected costs in order to make crucial household budget decisions.

The median income of Ontario's renter households is less than half of homeowner households (\$32,194 vs. \$66,382). According to Statistics Canada data, more than a third of Ontario's tenant households are living at or below the

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The Tenant Duty Counsel Program is a project of ACTO

pre-tax, post-transfer payment Low-income Cut-offs (LICOs) which are widely accepted as poverty lines.

According to Canada and Mortgage and Housing Corporation's (CMHC) 2001 Census-based Housing Data, while Ontario renter households accounted for 31% of all Ontario households, they comprised 66.4% of Ontario households in core housing need. Housing affordability is the predominant cause of core housing need.

Affordable housing, according to CMHC, should cost less than 30% of a household's total before-tax income. Forty-two (42%) per cent of Ontario's tenant households (or 564,735 households) pay 30% or more of their household income on shelter costs, including utilities. Twenty (20%) per cent Ontario's tenant households (or 265,995 households) pay 50% or more on shelter and are considered to be at significant risk of homelessness.

Persons on social assistance, single-parent families, elderly women, visible minorities, immigrants and persons with disabilities are all over-represented in the population of low-income tenants. They are particularly vulnerable to increases in shelter and utility costs – increases which are difficult to absorb and which could put their housing in jeopardy.

Smart Meter provisions in *Residential Tenancies Act, 2006* (RTA) and proposed Smart Sub-Metering Code

The SSM Code has been issued by the OEB pursuant to the coming into force on December 31, 2007 of the two regulationsⁱ enabling smart metering and smart sub-metering in condominiums. If, and when, the smart metering provisions in the *Residential Tenancies Act, 2006* come into force, ACTO understands licensed smart sub-metering providers working in the multi-residential rental sector on behalf of bulk-metered exempt distributors will also have to meet the minimum conditions and standards set out in this Code. We also understand that the SSM Code may be amended once the smart metering provisions in the RTA are proclaimed. ACTO, nevertheless, welcomes this early opportunity to bring its initial concerns to the attention of the OEB.

Section 137 in Part VIII of the RTA allows landlords to install smart meters in rental units without tenant consent and transfer the cost of in-suite electricity use to tenants directly. This section has not yet been proclaimed. As well, regulations associated with section 137, such as the energy conservation obligations on landlords and the calculation of the rent reduction once tenants are responsible for paying electricity bills, have yet to be developed.

There is smart sub-metering activity taking place currently in the multi-residential rental sector, under section 125 of the RTA which requires tenant consent before the landlord can transfer the cost of electricity use to the tenant directly and

decrease rent charges. However, there is no requirement at this time for licensing by the OEB of the providers of smart sub-metering services to landlords who are transferring electricity service costs under section 125 of the RTA. ACTO will be bringing this omission to the attention of the Ministry of Energy and the Ministry of Municipal Affairs and Housing.

ACTO's over-riding concern with the SSM Code is that low-income tenants, as customers of licensed smart sub-metering providers, may be disadvantaged as compared to direct customers of local distribution companies in terms of consumer protection provided by the OEB, particularly with respect to price oversight and dispute resolution. We also are concerned that, as customers of licensed smart sub-metering providers, low-income tenants may not have the same access as direct customers of LDCs to conservation and demand management programs to assist in reducing energy consumption and costs.

We would like to focus our comments regarding the proposed SSM Code on the following:

1. There should be clear direction from the OEB on what will be considered "reasonable" in terms of the costs passed on to tenants for in-suite electricity use.
2. There should be transparency in the smart sub-metering invoices with respect to all the costs being passed on to tenants for in-suite electricity use, particularly those related to cost recovery for providers of smart sub-metering services.
3. There should be a mandatory exemption or waiver for low-income households from consumer security deposit requirements.

Direction on "reasonable" costs for electricity service through smart sub-metering providers

The OEB has pointed out that it has no rate-making authority over smart sub-metering providers and has stated that it intends to provide the minimum of oversight because the provision of smart sub-metering services is a competitive, and not a distribution, activity.

The only control over costs being billed by a sub-metering provider on behalf of an exempt distributor is that contained in section 4.0.1 of O.Reg. 161/99 – Definitions and Exemptions, made under the *Ontario Energy Board Act, 1998*. To maintain status as an exempt distributor, this section requires that electricity be distributed "for a price no greater than that required to recover all reasonable costs". However, the OEB has no rules or guidelines in place with respect to what it will consider as "reasonable" costs. Reviews of whether costs are "reasonable" are undertaken by the Board on a reactive, complaints basis. This

assumes some degree of knowledge and expertise that consumers may not have, and puts the onus on the tenant customer to monitor charges and bring forward complaints to the Board for resolution.

The OEB should provide clear directions on what it considers reasonable costs that can be charged to consumers by smart sub-metering providers acting on behalf of exempt distributors. The Board should also confirm that it will investigate and resolve complaints about the reasonableness of costs that are submitted by customers of licensed smart sub-meter providers.

Transparency of smart sub-metering providers' costs on invoices to consumers

Smart sub-meter providers must comply with all applicable regulations regarding information on invoices to low-volume consumers of electricity (under section 4.3.1 of the SSM Code). Currently, this means a smart sub-metering provider must present bills to consumers in the format outlined in O.Reg. 275/04 – Information on Invoices to Low-Volume Consumers of Electricity, made under the *Ontario Energy Board Act, 1998*.

Our understanding is that O.Reg. 275/04 was intended to simplify and standardize electricity billings by local distribution companies (LDCs) to residential and small business consumers. As such, it does not specifically address the smart sub-metering situation, where there is an allocation of the bulk-meter billing and smart sub-metering provider costs to individual tenant households for in-suite electricity consumption and service.

The OEB should require that each smart sub-metering invoice to a tenant customer have separate and distinct line items with the description of, and actual amount for, all the fees and charges related to the provision of the smart sub-metering service such as cost recovery for the meter, administration and billing services. These costs should not be hidden.

In addition, the OEB should set guidelines on how a building's bulk (master) billing costs are to be sub-divided by a smart sub-metering provider for the individual in-suite electricity use invoices to tenant customers. A clear and detailed explanation of the sub-dividing method should be included on the invoices.

Mandatory security deposit exemption for low-income consumers

ACTO recommends that there should be a mandatory exemption or waiver for low-income households from the consumer security deposit requirements in the SSM Code. ACTO made this same recommendation for a system-wide, mandatory exemption for low-income residential customers from LDCs' consumer security deposit requirements in the Distribution System Code (in our

submission to the OEB's proceeding on Consumer Security Deposit Policies – EB- 2002-0146).

Security deposit policies can have a disproportionate adverse impact on, and even exclude, low-income households from accessing electricity services. ACTO has proposed that low-income consumers, for the purpose of this exemption from security deposit requirements, be defined as those persons and families with household income levels at or below the pre-tax, post-transfer payment LICOs, published by Statistics Canada.

The SSM Code gives smart sub-metering providers the discretionary authority to waive security deposit requirements under section 3.2.1, but there is no guarantee an exemption will be made. ACTO believes a security deposit exemption for low-income consumers is essential because section 4.2.9 (f) of the SSM Code allows smart sub-metering providers to disconnect a customer if the person owes money to the exempt distributor for a security deposit.

In cases where a low-income consumer was not required to pay a security deposit, but subsequently had a problem with their payment history, the smart sub-metering provider might disconnect to enforce the payment of a security deposit. We oppose disconnection in such circumstances. In general, disconnections must be a remedy of last resort and closely monitored to limit safety risks.

ACTO looks forward to the Ontario Energy Board's response to these initial concerns and recommendations regarding the SSM Code.

Yours sincerely,

Original signed by

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ⁱ O.Reg. 442/07 – Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums, made under the *Electricity Act, 1998*. O.Reg. 443/07 – Licensing Sub-metering Activities, made under the *Ontario Energy Board Act, 1998*.