



3240 Mavis Road  
Mississauga, ON  
L5C 3K1  
Tel: (905) 566-2727  
Fax: (905) 566-2737

Ontario Energy Board  
P. O. Box 2319  
2700 Yonge Street, Suite 2701  
Toronto, ON M4P 1E4  
Attn: Ms. K. Walli, Board Secretary

January 31, 2008

Dear Ms. Walli,

Re: EB-2007-0772

I am writing on behalf of Enersource Hydro Mississauga Inc. ("Enersource") in the above named matter. Thank you for the opportunity to comment on the Ontario Energy Board's draft Smart Sub-Metering Code (the "Draft Code").

Enersource seeks to ensure that equity exists among all end users of electricity in the City of Mississauga and that similarly situated end users experience like treatment, independent of their choice of residence. This principle of horizontal equity is articulated by Bonbright and is consistent with sound public policy.

Enersource recently responded to a request from a developer to convert a condominium townhouse development, from an embedded sub-metered system to one served by Enersource and smart metered; that experience is recounted in the attached Case Study (Attachment A). It is clear from that experience that the installation of infrastructure behind the licensed distributor's bulk meter can expose the end user to unregulated service and unchecked quality. While served by the unlicensed distributor, the electricity end users at that site had no consumer protection and did not enjoy the rights, privileges, protections and remedies of economic regulation. This outcome could occur under the provisions of the current Draft Code.

In order to preclude the exercise of monopoly power and to ensure that all consumers enjoy the same rights, privileges and protections, Enersource provides examples of additional provisions, amendments of existing provisions, and implications of the provision of Smart Sub-Metering that can be addressed at this time.

Enersource suggests that the Board provide additional provisions to the Draft Code concerning, for example:

- Precluding tied selling propositions – a Smart Sub-Meterer should not be permitted the discretion to present a Condominium Developer or Condominium Corporation with a 'mandatory' package of services (eg., including Smart Sub-Metering as well as commodity supply, natural gas, telecommunications, security alarm service);

- Choice of service provider – the draft Code is silent on whether the end user will be able to contract with their supplier of choice for commodity supply;
- Protecting consumers' confidential information – the draft Code does not impose any protections on confidential information and may, as a result, implicitly endorse the use of such information for purposes that enrich the Smart Sub-Meterer.

Potential amendments to existing provisions of the Draft Code may include:

- Requiring the Smart Sub-Meterer to provide specific levels of service (eg. the Draft Code requires the Smart Sub-Meterer to provide contact information but does not require the Smart Sub-Meterer to respond when contacted by the customer);
- Requiring the Smart Sub-Meterer to disclose its operating costs as well as the capital costs;
- Augmenting the provisions on security deposits to include the return of security;
- Precluding the Smart Sub-Meterer from selecting a dispute resolution services provider that is in a conflict of interest because of its ultimate ownership or control;
- Amending section 4.1.14 to bind the Smart Sub-Meterer, rather than the consumer.

Implications of the draft Code that may be addressed include:

- The draft Code contemplates that a party other than the Smart Sub-Meterer may provide meter reading or billing or disconnection services but the Board has not indicated how it will oversee these parties;
- The need for the Smart Sub-Meterer's contracts with a Condominium Corporation and with individual unit owners to be subordinate to the Smart Sub-Meterer's Conditions of Service;
- Protections commensurate with those provided through the Board's other regulatory instruments (eg. the Affiliates Relationships Code).

If the Draft Code, as proposed, is made by the Board, then condominium boards, condominium corporations and individual unit owners will need to take steps to develop sufficient expertise to protect themselves from monopoly powers and related long term contractual risk in the absence of regulation. This will require that they replicate the expertise of the Board, without the force of the enabling legislative powers.

Enersource will be pleased to expand on or clarify its position. Thank you for the opportunity to comment on the Draft Code.

Sincerely



K. Litt  
Manager, Rates and Regulatory

Att.

## Attachment A

Case Study:  
Enersource Hydro Mississauga Inc.'s  
Provision of Distribution Service to  
A Condominium Townhouse Development

Note: this Case Study is provided on a without attribution basis.

### Chronology

In 2002 a parcel of land in Mississauga was vacant. In June 2003 that land was actively being developed and the Developer's electrical consultant ("the Consultant") approached Enersource and requested an Offer to Connect. Enersource made an Offer to Connect (the "Offer to Connect") to the Developer on November 19, 2003. It provided the design of the distribution system, and a request for a financial contribution as determined through the economic feasibility test. The Developer did not respond to the Offer to Connect. In May 2004 Enersource was advised by the Consultant that the Developer had selected another firm (the "Unlicensed Distributor") to provide distribution services, including individual metering, at the site.

Enersource established the requirements to be met by the Unlicensed Distributor to be able to connect a proposed bulk meter at the development; specifically, additional devices were required so that the constructed distribution system could be isolated from Enersource's distribution system and to comply with Canadian Standards Association and Electrical Safety Association standards. The devices were provided. Enersource proceeded to connect the bulk meter to Enersource's existing distribution system and the Unlicensed Distributor entered into a Contract for Service with Enersource. Enersource established an account in the name of the Unlicensed Distributor and requested a security deposit. The security deposit was provided. Enersource commenced providing service to the Unlicensed Distributor as of November 2004.

In September 2006 the Developer and the Condominium Corporation (the "Condominium Corporation") approached Enersource and requested that Enersource provide distribution service directly to the townhomes and to the common areas of the development. In preparation for the provision of service by Enersource the Developer secured an executed Application for Service from the owner of each townhome and the Condominium Corporation commenced the process to register easements in favour of Enersource. The Developer obtained executed Applications for Service from all townhome owners by February 12, 2007.

On March 1, 2007 the Developer performed a final meter reading and removed the meters previously installed at each townhome and to the common areas. As each meter was removed, and in accordance with the Application for Service, Enersource directed its personnel to install a new Smart Meter at each townhome and for the common areas. Effective from the installation of its meters, Enersource commenced to provide distribution service to the end user townhomes and to the common areas. The Application for Service signed by each townhome owner explicitly requested that Enersource provide distribution

service and acknowledged that the townhome owner is responsible for payment to Enersource. These accounts are now directly responsible to Enersource for payment of the distribution services provided by Enersource. In May 2007 Enersource had retrofitted the electricity distribution system at the Development.

### **Steps and Actions Taken Related to the Provision of Distribution Service by Enersource**

Enersource encountered technical, customer related, commercial, legal and regulatory issues in providing distribution service to the Condominium Townhouse Development; they varied depending on the business arrangement in place, being:

- when the Unlicensed Distributor was responsible for the provision of distribution service and individual metering downstream of the bulk meter, from November 2004 or earlier until February 2006;
- when preparing to provide service to the individual townhomes and to the house services, from October 2006 until February 2007; and
- when providing distribution service on an ongoing basis, from March 2007 to the present.

#### Technical issues

- Enersource amended its Control Room protocols to include contacting a knowledgeable party upon detection of an interruption at the Condominium Townhouse Development so that Trouble Crews and Trucks were not dispatched inappropriately.
- Enersource risked impairing its Reliability Service Quality Indicator performance because Trouble Crews and Trucks were dispatched in response to the Unlicensed Distributor's uncommunicated planned outages at the Condominium Townhouse Development, rather than to true unplanned outages.
- Enersource's Engineering and Operations staff prepared a system design that was implemented inappropriately by other parties. Subsequently, that same staff prepared the remediation plan so that the system could appropriately connect to Enersource's distribution system and use a bulk meter, as desired by the Unlicensed Distributor.

#### Customer related issues

- Enersource's customers may have experienced inappropriately long outages because Trouble Crews and Trucks were not available.
- Enersource's customers may have experienced difficulty or unduly long waits when attempting to contact the Call Centre or Customer Care staff if that staff was dealing with a misdirected call from an inhabitant of the Condominium Townhouse Development during the November 2004 to February 2007 period. Note: this may have also unduly impaired Enersource's reported Customer Response Service Quality Indicator.

- Enersource developed appropriate Call Centre materials to support correct, consistent responses to inquiries from end users situated at the Condominium Townhouse Development during all three stages.

#### Commercial issues

- Enersource incurred unusual costs (eg. to review an inappropriate application of an Enersource design, to develop enabling legal instruments, to respond to Ontario Energy Board Compliance Office investigations on termination of service and billing) as a result of the provision of service by the Unlicensed Distributor from November 2004 until February 2007.
- Enersource expended time and resources to identify risks and take appropriate mitigating actions.
- In some instances Enersource incurred costs twice (eg. to design the distribution system for the Offer to Connect, to design the retrofitted distribution system).

#### Legal issues

- Enersource developed the required legal instruments and agreements (eg. Agreement to Transfer Electrical Distribution System, indemnities) to support the provision of service by Enersource.
- Enersource co-coordinated its legal instruments and agreements with those developed by the Developer's legal counsel so that Enersource did not take on any inappropriate risks.

#### Regulatory issues

- In preparation for providing service to the inhabitants of the Condominium Townhouse Development Enersource reviewed and evaluated the applicable regulatory instruments.
- Enersource dealt with two Ontario Energy Board Compliance Office investigations of Enersource's conduct with respect to the Unlicensed Distributor and with respect to billing the Unlicensed Distributor for commodity.

#### **The Outcome**

Enersource has been successfully providing distribution service to the inhabitants of the Condominium Townhouse Development since February 2007.