

BY EMAIL AND FACSIMILIE

January 31, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St., Suite 2700
Toronto, ON, M4P 1E4

Re: Proposed Code Amendments and Code Creation for the Licensing of Smart Sub-Metering Providers BOARD FILE NO.: EB-2007-0772

PowerStream Inc., Hydro Ottawa Limited, Horizon Utilities, Veridian Connections Inc. and Toronto Hydro-Electric System Limited (collectively the "Utilities") welcome the opportunity to comment on the Board's Proposed Code Amendments and Code Creation for the Licensing of Smart Sub-Metering Providers. In general the Utilities support what it understands is the intent of the OEB: to ensure a level playing field between smart sub-metering providers and licensed distributors providing smart metering services in condominiums and to ensure that end use consumers are afforded the same degree of consumer protection whether they are serviced by a smart sub-metering provider or by a licensed distributor. However there are some areas in which the practical implications of the proposed conditions do not meet this goal.

The introduction of individual suite metering in condominiums promises to be a valuable tool to assist consumers, distributors, meter service providers and the government in achieving conservation in Ontario. Remotely read meters also have the potential to save metering reading costs. On the other hand, establishing a robust regulatory regime for smart meters is not without its complexities – particularly when these meters are being used to serve individual condominium units. The Utilities suggest that from a regulatory perspective this is because the distribution system within a privately owned condominium building is owned and operated by the privately owned condominium corporation (i.e. the unlicensed in-house distributor) regardless of who is installing, operating and owning the meters and providing remotely read metering services.

The *Energy Conservation Responsibility Act, 2006* provides that the meters will be installed by all Ontario electricity distribution companies, or "any other person" licensed by the Board to do so. The Board's January 26, 2005 Report to the Minister of Energy proposed that smart meter capital and operating costs should be included in distributor's rates. And indeed the Board has previously determined that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. This was also asserted by the Chief Compliance Officer (CCO) who defined in his July 10, 2006 Bulletin (200605) "distribution activities to be those that enable the conveyance of electricity for *distribution purposes*". In his bulletin the CCO stated that meter reading and services for billing and collecting electricity charges are all activities that enabled the conveyance of electricity for distribution. The Utilities suggest then that both smart meter and smart sub-meter reading and services for billing and collecting electricity charges in condominiums are all still distribution services but these distribution services are conducted on behalf of the unlicensed in-house distributor – in both cases the condominium corporation.

While the Utilities were disappointed to see that the Legislation provided for or “any other person” licensed by the Board to install meters – essentially bifurcating the logical coupling of conveying electricity and metering electricity, the companies are working within this framework. There is little difference between the technology used to smart meter individual condominiums units and that used to smart sub-meter individual condominium units. The Utilities are at a loss to understand how it is that when a distributor meters the individual unit directly on behalf of the condominium corporation (the in-house distributor) it is viewed as a distribution activity but when a sub metering service provider meters the individual unit on behalf of the condominium corporation (the in-house distributor) it is not viewed as a distribution activity. In the former case, the distributor owns and operates the metering and billing infrastructure, in the latter the metering and billing infrastructure is owned and operated by the sub-metering company. But in both, the service is an activity that enables the conveyance of electricity for distribution purposes. To suggest that these services are competitive when undertaken by one type of company but not when undertaken by another is misleading.

Smart sub-metering as a competitive activity?

The Utilities urge the Board to reconsider its assertion that smart sub-metering is a competitive activity. Competition provides consumers with a choice of service providers, a relatively homogenous product and at its literal interpretation no barriers to entry or exit. The capital requirements to install and operate smart meters are not insignificant. The Utilities respectfully recommend that the Board consult with stakeholders (especially consumers) to gain a better understanding of the costs that are involved and satisfy itself that switching service providers can realistically happen. Although the initial installation of the metering infrastructure is contestable, once it is installed it cannot in any practical way be uninstalled and replaced by another competing infrastructure. If the ongoing distribution service enabled by the metering is tied to the metering, a *de facto* distribution service monopoly exists there forward.

While the Utilities understand that the Board has no authority to set rates over the condominium corporation as an exempt distributor, it does have the obligation to ensure that the exempt distributor is not recovering more than its reasonable costs. The Utilities suggest that the Code should provide for a reasonable cost audit to ensure the protection of the interests of consumers with respect to the cost of these services including the consideration of return. The termination provisions proposed in the SSM Code do not appear to have been made with an understanding of the level of charges that would be applied, essentially rendering the cost and therefore ability to terminate and switch providers prohibitive. The purpose of the SSM Code should therefore extend beyond “the protection of the interests of consumers with respect to the adequacy, reliability and quality of electricity service as they pertain to the licensed activities of the smart sub-metering provider” and include “with respect to reasonable costs”.

Technical Requirements for a Smart Sub-Metering System

The metering product being offered in condominiums is relatively homogenous. In the proposed Code the Board confirms the need to ensure that the technical requirements are the same as those set out in Regulation 425 except for the requirement to transmit information to the Smart Metering Entity's (the "SME") meter data management and meter data repository (the "MDM/R"). The Board believes that smart sub-metering providers' smart sub-metering systems should be able to do everything required by Regulation 425, including being capable of transmitting to the SME's MDM/R, but they are not required to

transmit to the SME's MDM/R. However the benefit in having a centralized data base and the ability to have more direct control of end-use appliances and devices – control that would enable increases or decreases in demand to be used to match the changes in system demand and supply on a minute-to-minute basis by the IESO is said to be significant (see Strengthening the vision for the Market APPrO Conference November 13, 2007 speech by Paul Murphy President and CEO IESO). Without the obligation to transmit data to the SME's MDM/R the potential for this type of conservation is lost. It also put distributors at a cost disadvantage when compared to sub-metering companies. The Utilities suggest that a licensed smart sub-metering provider be required to transmit data to the SME's MDM/R in order to maximize the benefit of information contained in the database as well as maximizing the province's efforts towards a culture of conservation and allowing consumers the same access to the demand response programs referred to by Mr. Murphy.

The proposed code states that a smart sub-metering provider shall ensure that the master meter is an interval meter. The responsibility for ensuring that the master meter meets all the requirements should rest with the LDC who still would have the condominium corporation as a customer.

While the proposed code does allow licensed distributors to offer smart sub-metering services by applying for a smart sub-metering licence distinct from its distribution licence, it is not clear why a distributor would do so¹. As stated above the difference lies with the fact that in one scenario there is a smart bulk meter separating the distributor from the end use customer and in the other there is no separation. In fact, the incentives to conduct smart sub-metering services under a separate licence would primarily be to avoid regulatory oversight as well as the requirement and cost to transmit data to the SME's MDM/R – further diluting the benefit of a central data warehouse and conservation, and spreading the fixed costs of the SME's MDM/R over a smaller customer base. In addition, the distribution rate cases would become more complicated as the Board and intervenors struggle to understand the cost and rate implications between those condominiums that are smart metered by the distributor and those that are smart sub-metered by the distributor.

Disclosure of Agreements and Disclosure in Agreements

The proposed code states that the Condominium Corporation or developer are the persons authorized to contract for smart sub-metering services on behalf of a prescribed location. Presumably in an existing condominium it would be the condominium corporation contracting with the smart sub-metering provider. Equally logical would be that in a condominium under development it would be the developer contracting with the smart sub-metering provider. The Utilities would not dispute that the initial choice between a smart sub-metering provider and a smart meter provider (LDC) exists. At issue is what happens when the consumers – those that will receive the smart sub-metering or smart meter service - take ownership of the unit? Their choice of switching service providers can only be exercised at such a significant cost (an unregulated) that for practical purposes that will never happen. While Section 3 of the proposed code attempts to provide transparency in

¹ The draft code is not clear whether this service would be offered by the same corporate entity or whether it would have to be done under an affiliated company and/or whether the service would be restricted to the distributor's service territory.

the required contracts, it does not provide customers with the ability to realistically switch service providers.

In fact, with the financial incentives that are often offered to developers by smart sub-metering providers to sign the original contract, distributors are at a disadvantage in their ability to “compete” given that their costs are closely regulated. Can the Board ensure that any such incentives are passed on to the consumer when s/he moves in to the condominium and not simply kept by the developer?

It is true that a prospective unit owner can exercise its choice simply by not moving in to the condominium that is being serviced by a given smart sub-meter service provider. However, Utilities observe that the Board has not advised customers to move out of a distributor’s service area in order to resolve service quality complaints. Otherwise, in this case it would be misleading to compare this situation to that where a consumer is moving into a newly constructed house and is required as part of the sales agreement to rent a hot water tank from a given company. While not always aware of such, consumers are able to refuse this condition and still purchase the house. The consumer’s choice is not dependent on and will not affect the owned or rented hot water tank of the person living next door. Similarly one person’s choice of cellular phone carrier or satellite TV can be made independently of his/her neighbour. This is not the case with the installation and provision of smart meter or smart sub-metering service provision. One unit owner’s preference and choice does affect his/her neighbour’s choice. It is unrealistic to think that a single consumer can exercise his/her choice of termination under section 3 of the proposed code – this is not a competitive service provision. The only way choice could be exercised would be for each and every unit owner to exercise its choice on every individual contract at the same time. This is not the same as where a contract is with the Condominium Corporation. The Utilities therefore suggest that the termination provisions contained in the initial contracts with the developer be transferred to the Condominium Corporation and not individual unit holders. The Utilities further recommend that the Board provide for an oversight role over the reasonableness of the termination clauses.

The Utilities do not object to the text of the proposed amendment to the DSC that is set out in Attachment A to the Notice and understands its obligations to Regulation 442 and the procurement requirements set out in section 2 of Regulation 427.

Provision of Information to Consumers and Consumer Complaints

“A smart sub-metering provider shall provide its address and telephone number to its consumers in all written communications between the smart sub-metering provider and the consumer. The smart sub-metering provider’s telephone number must be a local number or one that is capable of being reached without charge to the consumer.”

Distributors have an SQI requirement to answer customer phone calls within 30 seconds 65% of the time. There is no similar provision or requirement in the SSM Code that requires SSM providers to answer the phone within 30 seconds (or at its extreme answer the phone at all). Also the requirement for provision of the address is not specific; some SSM companies might simply provide a mailing address (post office box). But there is no requirement for SSM providers to actually respond (even in a timely manner) to their customers. The end result is that distributors will receive calls from SSM customers who are frustrated by not being able to contact their SSM provider, requesting LDC assistance to contact the SSM provider, or otherwise help to resolve problems with the SSM provider.

Anticipated Costs and Benefits of the Proposed Amendments and the Proposed Code

“The proposed change to the DSC will ensure that all distributors are following the same rules when smart metering, whether they are smart metering houses, condominiums, or small businesses”

The DSC ensures that distributors treat all their customers fairly and in the same way, however, with the proposed SSM Code, the converse will not always be true. All condominium customers will not be treated the same. Condominium customers that are directly suite metered are afforded all the protection under the DSC. However, smart sub-metered (SSM) customers are provided only a minimum of regulatory oversight by the Board. This does not prevent smart sub-meter service providers to levy unrestricted service charge increases to an essentially captive customer base. In effect, the proposed SSM Code creates two classes of customers: Individual suite metering customers served by distributors under the DSC, and SSM customers served by smart sub-meter service providers under the SSM Code. With the proposed SSM Code, SSM customers cannot and will not be protected by the same regulatory oversight as regular distribution customers.

“The SSM Code also includes provisions regarding the disclosure of information to consumers of smart sub-metering providers. These provisions will ensure that consumers within condominiums receive adequate information to make informed decisions about their consumption of electricity and are treated in a similar manner to those customers served by a licensed distributor.”

It is difficult to see how the simple disclosure of electricity information to SSM consumers will ensure they are treated in a similar manner to those customers served by a licensed distributor. It is unreasonable to assume SSM customers will be able to make informed decisions about their SSM service and service charges, especially if they are not subject matter experts. If the smart sub-meter service provider does not need to meet the same DSC or service quality indicator (SQI) requirements as licensed distributors, then the expectations that SSM customers will be treated in a similar manner as licensed distributor customers is wholly unrealistic.

Conclusion

The Utilities have attempted to provide comments on the Proposed Code Amendments and Code Creation for the Licensing of Smart Sub-Metering Providers in terms of the potential implications for both consumers and distributors. However the Utilities note that without cost awards for intervenors such as the Vulnerable Energy Consumer's Coalition or the Consumers Council of Canada will be unable to analyze and make comments to the Board on whether they feel the proposals adequately provide for protection of the interests of consumers with respect to the adequacy, reliability and quality of electricity service as they pertain to the licensed activities of the smart sub-metering provider. We are confident that these groups would also suggest that proposed codes adequately provide for protection of the interests of consumers with respect to the reasonableness of the **cost** of smart sub-metering providers rather than depending on developers do soon their behalf.



Thank you for the opportunity to comment on these Board proposals. If you have any questions, please do not hesitate to contact any of the undersigned.

Yours truly,

(Original signed on behalf of the Utilities by)

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