

IN THE MATTER OF the Ontario Energy Board's Notice of Proposal to Amend a Code and Notice of Proposal to Issue a New Code, dated January 8, 2008

AND IN THE MATTER OF the proposed Amendment to the *Distribution System Code* and the creation of the Smart Sub-Metering Code

SUBMISSION BY THE SMART SUB-METERING WORKING GROUP

INTRODUCTION

1. This submission is filed on behalf of the members of the Smart Sub-Metering Working Group (the "Group"). The Group consists of the following members: Carma Industries, Enbridge Electric Connections Inc., Hydro Connection Inc., Intellimeter Canada Inc., Rodan Energy & Metering Solutions Inc., Stratacon Inc., and Wyse Meter Solutions. The Group expresses its appreciation for the opportunity to provide comments in respect of the Board's Proposal dated January 8, 2008 (the "Proposal") to amend the *Distribution System Code* ("DSC") and to create a Smart Sub-Metering Code (the "Code").
2. Before making specific submissions in respect of the proposed amendments and/or any additional provisions which the Group submits are appropriate, the Group believes it is important to first briefly describe the smart sub-metering industry which currently exists and the market in which it operates.
3. Not all smart sub-metering businesses offer consumers the same range of services. The Group submits that it is important for the Ontario Energy Board ("OEB") and interested stakeholders to recognize the range of service offerings so that amendments to the DSC and the Code reflect the reality of the situation.
4. Developers of condominiums and condominium corporations created pursuant to the *Condominium Act, 1998*, S.O. 1998, c. 19 (the "*Condominium Act*") (collectively the "Exempt Distributors") do not all seek the same nature and degree of services from smart sub-metering companies. For example, an Exempt Distributor may enter into a contract with a smart sub-metering company solely for the purposes of meter reading and providing appropriate information to the Exempt Distributor for billing, leaving the collection and customer care functions to the Exempt Distributor (who may undertake

this through a condominium management company). The Exempt Distributor would retain the risk of non-payment and continue to deal directly with the host electric local distribution company (“electric LDC”). In this type of scenario, if a unit owner or occupant fails to pay for electricity charges, the condominium corporation, through its Board of Directors, would exercise its rights under the *Condominium Act*, the Declaration, and by-laws of the condominium corporation, to recover payment from the defaulting unit owner/occupant. This may include exercising a lien against the unit for the purposes of ultimately extracting payment. In this scenario, the Exempt Distributor would remain the customer of the electric LDC.

5. At the other end of the spectrum, some sub-metering companies offer to take over all functions and liabilities associated with meter reading, billing, collections, customer care, and the risk of non-payment. Many Exempt Distributors find such a service offering attractive because it reduces the administration associated with attempting to collect from defaulting unit owners/occupants, and the risk of bad debt.
6. Accordingly, while the OEB has correctly noted that the provision of smart sub-metering services is a competitive activity, it is important to realize that this competition exists not only in terms of price, but also in respect of the level and nature of services offered. Competition in the marketplace exists not only because of the competition between smart sub-metering service providers, but also by the involvement of electric LDCs who compete with smart sub-metering providers for the very same buildings.
7. It is the experience of the Group that most developers and condominium boards seek multiple bids from smart sub-metering candidates and one or more electric LDCs. For example, where one or more electric LDCs have established a smart sub-metering affiliate, this affiliate(s) has the ability to compete for smart sub-metering activities outside the service territory of its electric LDC parent(s). With the OEB’s determination in the Proposal that licensed electric LDCs will be allowed to offer smart sub-metering services (subject to receiving a smart sub-metering licence), an electric LDC may, within its service territory, enter into the competitive market as either a licensed smart sub-metering provider or a smart meter provider. An Exempt Distributor may therefore seek bids for sub-metering services from any and all sub-metering companies, the local

electric utility and the affiliate of other electric LDCs. Clearly, Exempt Distributors have an array of choice for smart sub-metering services.

8. The importance of acknowledging the range of service offerings by smart sub-metering providers lies in the fact that in many instances, the Exempt Distributor, particularly condominium boards, are looking to the smart sub-metering provider to undertake all activities associated with meter reading, customer care, billing, etc. This includes dealing with the host electric LDC. The smart sub-metering provider in such circumstances is therefore not the “agent” of the condominium corporation or board. The smart sub-metering company assumes, under contract with the condominium corporation, all duties and obligations such that the smart sub-metering provider becomes the customer of the host electric LDC.
9. The concept of a smart sub-metering provider becoming the customer of an electric LDC is not new. It exists today with many smart sub-metering providers being responsible for the payment of any security deposit (out of the smart sub-metering provider’s own funds) and all communications with the host electric LDC. Often it is the smart sub-metering company that makes the first request for connection with the host electric LDC.
10. The Group further submits that it is appropriate to generally identify the various regulatory and other consumer protections which exist which a smart sub-metering provider must observe. In addition to the Code, smart sub-metering providers are obliged to comply with Measurement Canada and Electrical Safety Authority requirements. Combined with the competitive forces of the smart sub-metering market, consumers will confidently benefit from the choices of service offered by sub-metering companies.
11. The Group now offers its specific submissions in respect of the DSC and the Code.

DISTRIBUTION SYSTEM CODE (“DSC”)

a) Introduction

12. The Group supports the addition of the new Clause 5.1.9, as worded in Attachment A to the Proposal. The Group submits that the DSC should be further amended in several respects to reflect both the nature and range of service offerings by smart sub-metering providers and for the additional reasons set out below.

b) Master Meter / Interval Meter

13. While the current DSC, at Clause 5.1.5, obligates a distributor to provide an interval meter to a customer who requests it in writing, unlike proposed Clause 5.1.9, Clause 5.1.5 does not require a distributor to install metering that meets the functional specification of Ontario Regulation 425/06 (under the *Electricity Act*). The Group is uncertain as to whether the Board intends there to be any difference in the functional specifications of an interval meter referenced under Clause 5.1.5, and meters that electric LDCs will be required to install under the new proposed Clause 5.1.9. This difference may also be relevant from the perspective of the Code in that the wording of the currently proposed Code requires licensed sub-metering companies, at Clause 2.2.1, to ensure the installation of “interval meters”. The Group submits that it is appropriate for the functional specifications of interval meters to meet the requirements of Ontario Regulation 425/06 and accordingly, the Group submits that it is appropriate to add a further clause to the DSC as worded and for the additional reasons set out below.
14. The Group notes that proposed Clause 5.1.9 does not specifically apply in the case of a request for the installation of a master meter (as defined in the proposed Code) by a licensed smart sub-metering provider. As well, the Group notes that proposed Clause 5.1.9, as currently worded, appears to only contemplate those situations where a condominium is under construction, in that the clause applies only where a declaration is “proposed or intended to be registered” (in other words, before the building is complete). The proposed clause does not, therefore, appear to deal with situations where a smart sub-metering provider is engaged by a condominium board after the declaration has been registered.
15. It is submitted that for certainty, it is appropriate to specifically require an electric LDC to install a master meter when requested by a licensed sub-metering provider. Accordingly, the Group submits that it is appropriate to add a further clause to the DSC, as follows:

5.1.10 Master Meters in Condominiums

When requested by a smart sub-metering service provider, under contract with the Board of Directors of a condominium corporation or the developer of a building, in any stage of construction, on land for which a declaration and description has been or is proposed or intended to be registered pursuant to Section 2 of the *Condominium Act, 1998*, a

distributor shall install a master meter that meets the functional specification of Ontario Regulation 425/06 – Criteria and Requirements for Meters and Metering Equipment, Systems and Technology (made under the *Electricity Act*).

16. The Group submits that it is important to add a new Clause 5.1.10 to the DSC to not only provide clarity as to a distributor's obligation to install a master meter which meets the appropriate functional specifications, but also because the proposed Code, at Clause 2.2.1, as currently worded, obligates a smart sub-metering provider to "ensure that the master meter is an interval meter." As the master meter is the revenue meter from the perspective of the host electric LDC, it is to be expected that the LDC will insist upon installing the master meter. While a smart sub-metering provider may request the installation of a master meter, the host electric LDC may not allow the smart sub-metering provider to install it. A new clause 5.1.10 as worded above would avoid any confusion in this area.

c) Definitions

17. The DSC currently defines customer as:

"a person that has contracted for or intends to contract for connection of a building or an embedded generation facility. This includes developers of residential or commercial subdivisions."

The Group submits that the definition should be clarified such that it specifically includes reference to smart sub-metering providers, as well as a developer.

18. Under the current wording of the definition, a smart sub-metering provider that contracts for or intends to contract for connection of a condominium building meets the definition of a customer. In many instances, it is not the developer or the original condominium board but the smart sub-metering provider that makes the initial request for connection of a building under construction. However, there are situations when the smart sub-metering provider is not retained until after a building, whether wholly or partially built, has already been connected. In these circumstances, the current definition of customer under the DSC leaves open the question of whether a smart sub-metering service provider falls within the definition.

19. Given the reality of the industry, the Group recommends that the OEB add to the end of the definition the words “and licensed smart sub-metering providers.” The new definition would therefore read:

“customer” means a person that has contracted for or intends to contract for connection of a building or an embedded generation facility. This includes developers of residential or commercial subdivisions and licensed smart sub-metering providers.

20. The DSC does not define “smart sub-metering provider” nor “master meter.” The Group therefore recommends that the DSC definitions be amended to include the same definition for both, as is found in the proposed Code, which states:

“smart sub-metering provider” means a person licensed by the Board to provide a prescribed activity in a prescribed location.

“master meter” means the meter controlled by the licensed distributor and used for settlement of the master bill with the master consumer.

21. Given the use of the term “master consumer” in the above definition of master meter, this term should also be added to the DSC. As noted below in the Group’s submissions in respect of the proposed Code, the definition of “master consumer” should be amended to include a “customer” to reflect the fact that many smart sub-metering providers, not the condominium corporation or its board, are the customer of the host electric LDC. Accordingly, the definition of “master consumer” would read:

“master consumer” means the condominium corporation, the developer or the customer for the prescribed location being served by the licensed distributor.

22. Finally, the Group notes that neither the DSC, the proposed Code, nor any Regulation differentiate between smart metering activities and smart sub-metering activities. There is no definition that makes it clear as to when a smart metering activity becomes a smart sub-metering activity for which an obligation to obtain a licence and comply with the Sub-metering Code arises. Different parties may have differing views as to what smart metering versus smart sub-metering entails and the requirements and obligations associated with each of these activities.

23. Accordingly, the Group recommends that the OEB add to the DSC (and the proposed Code) the following definition for smart sub-metering:

“smart sub-metering” means the activities of a customer of a licensed distributor that measures, bills, invoices, and/or collects for electricity used by consumers behind the distributor’s master meter.

PROPOSED SMART SUB-METERING CODE

24. The following submissions in respect of the proposed Code follow numerically the structure of the proposed Code. Accordingly, our first submission relates to the definition subsection in the proposed Code.

a) Definitions

25. We note that the proposed Code does not contain a definition for “customer”. The Group recommends that the OEB include the same amended definition for customer as the Group advocates is appropriate for the DSC. The definition the Group proposes reads:

“customer” means a person that has contracted for or intends to contract for connection of a building or an embedded generation facility. This includes developers of residential or commercial subdivisions and licensed smart sub-metering providers.

26. As stated earlier, the Group is uncertain as to whether the OEB intends there to be a functional difference between an interval meter and a meter that meets the functional specifications of Ontario Regulation 425/06. If there is to be no functional difference, then the definition of interval meter in both the DSC and the proposed Code should specifically reference the functional specifications of the Regulation.

27. The proposed Code contains a definition for “master consumer”, which only references a condominium corporation or developer. As noted in the introductory section of this submission, many smart sub-metering providers contractually assume all of the rights and obligations of developers and condominium corporations in respect of both unit owners and the host electric LDC. The smart sub-metering provider in these circumstances is not acting on behalf of or as agent for a developer or condominium corporation, but rather it undertakes sub-metering activities in its own right. The Group submits that it is therefore appropriate that the definition of master consumer be amended to specifically include a customer. The amended definition would then read:

“master consumer” means the condominium corporation, the developer, or the customer for the prescribed location being served by the licensed distributor.

28. For the reasons set out above in respect of the DSC, the Group submits that it is appropriate to add to the proposed Code a definition for smart sub-metering to ensure that there is certainty as to when activities giving rise to the need to obtain a licence and comply with the proposed Code arise. The definition proposed reads:

“smart sub-metering” means the activities of a customer of a licensed distributor that measures, bills, invoices, and/or collects for electricity used by consumers behind the distributor’s master meter.

b) Technical Requirements for the Master Meter

29. The proposed Code currently requires a sub-metering provider to “ensure” that the master meter is an “interval meter.” As stated earlier, it is unlikely that a host electricity LDC will permit a sub-metering provider to install a master meter. As a practical matter, the sub-metering provider therefore may not be capable itself of “ensuring” that the master meter meets appropriate technical requirements. For this reason, the Group has suggested that the DSC be amended to include the new Clause 5.1.10, as stated above. Consistent with this, the Group recommends that Clause 2.2.1 of the proposed Code be changed such that smart sub-metering providers “verify” rather than “ensure” that the master meter is appropriate and if not, to request that a licensed distributor install an appropriate master meter. The licensed distributor would then be obliged, given the proposed new Clause 5.1.10, to install a master meter. Proposed Clause 2.2.1 would then read:

“2.2.1 A smart sub-metering provider shall verify that the master meter is an interval meter, and if the master meter is not an interval meter, then the smart sub-metering provider shall request that the distributor install an interval meter.”

c) Disclosure of Agreements

30. The proposed Code, at Clause 3.1.1 will obligate a smart sub-metering provider to disclose to a condominium corporation all agreements between itself or its affiliate and the developer of the condominium or an affiliate of the developer. The Group agrees with this proposed clause. Indeed, it is understood that this is already occurring, and Clause 3.1.1 will correctly ensure that this practice continues.

31. The Group is concerned about the need for, associated cost, and administrative burden associated with providing a copy of all of these agreements to every consumer, as the proposed Code requires under Clause 3.1.2. It is important to understand that the agreements between smart sub-metering providers and developers and condominium corporations are often lengthy, containing many pages of standard contractual language and terms which, the Group submits, would be of little assistance to consumers. The Group questions the benefit of providing each consumer with a package that in many instances could well exceed 100 pages. It should be noted that under Section 55(3) of the *Condominium Act*, each unit owner has the right to examine the records of the condominium corporation and, under Subsection 55(6), to request copies of such records from the condominium corporation. Accordingly, the Group submits that consumers have the ability to review and receive these agreements and need not look to the proposed Code.
32. When one considers that there are potentially hundreds of thousands of consumers that may ultimately be served by smart sub-metering providers, it is clear that the cost of reproducing and delivering such volumes of paper will be onerous. It is the experience of the Group that it is only the rare consumer that requests a copy of such documents, and each member of the Group is prepared to provide same, upon request, should a consumer seek to do so through its sub-metering service provider rather than through the condominium corporation. Accordingly, the Group requests that Clause 3.1.2 be amended such that the obligation to provide a copy of the agreements exists “upon request.” The revised clause would therefore read:
- “3.1.2 A smart sub-metering provider shall provide a copy of the agreements referred to in Section 3.1.1 to each consumer, upon request.”
33. The Group also recommends that proposed Clause 3.1.3 be amended to remove the term “consumer” such that the information required by Subclauses 3.1.3(a) through (d) need not be included in every contract with a consumer. The Group submits that this will only cause any contracts with consumers to become unnecessarily long, complex and confusing since the information required by Subclauses 3.1.3(a) through (d) are all matters which would have been negotiated with a condominium corporation’s Board of Directors or a developer. The proposed clause 3.1.3 would continue to require such information to appear in contracts with condominium corporations and developers, and

these would be made available to a condominium Board of Directors and to consumers, either upon request directly from the smart sub-metering provider or from the condominium Board of Directors, as contemplated under Clauses 3.1.1 and 3.1.2. To require information that relates to the building as a whole be included in every individual contract with unit owners is therefore redundant and unnecessary. Accordingly, the Group submits that Clause 3.1.3 should read:

“3.1.3 Every contract a smart sub-metering provider has with an exempt distributor or developer shall include the following information:
[the rest remains the same]

34. Similarly, the Group believes that the proposed clause which would require sub-metering providers to provide a copy of their Conditions of Service to each consumer is also unnecessary and environmentally wasteful. It is noteworthy that electric LDCs are not so obligated. Clause 2.4.2 of the DSC requires an electric LDC to file its Conditions of Service with the OEB, make them publicly available, and provide a copy to any person requesting it. The Group submits that the proposed Code should contain similar language. Accordingly, the Group requests that Clause 3.2.3 of the proposed Code be removed in its entirety, and Clause 3.2.2 be amended to read as follows:

“3.2.3 A smart sub-metering provider shall file a copy of its Conditions of Service with the Board and shall make its Conditions of Service publicly available and provide a copy to any person requesting it.”

d) Security Deposits

35. The Group has no difficulty with the intent or purpose of the security deposit provisions set out in the proposed Code. Its submission in respect of Clause 4.1.1 is limited solely to the Group’s recommendation that language in the proposed Code reflects the reality of the range of services offered by various smart sub-metering providers. Clause 4.1.1, as currently worded, starts by stating that “a smart sub-metering provider who has contracted to collect security deposits on behalf of the condominium corporation or developer shall ensure...” (emphasis added). As noted above, many smart sub-metering providers do not collect security deposits on behalf of condominium corporations or developers. They do so in their own right, and it is the smart sub-metering provider, not the condominium board or developer, that should be obligated to comply with the security deposit provisions of the Code. Accordingly, the Group

recommends that Clause 4.1.1 be amended so that it is more generic in its application.

The Group specifically recommends that the clause read:

“4.1.1 A smart sub-metering provider who collects security deposits shall ensure that its Conditions of Service include the smart sub-metering provider security deposit policy ...” [and the balance of the proposed clause remains unchanged].

In this way, there is no question that the clause applies in all applicable situations.

e) Disconnection and Reconnection

36. The Group’s comments in respect of Clause 4.2.1 are similar to those relating to the security deposit clause. Clause 4.2.1 prohibits disconnection unless “the condominium corporation or developer has contracted the smart sub-metering provider to do so on its behalf” (emphasis added). Again, many sub-metering service providers do so in their own right, not on behalf of a condominium corporation or developer. To reflect this reality, the Group recommends removing the words “on its behalf” so that the clause then reads:

“A smart sub-metering provider shall not disconnect consumers for non-payment of bills unless the condominium corporation or developer has contracted the smart sub-metering provider to do so.”

f) Form of the Invoice

37. The submissions of the Group in respect of Clause 4.3.1 are similar to those in respect of Clause 4.2.1 and 4.1.1. The current proposed wording simply does not reflect the reality of the service offerings by various smart sub-metering entities. Many smart sub-metering providers do not bill low volume consumers on behalf of a condominium corporation or developer. They do so in their own right. Accordingly, the Group recommends that this clause read as follows:

“4.3.1 A smart sub-metering provider under contract with a condominium corporation or developer that bills low volume consumers shall comply with all applicable regulations regarding information on invoices to low volume consumer of electricity.”

The Group submits that this clause, as amended, captures every service offering, thereby obligating all smart sub-metering providers to comply with applicable requirements.

CONCLUSION

38. The Group believes that the aforementioned additional clauses and proposed amendments eliminate confusion which might have arisen and add to the purpose and intent of the Proposal, which is to ensure that sub-metering activities are undertaken in a manner which is consistent with the public interest. This includes the preservation of the competitive market for smart sub-metering services. The Group looks forward to working with the OEB and other stakeholders to ensure that these objectives are met over the longer term.

39. The Group would be pleased to respond to any questions in respect of this submission.

All of which is respectfully submitted.

January 31, 2008.