



PUBLIC INTEREST ADVOCACY CENTRE
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February 7, 2008

VIA COURIER AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2007-0772

**NOTICE OF PROPOSAL TO AMEND A CODE AND NOTICE OF PROPOSAL TO
ISSUE A NEW CODE, and PROPOSED AMENDMENT TO THE DISTRIBUTION
SYSTEM CODE AND CREATION OF THE SMART SUB-METERING CODE**

The following are VECC's Comments with respect to the above noted NOA of the DSC and Proposed SSM Code.

Summary of SSM Code Provisions and Costs

The SSM Code is intended to protect 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 by setting out the minimum standards and conditions with which a smart sub-metering provider must comply. ***[Note price is excluded]***

The SSM Code provides for standards in the type of metering equipment to be used by smart sub-metering providers as well as billing and collection practices that smart sub-metering providers must follow. 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 consumers served by a licensed distributor.*** [emphasis added]

VECC's major concerns with the proposed framework for SSM

VECC has 6 major high level concerns with the proposed framework for SSM and SSM Service Providers:

1. No OEB Oversight of Rates and Charges

The primary rationale for SSM is that it will incent electricity consumers in condominiums to conserve energy. There is no guarantee that this laudable public objective will be achieved, if rates are established that do not conform to standards of rate-making (including cost allocation and cost causality principles) as currently applied to regulated Electricity Distributors. In the extreme, the SSM service provider could charge all customers a fixed monthly rate for bundled SSM services or, more likely a fixed rate or fee based on the square footage of the unit.

In addition, the transaction costs related to capital investment and customer care, plus Service Provider's profit, could outweigh the electricity savings that may be engendered because the price/consumption relationship and signals may be distorted by excessive unregulated charges.

The "No Harm" principle that the Board has rigorously applied in the past should apply to SSM activities. Electricity consumers should be better off, or at least no worse off, than under the current bulk metered regime. That this will be the case is by no means certain.

VECC submits that customers require price protection. The solution is for the OEB to prepare an Appendix to the SSM Licence setting out the range of standard rates and charges that licensees may charge. Otherwise, the SSM service provider must make application to the Board for alternative rates and charges

2. Who are the real Customers of the SSM Service Provider?

The obvious answer is the owner or his/her agent. In practice, the Condominium Market has a high proportion of sub-lessees/tenants. Depending on the terms of the lease, that third party "tenant" currently may or may not be responsible for the monthly Maintenance fees, including utilities. Many leases are of the "all in" variety and some explicitly require the lessee to pay the Maintenance fees by payment to the owner and/or the owner's agent.

There is a large turnover of leases and the provision for the lessee to pay the electricity bill may take a while to become the standard.

Under the new regime does the lessee/tenant have the same rights and protections as the owner or will the SSM Service Provider only deal with the owner, or the owner's agent (e.g. leasing/rental agent)?

There is a fundamental question whether Condominium Corporations can act as Exempt Distributors themselves, because of the legal structure of such corporations. Condominium corporations are in effect customers of the distributor for bulk metering and also the customers of the smart meter and smart-sub meter providers, not distributors of electricity.

3. Sample License for Sub-Metering Service providers

The Board has not provided the Public with a copy of the proposed License for SSM Service providers. This is a significant omission. Whether, and how the Licence differs from the standard electricity distributors' licence, therefore, cannot be ascertained. Will the SSM Service provider be exempt from certain provisions of the DSC and will issues such as protection of confidential customer information be included as conditions of the licence?

4. Protection of Confidential Customer Information

Information such as a consumer's electricity consumption, credit history etc. is confidential and should not be disclosed to anyone without the express written consent of the customer. That consent should be obtained with the consumer's full understanding and knowledge as to how and to whom that information is to be provided and what the ramifications of the disclosure may be.

5. Complaints Resolution Procedures

Although the proposed SSM Code requires that the SSM service provider set out a complaints resolution in its conditions of service it must be made clear to the customer that, like customers of regulated Electricity Distributors, the ultimate arbiter of disputes is the licencing authority, the Ontario Energy Board. A copy of the Board's procedure for filing and processing of complaints about conditions of service, connection/disconnection fees, service charges and billing should be attached to the Conditions of Service and a copy of the SSM Code and

SSM provider's licence must be made available to the customer upon request.

6. Precedent Implications of proposed SSM Framework for Rental Accommodation

The SSM Code has been issued by the OEB pursuant to the coming into force on December 31, 2007 of the two regulations¹ 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, 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

The enormity of the implications of the proposed Code for the rental accommodation market and the precedent value insofar as the Code relates to the rental housing sector cannot be understated. If landlords are to be viewed in the same light as Condominium Corporations when facilitating sub-metering (leaving aside the technical/retrofit metering issues) then the potential for tenants to be seriously harmed is an order of magnitude greater than for condominium owners and their sub-lessees.

VECC urges the Government and OEB not to extend Sub-metering to the rental housing sector. Conservation in the Multi-Residential rental markets should be directed at a building's HVAC systems and envelope with light measures such as efficient appliances and water conservation at the individual suite level. Shifting the onus for conservation to tenants would not provide major savings and would be a retrograde step.

Note on Interests Represented

VECC is a coalition of groups that represents the interests of those energy consumers who, because of their household income, or other distinguishing characteristic such as age, language, literacy, etc., have a set of concerns that may differ in kind, and, in magnitude, from those of more affluent residential consumers as well as commercial and industrial consumers. The Vulnerable Energy Consumers Coalition (VECC) is currently comprised of the Ontario Coalition of Senior Citizens (OCSCO), and the Federation of Metro Tenants Association.

OCSCO is itself a coalition of over 120 senior groups, as well as individual members, across Ontario. OCSCO represents the concerns of over 500,000 senior citizens through its group and individual memberships. OCSCO's objective is to improve the quality of life for Ontario Seniors.

The Federation of the Metro Tenants Association is a non-profit corporation composed of over ninety-two affiliated tenants associations, individual tenants, housing organizations, and members of non-profit housing co-ops.

Although the organization is not itself a member of VECC, the Public Interest Advocacy Centre (PIAC) in Ottawa assists in the representation of the interests of vulnerable consumers by ensuring the availability of competent representation and advice to the VECC intervention.

Thank you the opportunity to provide our comments.

Yours truly,



Michael Buonaguro
Counsel for VECC

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*.