



**NOTICE OF REVISED PROPOSAL TO AMEND A CODE AND
NOTICE OF REVISED PROPOSAL TO ISSUE A NEW CODE**

**REVISED PROPOSED AMENDMENT TO THE DISTRIBUTION SYSTEM CODE
AND CREATION OF THE REVISED SMART SUB-METERING CODE**

BOARD FILE NO.: EB-2007-0772

**To: All Licensed Electricity Distributors
All Licensed Electricity Retailers
All Participants in Proceeding RP-2005-0352
All Participants in EB-2007-0772
All Other Interested Parties**

**Re: Revised Code Amendment and Revised Code Creation for the Licensing of
Smart Sub-Metering Providers**

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act") of a revised proposed amendment to the Distribution System Code (the "DSC") and is giving notice under section 70.1 of the Act of the creation of a revised proposed Smart Sub-Metering Code (the "SSM Code") (altogether, the "Notice").

The Board will not be granting cost awards in this matter.

I. Background and Summary of Comments

On January 7, 2008, the Board released a Notice of Proposal in which it proposed to amend the DSC and proposed the creation of a new SSM Code (the "January Notice"). The Board received 10 written submissions regarding the January Notice from a variety of stakeholders including distributors, an electricity retailer, a condominium corporation, and groups representing smart sub-metering providers, building owners, and consumers. The submissions are available for viewing on the Board's website at www.oeb.gov.on.ca.

The Board has considered all of the comments received and has determined that minor clarifying changes should be made in relation to some of the amendments proposed in the January Notice.

Further details regarding the comments received and the Board's responses are set out in sections A through D below. A summary of revised proposed amendments is set out in Part II.

Ontario Regulation 443/07-*Licensing Sub-Metering Activities* (made under the Act) requires the Board to licence persons engaged in the commercial offering or the commercial provision of smart sub-metering systems to the class of properties prescribed by Ontario Regulation 442/07-*Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums* (made under the *Electricity Act, 1998* (the "Electricity Act")) (altogether, "Regulation 442").

The classes of property prescribed by Regulation 442 are:

- (a) a building on land for which a declaration and description have been registered pursuant to section 2 of the *Condominium Act, 1998*;
- (b) a building on land for which a declaration and description have been registered creating a condominium corporation that was continued pursuant to section 178 of the *Condominium Act, 1998*; and
- (c) a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the *Condominium Act, 1998*.

For the purposes of this Notice, the three classes of property described above will be referred to as condominiums.

The Board explained the distinction between smart metering and smart sub-metering in the January Notice. Smart metering describes the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. Smart sub-metering describes the situation in which a licensed distributor provides service to the condominium's master (bulk) meter and then a separate person (the smart sub-meter provider on behalf of the condominium corporation) allocates that bill to the individual units and the common areas through the smart sub-metering system.

A. Condominiums as Exempt Distributors

Two stakeholders submitted that a condominium is not a distributor, and therefore cannot be an exempt distributor. The Board does not agree with this submission.

Under the Act, a distributor is a person who owns or operates a system for conveying electricity at voltages of 50 kilovolts or less.

Electricity distributors have a number of obligations under the Act as well as the Electricity Act. Unless exempted by regulation, these obligations include, but are not limited to:

- (a) having a Board-issued licence;
- (b) having a Board-approved rate order for distribution rates;
- (c) selling electricity to anyone connected to their system; and
- (d) providing access to their system for retailers to sell electricity.

The licences of electricity distributors require the distributors to comply with codes issued by the Board including the Distribution System Code, the Retail Settlement Code, the Affiliate Relationships Code, and the Standard Supply Service Code.

Section 4.0.1 of Ontario Regulation 161/99—*Definitions and Exemptions* (made under the Act) ("Regulation 161") provides an exemption from certain requirements of the Act, including the requirement to hold a licence and be rate-regulated, for a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs and who owns or operates a distribution system that is entirely located on land on which a condominium (or other specified types of buildings or facilities) is located.

The Board refers to distributors who are unlicensed as a result of Regulation 161 as exempt distributors.

It is the Board's view that condominiums are included in the definition of distributor under the Act. If they were not included in the definition of distributors under the Act, there would have been no need to specifically exempt them under Regulation 161. The condominiums are therefore the exempt distributors.

An electricity retailer and a distributor both proposed that smart sub-metered consumers be allowed to exercise retail choice. However, the Board notes that section 2.2.1 of Ontario Regulation 160/99—*Definitions and Exemptions* (made under the Electricity Act) provides an exemption from section 26 of the Electricity Act (the obligation to provide non-discriminatory access) if the distributor is exempt from holding a licence under Regulation 161.

The group representing smart sub-metering providers asserted that the smart sub-metering provider is required to comply with the billing and collection services in section 4 of the proposed SSM Code on its own behalf rather than on behalf of the exempt distributor. The Board does not agree with this assertion. The Board is of the view that a smart sub-metering provider cannot undertake any prescribed activity, including associated services such as billing and collection activities, unless it has a contract with the condominium corporation or developer to do so.

B. Distributors, Smart Metering, and Smart Sub-Metering

Distributors, an electricity retailer and a group representing building owners all posed questions with regard to a licensed distributor's ability to both smart meter and smart sub-meter.

As set out in the January Notice, the Board remains of the view that smart metering is a distribution activity, and that the Electricity Act and Regulation 442 taken together allow all licensed distributors to undertake smart metering in condominiums. The distributor would do so as a distribution activity within its licensed service area.

One distributor has asserted that the potential additional costs of installing smart meters in condominiums must be funded by the condominium. The Board notes that section 3 of the DSC requires the distributor to set the basic connection under its Conditions of Service and allows the distributor to recover costs above and beyond the basic connection through a connection charge or equivalent payment. The basic connection should be equivalent in cost to any other residential connection.

As also set out in the January Notice, the Board remains of the view that smart sub-metering is intended to help the government achieve its conservation objectives, and therefore the Board believes that section 71(2) of the Act permits licensed distributors to smart sub-meter. To do so, a licensed distributor would have to apply for a smart sub-metering licence distinct from its distribution licence. If a licensed distributor chooses to obtain a smart sub-metering licence and provide smart sub-metering services, the Board's policies relating to conservation and demand management ("CDM") activities will apply. The Affiliate Relationships Code would only apply if the smart sub-metering provider was an affiliate of the licensed distributor rather than the licensed distributor itself.

One distributor sought assurance that it is not required to act as a default provider of smart sub-metering services. The Board confirms that if a condominium is smart sub-metered and the smart sub-metering provider ceases operations or ceases to honour its contract, the licensed distributor is not required to step in and provide smart sub-metering services to the condominium.

C. Smart Sub-Metering Providers and Smart Sub-Metering

Distributors, a condominium corporation, and a group representing consumers submitted that the Board should set rates for the smart sub-metering providers. As stated in the January Notice, the Board remains of the view that it has no rate-making authority over smart sub-metering providers.

Smart sub-metering providers offer their products and services in a competitive market. There are multiple service offerings from multiple providers from which developers and boards of directors of condominiums can compare and choose. The prices charged are therefore determined by the market forces of competitive supply and demand and are, presumably, reasonable. The developer or board of directors of a condominium are able to freely choose the product and services which meet their needs and then enter into a contract with the smart sub-metering provider for the requested product and/or services. Developers and boards of directors of condominiums can avail themselves of a number of resources to assist them before entering into a contract, including lawyers and building or condominium associations. It should be noted that smart sub-metering

is not a new activity—developers and boards of directors of condominiums have been entering into contracts with smart sub-metering providers for a number of years. The fact that smart sub-metering providers are now required to hold a licence should not alter or remove the obligations of parties to exercise the necessary care and diligence expected of parties before entering into a contract.

The Board will set out rules to protect the interests of consumers that are within its jurisdiction. In the proposed SSM Code, the Board has included customer protection measures similar to those provided to customers of licensed distributors regarding disconnection, security deposits, and the consumer complaint process. Otherwise, the Board has applied requirements similar to the other area of competition in the electricity sector—the retailing of the commodity.

The group representing smart sub-metering providers submitted that a smart sub-metering provider is, in its own right, a customer of the licensed distributor. The Board does not agree. In the DSC, "customer" means a person that has contracted for or intends to contract for connection of a building, and includes developers of residential or commercial sub-divisions. This definition flows from section 28 of the Electricity Act which obligates a distributor to connect a building if the building lies along any of the lines of the distributor's distribution system and "the owner, occupant or other person in charge of the building requests the connection in writing." The smart sub-metering provider is not the owner, occupant or person in charge of the building, and therefore can only request a connection if it has been authorized by one of these persons to do so.

Groups representing smart sub-metering providers and building owners submitted that the smart sub-metering provider is unable to ensure the master meter is an interval meter. The group representing the building owners further suggested that licensed distributors must be obligated to provide the interval meter in a timely and reasonable manner. Distributors stated that it is the licensed distributor that installs the master meter. One distributor submitted that the smart sub-metering provider must work with the licensed distributor to make the necessary arrangements and reimburse the licensed distributor's costs.

The Board agrees with the parties that it is the licensed distributor who is responsible for installing the master (bulk) meter. Furthermore, the Board notes it is the customer that must submit a written request to the licensed distributor if an interval meter is required. If the smart sub-metering provider submits this request, it is only able to do so if authorized by the customer. However, in order to provide reconciliation to the master bill, the smart sub-metering provider must ensure that an interval meter is provided. Since distributors are already required under section 5.1.5 of the DSC to "provide an interval meter within a reasonable period of time" at the customer's cost when requested by the customer or an authorized party, the smart sub-metering provider can ensure that the master meter is an interval meter (not necessarily a smart meter) capable of providing hourly data for reconciliation with the smart sub-metering data.

The smart sub-metering group also submitted that there were requirements in the SSM Code regarding the provision of information to customers that were more onerous than the requirements set out in the DSC for licensed distributors (i.e., providing Conditions of Service to all customers automatically). The Board agrees that the requirement in the SSM Code should mirror the requirement in the DSC and will therefore change that section of the SSM Code.

D. Other Issues Raised in the Submissions

A distributor and a group representing consumers provided comments on the need to protect confidential consumer information. The Board considers the issue of the protection of confidential consumer information to be adequately addressed in the smart sub-metering provider's licence. A sample of the smart sub-metering licence has been available on the Board's website since January 9, 2008.

Distributors have suggested that smart sub-metering providers be required to transmit meter data to the meter data management and meter data repository (the "MDM/R") managed by the Smart Metering Entity (the "SME"). The proposed SSM Code has specified that smart sub-metering systems must be capable of providing data to the SME but that they are not currently required to actually transmit the data. The Board remains of the view that this proposed provision is appropriate. The Board notes that one of the purposes of the SME is to avoid duplication of data management capability for smart metering in all licensed distributors but that smart sub-metering providers already have that capability as part of their service offerings. Also, the SME is currently in the initial phases of registering licensed distributors into its MDM/R. It is premature to require smart sub-metering providers to transmit data at this time. However, the Board considers it advisable to ensure that the smart sub-metering systems are capable of transmitting the data in the event the Board may determine such transmission is required.

Lastly, several stakeholders expressed concerns with the required form of the invoice for smart sub-metering providers and the type and transparency of the charges that appear on the invoice.

The Board notes that Ontario Regulation 275/04-*Information on Invoices to Low-Volume Consumers of Electricity* (made under the Act) applies to all invoices to low-volume consumers and specifies the information that must appear on invoices to low-volume consumers of electricity. This regulation applies whether the distributor is a licensed distributor or an exempt distributor and it would apply to a smart sub-metering provider issuing bills on behalf of an exempt distributor.

II. Summary of the Proposed Amendments

The January Notice summarized the general intent and purpose of the proposed amendments and discussed the specifics of the amendments to the DSC and the new

SSM Code. This notice discusses only the revisions being proposed to those original amendments.

A. The DSC

The Board has revised the formatting of the proposed section 5.1.9 of the DSC to clarify that it applies to existing condominiums as well as ones under development. The Board also added the word "smart" into the amendment to clarify that distributors are only required to smart meter under the DSC, not smart sub-meter.

The complete text of the proposed amendment to the DSC is set out in Attachment B to this Notice.

B. The SSM Code

The Board has revised section 2.2.1 of the SSM Code to clarify that it is the developer or the board of directors of the condominium corporation who is the customer of a licensed distributor and that it is the customer who requests an interval meter as the master meter. The revision to section 2.2.1 of the SSM Code also confirms that it is the licensed distributor that installs the master meter. The section still requires a smart sub-metering provider to ensure that the master meter is an interval meter before beginning to provide smart sub-metering services.

The Board has revised section 3.1.2 of the SSM Code to require the smart sub-metering provider to provide copies of the agreements in 3.1.1 of the SSM Code only when requested as opposed to providing the agreements to each consumer automatically.

The Board has revised section 3.2.2 of the SSM Code to require the smart sub-metering provider to make a copy of its Conditions of Service available on its website. The Board has deleted section 3.2.3 of the SSM Code which required the smart sub-metering provider to provide a copy of its Conditions of Service to each of its consumers. The Board agrees with the submissions of the parties that stated that the DSC only required a distributor's Conditions of Service be provided upon request. The requirements set out in section 3.2.2 of the SSM Code are more in keeping with the provision of the DSC. Smart sub-metering providers will now only have to provide a copy of Conditions of Service to a person upon request as opposed to providing the Conditions of Service to each consumer automatically.

Because of the deletion of section 3.2.3 of the SSM Code, the other remaining subsections of section 3.2 were renumbered.

Lastly, the Board has revised section 4.1.14 of the SSM Code to put the onus on the smart sub-metering provider to respond to a request from a consumer to review the consumer's security deposit.

The complete text of the SSM Code is set out in Attachment D to this Notice.

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

As stated in the January Notice, the Board is of the opinion that smart sub-metering of condominiums is intended to help the government achieve its conservation objectives through individual accountability for energy use and, eventually, load-shifting due to time-dependent pricing. To that end, the government has issued Regulation 442 and Regulation 443 to ensure that licensed providers install smart meters or smart sub-metering systems in prescribed locations. The amendment to the DSC and the issuance of the SSM Code are in support of the regulations.

The proposed change to the DSC will help to clarify who can ask for the installation of smart meters and that distributors are only required to provide smart meters to the prescribed locations. This additional clarity will benefit the industry by ensuring that all parties understand their roles in the smart metering framework.

The SSM Code will 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.

Smart sub-metering providers will incur costs to comply with the SSM Code. However, in response to comments from stakeholders, the Board has revised the SSM Code to try to limit the costs by only requiring disclosure of certain documents when they are requested by a consumer.

Overall, the Board anticipates that the benefits of the proposed DSC amendment and the proposed SSM Code will outweigh the costs of the proposed DSC amendment and the proposed SSM Code.

IV. Coming into Force

The Board proposes that the proposed amendment to the DSC and the new SSM Code, described above and set out more fully in Attachments B and D to this Notice, come into force on the date on which they are published on the Board's website after having been made by the Board.

V. Invitation to Comment

All interested parties are invited to make written submissions on the Board's revised proposed amendment to the DSC and the revised proposed SSM Code set out in Attachments A and B to this Notice by **4:30 p.m. on June 24, 2008**. The Board asks that interested parties confine their comments to the revisions to the proposed amendments as shown in the comparison version of the proposed amendments set out

in Attachments B and D. Your submission must quote file number **EB-2007-0772** and include your name, address, e-mail address, telephone number, and fax number.

The Board requests that interested parties make every effort to provide electronic copies of their submissions in searchable/unrestricted Adobe Acrobat (PDF) format, and to file their submissions through the Board's web portal at www.err.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the RESS e-Filing Guides also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of submissions may be filed by e-mail at boardsec@oeb.gov.on.ca.

Those that do not have internet access must provide three (3) paper copies and one electronic copy of the written submissions. The electronic copy should be a CD or diskette containing their submissions in PDF format.

Paper copies should be sent to:

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

This Notice, including the attached revised proposed amendment to the DSC and the revised SSM Code, and all written submissions received by the Board in response to this Notice, will be available for public viewing on the Board's website at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

If you have any questions regarding the proposed amendments described in this Notice, please contact Laurie Reid at 416-440-7623. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, June 10, 2008.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments:

- Attachment A: Revised Proposed Amendment to the Distribution System Code (Comparison Version)
- Attachment B: Revised Proposed Amendment to the Distribution System Code (Clean Version)
- Attachment C: Revised Proposed Smart Sub-Metering Code (Comparison Version)
- Attachment D: Revised Proposed Smart Sub-Metering Code (Clean Version)

Attachment A**Revised Proposed Amendment to the Distribution System Code (Comparison Version)**

1. Section 5 of the Distribution Settlement Code is amended by adding the following new section 5.1.9 immediately after section 5.1.8:

5.1.9 Smart Meters in Condominiums

When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) the developer of a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the Condominium Act, 1998,

a distributor shall install smart metering 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).

Attachment B**Revised Proposed Amendment to the Distribution System Code (Clean Version)**

1. Section 5 of the Distribution Settlement Code is amended by adding the following new section 5.1.9 immediately after section 5.1.8:

5.1.9 Smart Meters in Condominiums

When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) the developer of a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the Condominium Act, 1998,

a distributor shall install smart metering 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).

Attachment C

Revised Proposed Smart Sub-Metering Code (Comparison Version)

(see attached document)

Attachment D

Revised Proposed Smart Sub-Metering Code (Clean Version)

(see attached document)