



2010 November 18

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

via RESS and courier

**RE: Amendments to the Distribution System and Smart Sub-metering Codes
EB-2010-0321
Comments of the Coalition of Large Distributors**

Dear Ms. Walli:

In response to the Board's Notice of Proposal to Amend a Code (Notice) under file number EB-2010-0321, the Coalition of Large Distributors (CLD), consisting of Enersource Hydro Mississauga Inc., Horizon Utilities, Hydro Ottawa, PowerStream, Toronto Hydro-Electric System Limited, and Veridian Connections, provides its comments below.

The CLD has no comments with respect to the existing proposed Smart Sub-metering Code amendments.

With respect to the proposed amendment to Section 5.1.9 of the Distribution System Code, the CLD submits that the effect of the wording is to inappropriately place an unconditional obligation on utilities that is not present in O.Reg 389/10 and to transfer to utilities an obligation that is placed on other parties under O.Reg 389/10. Under the proposed Section 5.1.9, utilities would become the *de facto* providers of last resort of unit metering and the CLD submits that this is not congruent with the wording or intention of either the Energy Consumer Protection Act (ECPA) or O.Reg 389/10.

Specifically, Section 38 (1) of O.Reg 389/10 is permissive rather than prescriptive and states that a suite meter provider "may install a suite meter" in the specified circumstances. In the case of new buildings, Section 39 (1) of O.Reg 389/10 explicitly places the obligation to install unit meters on the "owner or other person in charge of a unit belonging to a class of units", i.e. the master consumer, and expressly does not place that obligation on utilities.

Therefore the proposed amendment to Section 5.1.9 goes significantly beyond the substance of O.Reg 389/10 by imposing on utilities a positive duty to act which is non-existent in O.Reg 389/10 and the ECPA. Furthermore, it is inconsistent with the Notice which states at page 3 that “The Board is proposing amendments to the SSMC and the DSC to *recognize and implement* the new legislative provisions” (emphasis added), since it substantially extends the provisions of O.Reg 389/10. The CLD therefore objects in principle to the proposed amendment to Section 5.1.9.

That amendment is also inconsistent with the framework established by the Board for the operation of the unit metering market. On several occasions, and notably in the EB-2009-0308 Decision at page 13, the Board stated that “the entire sub-metering market, including distribution of electricity on behalf of an exempt distributor behind the bulk meter, was contestable”; and at page 15, that “The Board does not accept the arguments that the provision of distribution of electricity behind the bulk meter is a natural monopoly.”

It would be inconsistent for the Board to both

- a) impose a new duty on utilities, not supported by any provision of the ECPA or O.Reg 389/10, to provide unit meters and
- b) to hold that the unit metering market is contestable.

If the Board were to impose such a duty on utilities operating in that market and providing goods and services that are practically indistinguishable from those provided by other unit meter providers, it must also impose that duty on those providers, i.e. smart sub-meter providers.

Otherwise the Board would clearly invite abuse in the marketplace by forcing utilities to be the *de facto* providers of last resort. In that situation, non-utility providers could ‘cream-skim’ by choosing to serve only the most lucrative contracts and refusing to serve any properties presenting higher costs of installation and/or operation, or higher risks of bad debt. Utilities would then be forced to serve properties refused by other providers and which create high costs for installation, maintenance, and administration including bad debt. These costs would necessarily be passed on to utility ratepayers.

However, the CLD submits imposing such a duty on any party is plainly inconsistent and incompatible with the Board’s existing framework of contestability and in any event could not be enforced. The Board has found that the unit metering market is contestable, and the Board, along with all other involved parties, must live with the consequences of that finding.



The CLD therefore objects on grounds both of principle and of practice to the proposed amendment to Section 5.1.9. and submits that the Board should not implement it.

However, if the Board rejects the CLD's position regarding the imposition of the duty contemplated in the amendment, then the CLD submits that the provision should be extended to expressly allow utilities to recover all present and future costs in excess of those recovered through rates from the master consumer, and to require and obtain from the master consumer all applicable representations and warranties that the installation requested is in full compliance with all requirements of legislation, regulation, and code.

Yours truly,

[Original signed on behalf of the CLD by]

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