

Dennis M. O'Leary  
Direct: 416.865.4711  
E-mail: doleary@airdberlis.com

April 17, 2009

**Via Email and Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Comments on Notice of Proposal to Amend Codes - *Distribution System Code*, the *Retail Settlement Code*, and the *Standard Supply Service Code*, dated March 10, 2009 (the "Notice")**  
**Board File No. EB-2007-0722**  
**Submissions by Enbridge Electric Connections Inc. ("EECI")**

---

EECI welcomes the opportunity to make general comments in respect of the proposed amendments to several Codes, as set out in the Notice. These proposals emanate from the consultative held by the Ontario Energy Board ("OEB" or the "Board") (EB-2008-0150), which examined issues associated with low income energy consumers.

In its report dated March 10, 2009 (the "Report"), the Board set out a framework for a Low Income Energy Assistance Program ("LEAP"), which consists of three components. One of these components consists of tailored customer service measures, which are reviewed at Section 5.2 of the Report. At Section 7.1 of the Report, the Board states that for the purposes of implementing the customer service elements of LEAP, the Board issued proposed amendments to the DSC, the *Retail Settlement Code* and the *Standard Supply Service Code*. In respect of the smart sub-metering industry, the Board stated that it: "believes it to be efficient to defer proposing amendments to the Smart Sub-metering Code to implement similar customer service rules until such time as the process of amending the other Codes has been completed."

EECI therefore expects that the Board will issue a Notice of Proposal to Amend the Smart Sub-metering Code ("SSM Code") at some future date and that smart sub-metering ("SSM") companies will be entitled to comment on proposed changes to the SSM Code at that time. Despite this, It remains important for EECI to make some general comments and observations about the appropriateness and impact of amending the SSM Code to include virtually similar provisions to those proposed in the Notice.

The most striking and important difference between electric local distribution companies ("LDCs") and SSM providers is the fact that the former are rate-regulated, while SSM providers operate in a competitive market. This important distinction means that SSM providers operate pursuant to the contractual terms reached with building owners and developers. A SSM provider may have little or no flexibility to pass along the additional costs that will arise if future changes to the SSM Code mirror those proposed in the Notice.

Indeed, EECl notes at page 26 of the Board's Notice dated March 10, 2009, that the proposed amendments may require some LDCs to incur costs in order to bring their current practices into line with the new requirements. The Board acknowledges "that some of these costs may be material." SSM providers assume that to the extent that an LDC can demonstrate increased OM&A costs to provide the additional customer service requirements, that LDC would be entitled to recover these costs in rates. From an SSM provider's perspective, such increased costs may not be recoverable, either by reason of contractual commitments to the contrary and/or the SSM provider's relative competitive position. For example, one SSM provider may have a significantly greater low income customer count than another. This could have a negative impact on the former's competitive position in the marketplace if required to implement changes similar to those proposed.

EECl notes that there is little doubt that the proposed changes to the DSC, if similarly made to the SSM Code, will result in SSM providers incurring additional material costs. Whether it is the additional cost to process credit cards, additional time before receiving payment on invoices, the cost to implement an equal billing plan, the loss of the right to require security deposits, or to implement and administer an arrears management plan, there will be an increase in costs to provide SSM services.

Accordingly, EECl submits that the Board should be concerned about the impact on SSM providers by proposing similar amendments to the SSM Code, as the ramifications to competitive SSM providers is not the same as for electric LDCs. Similar changes to the Smart Sub-metering Code may not be appropriate.

Finally, EECl is of the view that the new proposed Clauses 2.7.2 and 2.7.3 are not necessary in a SSM situation. Not every SSM provider seeks the consent of every multi-unit building occupant, given that authorization exists under an agreement between the SSM provider and a building owner and/or developer. The building owner and/or developer, in most instances, has the consent of the existing or prospective occupant to smart sub-meter a unit, but there may not be any written consent or agreement specifically between the SSM provider and the unit occupant. Mandating such a requirement could prove impractical and very costly to SSM providers.

Proposed Clause 2.7.3 would prohibit an SSM provider from looking to a building owner for unpaid charges for service unless the building owner has agreed, in writing, to assume responsibility for such charges. It is submitted that the terms of the agreements reached between SSM providers and building owners and developers should prevail, and there is no reason for the Board to draw into question the compatibility of existing and future

**April 17, 2009**

**Page 3**

contracts by amending the SSM Code to impose what arguably might be some further obligation on SSM providers.

All of which is respectfully submitted.

AIRD & BERLIS LLP

Original signed by,

Dennis M. O'Leary

DMO/ct

5120917.1

