



May 20, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Re: EB-2009-0111
Authorization to Conduct Discretionary Metering Activities

Dear Ms.Walli:

The Building Owners and Managers Association of Greater Toronto (BOMA) is pleased to provide this submission to the above proceeding.

In summary, we have grave concerns that this proceeding, while it appears intended to address issues related to tenants in multi-unit residential buildings, will by extension impact normal business practices as occur in commercial buildings.

The broad definitions of 'distributor' and 'discretionary metering activity' could apply to all manner of metering of utilities in commercial, office and industrial buildings. Indeed, these definitions could even be extended to metering for the purposes of building monitoring and industrial process control.

We will provide background information on the nature of metering and billing activities as they presently exist in commercial buildings, along with specific responses to the issues posed, such that potential unintended consequences can be addressed.

Commercial Building Practices

Most leases in commercial buildings are of a 'net' type whereby property taxes, utilities and operating costs are charged to the tenants in addition to the base rent. Standard lease provisions allow for the landlord to install metering, charging tenants for their specific usage. In practice this is usually applied where the tenant has exceptional loads, above the norm of what other tenants are consuming, or above the normal capacities available in the building.

Examples here include dedicated cooling equipment, local data centres, UPS and IT equipment. The revenues received from charging tenants for such exceptional usage are credited to the operating account and lower operating costs for all tenants.

However, there are also a number of buildings whereby tenants are metered and charged for the normal usage attributable to them in their space. I.e. 'plug' load and lighting load, and decentralized HVAC (Heating Ventilating Air Conditioning) equipment. Again the revenues recovered serve to lower common area costs for all tenants. A number of the major downtown Toronto towers operate on this basis, where all floors, and all tenants, are metered and charged according to their usage.

In both cases it is a matter of equity and creating a conservation culture. Tenants with normal usage will not look favourably on subsidizing other tenants with recognized excessive usage. Indeed, as tenants are becoming increasingly concerned with minimizing their carbon footprint and contributing to sustainability, there is a growing demand from tenants to establish such sub-metering arrangements. Sub-metering of commercial space is also recognized as a means by which energy conservation programs can be implemented at the tenant level. Of note, the OPA provides funding for the installation and monitoring of such commercial submetering systems.

The existing oversight pertaining to submetering practices in commercial buildings rests with Measurement Canada and the responsibility of the building owner to comply with the Electricity and Gas Inspection Act. This requires that the building owner only use approved equipment types, maintain the certification of the meters, and be registered as a 'contractor' with Measurement Canada.

'Informed consent' of commercial tenants is achieved by virtue of delineation of such metering arrangements in the lease. Tenant protection is achieved through adherence to lease terms and the ultimate authority of Measurement Canada to become involved with, and arbitrate any disputes. In our experience such disputes are rare. Landlords recognize their obligations in this respect and often use independent specialist in determining the billings. Additionally, tenants are supported by professional advisors including leasing brokers, lawyers, consultants and lease auditors. Commercial tenants have proven themselves to be adept at protecting their interests and would not generally be viewed as 'vulnerable consumers'.

Response to Issues

All of this, which we have described, represents the normal conduct of business between commercial landlord and tenant. Existing practices work for the benefit of both parties. Energy conservation objectives are further facilitated by increased use of submetering in commercial facilities and existing regulatory oversight, in the form of Measurement Canada, is well understood.

The Compliance Bulletin 20091 effectively prohibits this existing activity in commercial buildings, which we believe is neither warranted nor intended.

As such we respectfully submit that:

- Discretionary Metering activities, as defined, should be allowed to continue in commercial, industrial and office building facilities.
- The issue of tenant consent in commercial buildings is moot in that existing leases specifically provide for such arrangements.
- While the currently licensed smart sub-meter providers may in fact be providing services to the commercial building sector, there is no need to limit metering activities to such providers. Other qualified contractors, and the building managers themselves, are capable of providing metering and related billing services, all consistent with Measurement Canada requirements.

With respect to the issues of smart submetering in multi-unit residential, we offer the opinion that tenant protection should be available to residential tenants to the same extent it is available to all residential consumers. We believe the extension of the Smart Sub Metering Code for Condominiums to the broader multi-unit residential sector, and the requirements for licensing of Smart Submeter providers who operate in this sector, would provide a practical structure for regulatory oversight and consumer protection.

Yours truly,



Chuck Stradling
Executive Vice President
BOMA Toronto