



May 26, 2009

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

RE: 'Large Distributors Group' (LDG) Submissions in EB-2009-0111
Discretionary Metering

Dear Ms. Walli:

Certain utilities (the 'Large Distributors Group' or LDG (listed below)) have received and reviewed PO No. 1 in the above-noted proceeding and the submissions of the LDG follow in accordance with that Procedural Order.

Yours truly,

(Original signed on behalf of the Large Distributors Group by)

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Introduction

The member distributors of the LDG have a direct interest in the matters under consideration in this consultation, through their roles as distributors and suppliers to any exempt distributors situated within the service areas of LDG distributors. The LDG submits that distributors generally may be affected by the Board's determination in this proceeding, through direct and indirect effects on the obligations and responsibilities of distributors, as well as through effects on the scope of distributors' businesses and the character of their franchise within their service areas.

Limits on Exempt Distribution and Exempt Distributors

At page 2 of PO No.1, the Board states the activities that may be authorized through this proceeding are those of exempt distributors, and that to qualify as an exempt distributor an entity must, among other things, "distribute electricity for a price no greater than that required to recover all reasonable costs". In citing this requirement the Board in turn relies on Section 4.0.1 of the *Definitions and Exemptions* regulation, O. Reg 161/99, which specifies the definitions of exempt distributors.

The LDG submits that the essence of the provisions in the *Definitions and Exemptions* regulation that authorize exempt distributors is that they permit, on an unregulated basis, the *subdivision* of the bulk electricity bill, together with reasonable administration costs. That regulation should not be construed to permit the *resale for profit* of the delivery services and electricity provided to the bulk meter.

The concept of an exempt distributor set out in O. Reg 161/99 intrinsically implies that the distributor has a unifying or consolidating relationship with the electricity end-users, apart from that of being their electricity distributor, which segregates the end-users in that district or on that land from the general public, and to which the distribution of electricity is incidental. The relationship may take several forms, including for example that of landlord, trailer-park operator, amusement park operator, airport authority, religious or educational institution etc. The characteristic all of these entities have in common is that they own or have authority over the land on which the exempt distribution system is situated and either provide services to or act as the organizing factor for the ultimate end-users.

Only the entity which acts as the unifying agent of all the ultimate end-users of the electricity should qualify as the exempt distributor, and in order to be exempt it should continue in an independent, consolidating, supplier/customer- or supplier/client-type relationship with the end-users, apart from that of distributing electricity.

Under that configuration, the unifying agent distributes electricity to tenants, members, or other end-users as a service incidental to what is otherwise the main business or pursuit of the organization, and it does so essentially on a cost recovery i.e., *non-profit* basis. The LDG acknowledges that the metering, billing, and administration of such an exempt distribution system will create capital and operating costs which must be recovered by the operator of the system, and as a result, the total revenue recovered from end-users

should be demonstrably equal to the sum of the bulk-metered bill plus operating costs plus capital related costs (depreciation, and reasonable return on invested capital, and taxes where applicable). Clearly excluded from reasonable costs would be super-normal profits and returns extracted by the exercise of unregulated monopoly-pricing power.

If such a unifying relationship is absent, there is nothing to distinguish the group of end-users served from the general public, and more importantly, there is no basis for an entity whose sole business with the end users is electricity distribution for profit to be exempt from the provisions of the *OEB Act*.

Exempt distribution is different in essence from unregulated distribution by an independent commercial company, that acquires the end-use customers, provides only distribution, metering and associated services, and charges unregulated rates that do not demonstrably satisfy the requirement that the “price [be] no greater than that required to recover all reasonable costs”. In that case the distribution activity is the only, or principal, concern of the distributor and is not incidental to some other primary objective or activity; rather, it is undertaken primarily as a commercial enterprise with the purpose of making profits by providing an essential service to captive customers at unregulated rates. That situation is conducive to the achievement of excess profits because the customers are captive and the rates are unregulated. The provisions in the *Definitions and Exemptions* regulation do not, and should not be interpreted, to permit the establishment and exercise of unregulated monopoly power in the distribution of electricity, an essential service.

It follows therefore that sub-meterers should not be independently able to attach and have direct customer relationships with end-users, but rather should have as their direct and only customers the unifying agents, which themselves should be the only entities eligible for designation as ‘exempt distributors’. While it would be unreasonable to erect barriers to the contracting of sub-meterers by exempt distributors to conduct an activity that those distributors may have no expertise or capability in, it would be equally unreasonable to confer directly on sub-meterers the classification of exempt distributor, since in fact they would be nothing other than unregulated embedded distributors.

At page 2 of PO No. 1, the OEB also states:

“In many instances, the smart sub-metering systems have been installed, and are being used to bill consumers, by a licensed smart sub-metering provider on behalf of the Exempt Distributor.”

Nothing in the *Definitions and Exemptions* regulation or the *Prescribed Activities* regulation (O. Reg. 443/07) does or should be construed to permit sub-meterers to profit on the direct re-sale of bulk distribution services to individual end-users. However, in the current marketplace it appears possible that captive customers can be turned over to sub-meterers who then maintain independent, unregulated relationships with end-users instead of acting strictly as a sub-contractor to the exempt distributor. For the reasons set out above, the OEB should take steps to ensure that sub-meterers are indeed billing consumers only on behalf of exempt distributors, and not on their own behalf.

The Definition and Recovery of 'Reasonable Costs'

As noted above, the LDG submits that 'reasonable' costs should be demonstrably equal to the sum of the bulk-metered bill plus operating costs plus reasonable capital related costs. To meet the definition, and the responsibilities, of an exempt distributor, the distributor should be able and required to demonstrate that the bulk meter bill is being recovered proportionally from end-users *as a matter of design*, and that operating and capital related costs (together, 'administration costs') are reasonable for the purpose.

With respect to the recovery of the bulk meter bill, it is *unreasonable* to permit exempt distributors to apply a system of rates that does not:

- a) Recover, over time, identically the amount of the bulk meter bill; and
- b) Recover the bulk meter bill from each end-user in a manner proportional to that end-user's contribution to the amount of the bulk meter bill.

Thus a system should not be permitted under which the rates charged by the exempt distributor are predicated on billing determinants that do not match or are not reconciled to the billing units underpinning the bulk meter bill. Given that new or recent installations which are the subjects of this proceeding ought to be bulk billed with either a smart meter or an interval meter, and that end-users ought to be billed with a smart sub-meter, a simple pass-through of bulk meter variable (i.e., consumption-based) rates should be achievable. To the extent that a configuration or technical problem prevents a simple pass-through of rates, the exempt distributor should be required to adopt an apportionment methodology for the bulk bill that demonstrably assigns costs on a consumption-proportional basis and neither over- nor under-recovers the bulk bill.

The OEB should specifically prohibit a system under which the bulk bill is rendered on one set of billing units (e.g., kWh, non-coincident kW, and coincident kW depending on the charge type), and the end-use bill is rendered on an irreconcilably different billing unit such as peak kW/day. A system with irreconcilable billing units cannot be shown to identically recover the bulk meter bill, and furthermore is conducive to systematic over-collection of the bulk bill.

The OEB should also specifically direct that charges that are influenced by 'diversity' in demand be allocated to end-users in *proportion* to their contribution to the bulk bill, not simply passed through on the basis of measured individual demand. These include bulk distribution and transmission charges. For example, distribution charges to the bulk meter are typically based on non-coincident demand measured in kW or kVA at the bulk meter. However, because the bulk demand is a function of the diversified individual demands not all of which peak at the same time, even if the charge to end-users is based on the same billing unit and is charged at the same rate as the bulk distribution, surplus revenues will be generated because the sum of the individual maximum monthly demands will exceed the combined bulk monthly demand, due to the diversity of demand among the individual end-users.

Excess revenues due to diversity should be prevented by requiring that end-users be charged for demand-related costs based on the end-user demand readings at the same time that the bulk distribution and transmission charges are determined (i.e., non-coincident or coincident peak hour), or alternatively by dividing the bulk bill component by the sum of the individual demands to obtain a proration factor of less than unity.

With respect to the recovery of administrative costs, the LDG submits that it is appropriate to the operation and exempt status of exempt distributors that these costs:

- a) Be documented in detail by the exempt distributor, regardless of whether those costs are borne directly or by way of a contract with a sub-meterer; and
- b) Be recovered by way of fixed customer charges per time period (monthly or as may be appropriate to the application)

The OEB should not permit the 'reasonable costs' standard to be confounded or bypassed by way of non-transparent contracts and charges from sub-meterers to exempt distributors, or worse yet to end-users. The OEB should direct OEB Staff to devise a 'revenue requirement template' to be used and filed by exempt distributors which would detail by category the operating and capital-related costs and rates which together would form the basis for the fixed customer charge.

Furthermore, in the event that concerns arise over the measurement of consumption, application of rates, or over-recovery of costs, consumers should be able to refer disputes to the OEB for final determination.

This approach would not prevent supplementary contracts from being entered into by the exempt distributor and the sub-meterer, which could involve extra services and/or extra fees, but it would preclude the charging of *unreasonable* costs to end-users through the use of undocumented rates.

The costs of installing and maintaining sub-metering systems are likely to be highly predictable and once installed are likely subject to very low levels of fluctuation. Furthermore those costs are virtually unaffected by fluctuating levels of throughput within the design range. The LDG therefore submits that collection of administrative costs through fixed charges only, rather than through consumption-based charges, is appropriate from the perspective of matching cost-incurrence to revenue recovery, and is simpler and more conducive to accurate recovery of administrative costs than an inherently volatile consumption-based revenue stream would be.

Summary of General Submissions

1. Exempt distribution is intrinsically a non-profit activity, and for-profit sub-meterers should not be granted formal or *de facto* exempt distributor status.
2. Sub-meterers should be permitted to act on behalf of exempt distributors in the ongoing administration of the sub-metering and billing system, but the only direct customer of the sub-meterer should be the exempt distributor.
3. Only the exempt distributor should be permitted to have the electricity end-users as direct customers.
4. Exempt distributors should be permitted only to *sub-divide* the bulk electricity bill, and no markup of the bulk electricity bill, implicit or explicit, should be permitted.
5. The bulk electricity bill should be allocated to end-users in proportion to their consumption that determines the amount of the bulk bill, after adjustment to exclude the effect of demand diversity among end-users.
6. Recovery of sub-meter operating and capital costs should not be permitted by way of consumption-based charges, but only by fixed periodic customer charges.
7. Sub-meter operating and capital costs should be fully and transparently documented, and the OEB should resolve consumer billing disputes.

LDG Submissions on Identified Issues

The LDG's submissions below follow the structure of PO No.1 for ease of reference.

1. whether the discretionary metering activities should be allowed in all buildings (including buildings under development) or whether it should be limited to buildings where the smart sub-metering systems are already in place

The LDG submits that discretionary metering (i.e., in this context, installation of smart sub-metering systems in apartment buildings) should be permitted in existing buildings, whether currently bulk-metered or sub-metered, subject to conditions set out under the following issues 2 and 3, and subject to the proviso that installation of sub-metering does not confer exempt distributor status on the sub-meterer.

With respect to new apartment buildings (in which the electrical system is not yet designed, provisioned, and installed), some distributors have provisions in their Conditions of Service specifying that new end-use premises in multi-unit residential buildings are to be connected directly as individual customers of the licensed distributor.

2. whether the smart sub-metering system, once installed, should only be used to bill the tenant/consumer if there is tenant/consumer consent

The LDG submits that a sub-metering system should only be used for billing purposes where there is express, informed consent of the tenant or consumer, or in the case where consent may be deemed in accordance with regulations or legislation.

The LDG acknowledges that there are policy concerns around the transfer of electricity bills to low-income or otherwise vulnerable tenants, and supports the development of regulations or Code which would specify conditions which must be met in order to commence or continue billing directly for electricity tenants who did not undertake responsibility for the electricity bill when they initially rented their premises.

3. whether the smart sub-metering system should be allowed to be used for billing purposes for existing tenants/consumers, new tenants/consumers, or both

The LDG submits that sub-metering systems should be permitted for billing of both existing and new accounts subject to the conditions set out above under issue 2.

4. whether a licensed smart sub-metering provider must be retained to provide and install the smart sub-metering system in the buildings

In cases where sub-metering is permitted, the LDG submits that the exempt distributor should be required to engage the installation services of a licensed sub-meterer or to demonstrate that the system was or will be installed to equivalent technical standards by equivalently qualified technicians.

5. whether a licensed smart sub-metering provider must be retained to provide services associated with the smart sub-metering system, including billing

In cases where sub-metering is permitted, the LDG submits that the exempt distributor should have the option but not be required to retain a sub-meterer for billing and other services, but that in any case it be required to demonstrate that its sub-metering and associated billing system meets standards of documentation, accuracy and auditing applicable or equivalent to those for licensed distributors, and that over time nothing more than the bulk bill plus reasonable administrative costs are recovered.