EB-2010-0142

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998,* S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2011;

**AND IN THE MATTER OF** a Motion filed by the Smart Sub-metering Working Group ("**SSMWG**") on January 14, 2011.

# TORONTO HYDRO
# BOOK OF AUTHORITIES

**Filed: January 19, 2011**

**INDEX**

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

# NOTICE OF PROPOSAL TO AMEND A CODE AND NOTICE OF PROPOSAL TO ISSUE A NEW CODE

## PROPOSED AMENDMENT TO THE DISTRIBUTION SYSTEM CODE AND CREATION OF THE 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 Other Interested Parties**

**Re: Code Amendments and 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 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 proposed Smart Sub-Metering Code (the "SSM Code") (altogether, the Notice").

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

## I. Background

### A. Regulations Regarding Smart Sub-Metering in Condominiums

Ontario Regulation 443/07—*Licensing Sub-Metering Activities* (made under the *Ontario Energy Board Act, 1998*) ("Regulation 443") came into force on December 31, 2007. Regulation 443 states that in relation to the classes of property prescribed by section 2 of Ontario Regulation 442/07, no person shall engage in the commercial offering or the commercial provision of smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies and any associated services unless licensed to do so by the Board.

The classes of property prescribed by section 2 of Ontario Regulation 442/07—*Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums* (made under the *Electricity Act, 1998*) ("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.

Therefore, any person wishing to engage in smart sub-metering services in condominiums will need to be licensed by the Board to provide those services.

**B. Smart Metering Versus Smart Sub-Metering**

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, each unit will become a residential customer of the licensed distributor and each unit and the common areas must have a separate account with the licensed distributor.

The Board uses the term "smart sub-metering" to describe the situation in which a licensed distributor provides service to the condominium's bulk (master) 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. In this scenario, the condominium continues to be the customer of the licensed distributor and will receive a single bill based on the measurement of the bulk (master) meter. The condominium corporation, which is responsible for the distribution of electricity on the consumer side of the bulk (master) meter, is an exempt distributor under section 4.0.1 of Ontario Regulation 161/99—*Definitions and Exemptions* (made under the Act). The smart sub-metering provider, which is acting on behalf of the exempt distributor, would then issue a bill to each unit and the common areas based on the consumption of the unit or common area.

**C. Smart Metering**

The Board has previously determined in rates proceedings related to smart metering activities of certain distributors that smart metering is a part of the distribution activity that is already covered by distributors' distribution licences. As there is no distinction between smart metering condominiums and other residences, the Board has determined that only licensed distributors can smart meter condominiums. In the Board's view, this is in keeping with the current regulatory framework in the electricity sector.

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2009-0139

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

**BEFORE:** Howard Wetston
Chair & Presiding Member

Gordon Kaiser
Vice Chair & Member

Ken Quesnelle
Member

# DECISION

## April 9, 2010

# Table of Contents

# 1. THE APPLICATION AND THE PROCEEDING

Toronto Hydro-Electric System Limited ("THESL" or the "Applicant") distributes electricity to 684,000 customers in the City of Toronto. A 100 percent-owned subsidiary of Toronto Hydro Corporation ("THC"), the Applicant is the successor to the six former hydro-electric commissions of the municipalities which amalgamated on January 1, 1998 to form the City of Toronto. THC, the Applicant and other affiliates of the Applicant were incorporated under the *Business Corporations Act* on June 23, 1999. The sole shareholder of THC is the City of Toronto

The Applicant filed an application dated August 28, 2009 with the Ontario Energy Board (the "Board") under section 78 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B) (the "Act"), for an order or orders approving just and reasonable rates and charges for the rate year commencing May 1, 2010.

The application included increases in operating expenses, increases in capital expenses, changes to the cost of debt and equity, as well as a smart grid plan. The Applicant also proposed disposing of certain deferral accounts and requested new deferral accounts. The Board assigned file number EB-2009-0139 to the application.

The application was for approval of distribution rates and other charges to recover a revenue requirement of $528 Million for 2010.

The intervenors to this proceeding are listed in Appendix A.

The Approved Final Issues List is attached as Appendix B.

A Settlement Conference was convened on Tuesday December 8, 2010. On January 22, 2010, a Settlement Agreement was filed with the Board which incorporated settlement of most outstanding issues in this proceeding.

On the same date, the Board issued its Decision on Motion rejecting THESL's request that the Board vary part of a Decision with Reasons issued May 15, 2008, related to an earlier cost of service application by THESL concerning the Board's finding that 100% of the net after-tax gains arising from the sale of certain properties should go to the ratepayer. As part of its decision, the Board stated that while it did not accept THESL's argument, it did recognize that implementation of the May 15, 2008 decision required further direction from the Board and that the Board would hear submissions from parties during the EB-2009-0139 proceeding concerning the implementation of the Decision in view of the delay caused by the appeals process.

On February 4, 2010, the Board announced its acceptance of the Settlement Agreement. Unsettled issues remained in three areas, which were:

(1) cost of capital and related PILs impact;

(2) distributed generation issues, encompassing:

> (i) whether or not THESL responded appropriately to all of the Board's relevant directions with respect to distributed generation from previous proceedings,
>
> (ii) whether or not THESL's proposed capital expenditures to facilitate distributed generation are appropriate, and
>
> (iii) whether or not THESL's Asset Condition Assessment information and Investment Planning Process adequately addresses the condition of the distribution system assets and supports the OM&A and Capital Expenditures for 2010, and;

(3) the proper rate design for multiple unit residential "suite metered" customers.

The central feature of the Settlement Agreement was an agreement to decrease the utility's proposed 2010 revenue requirement from $528.7 million to $507 million contained in the Settlement Agreement, a $21.7 million reduction before the cost of capital impact. The Settlement Agreement reflected a reduction in rate base of $22 million and a reduction in OM&A of $16.7 million. The Settlement Agreement is attached as Appendix C.

The oral hearing commenced on Thursday February 4, 2010 and was completed on Monday February 8, 2010. The argument phase was completed on Wednesday February 24, 2010.

The full record of the proceeding is available at the Board's offices. The Board has chosen to summarise the record in this Decision only to the extent necessary to provide context to its findings.

# Appendix “C”

# Settlement Agreement

# EB-2009-0139

# April 9, 2010

# EB-2009-0139

# TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

# SETTLEMENT AGREEMENT

# January 22, 2010

**Toronto Hydro-Electric System Limited**

**EB-2009-0139**

**Settlement Agreement**

**Filed with OEB:** January 22, 2009

This settlement proposal is filed with the Ontario Energy Board ("the Board") in connection with an application by Toronto Hydro-Electric System Limited ("THESL") for an Order or Orders fixing just and reasonable distribution rates and other charges, effective May 1, 2010 (Board Docket Number EB-2009-0139) (the "Application").

Further to the Board's Procedural Order No. 1 dated October 19, 2009, a settlement conference was held commencing on December 8, 2009 in accordance with the Board's *Rules of Practice and Procedure* (the "Rules") and the Board's *Settlement Conference Guidelines* (the "Guidelines"). Mr. Ken Rosenberg acted as facilitator for the settlement conference, which continued until December 18, 2009.

THESL and the following intervenors (the "intervenors", and collectively including THESL, the "parties") participated in the settlement conference:

Association of Major Power Consumers in Ontario ("AMPCO")
Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
Consumers Council of Canada ("CCC")
Energy Probe Research Foundation ("EP")
Pollution Probe Foundation ("PP")
School Energy Coalition ("SEC")
Smart Sub-metering Working Group ("SSMWG")
Vulnerable Energy Consumers Coalition ("VECC")

Ontario Energy Board staff also participated in the settlement conference but are not a party to this settlement proposal. The Canadian Union of Public Employees (Local One) and the Ontario Power Authority did not participate in the settlement conference and are not parties to this settlement proposal.

These settlement proceedings are subject to the rules relating to confidentiality and privilege contained in the *Guidelines*. The parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the Settlement Conference are strictly confidential and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception: the need to resolve a subsequent dispute over the interpretation of any provision of this settlement proposal.

Outlined below are the final positions of the parties following the settlement conference. For ease of reference, the settlement proposal follows the format of the Approved Final Issues List provided in the Board's Procedural Order No. 2 dated November 10, 2009 (which is hereto

Subject to these three changes, for the purposes of settlement the intervenors accept THESL's proposal for the amounts, disposition, use and continuance of deferral and variance accounts.

**Evidence:** Exhibit J1, Tab 1, Schedule 2; Exhibit J2, Tab 2, Schedule 8-10; Exhibit R1, Tab 1, Schedule 84-89; Exhibit R1, Tab 11, Schedule 38-40

**Supporting parties:** THESL, AMPCO, BOMA, CCC, EP, SEC and VECC.

**Parties taking no position:** PP and SSMWG.

6.2 Is Toronto Hydro's proposal to record variances between the approved levels of capital contributions to Hydro One and the actual contribution levels in USOA 1508 appropriate?

**Complete Settlement:** For the purposes of settlement the intervenors accept THESL's proposal.

**Evidence:** Exhibit D2, Tab 1; Exhibit J1, Tab 1, Schedule 2; Exhibit R1, Tab 1, Schedule 92

**Supporting parties:** THESL, AMPCO, BOMA, CCC, EP, SEC and VECC.

**Parties taking no position:** PP and SSMWG.

## 7. COST ALLOCATION AND RATE DESIGN

7.1 Is Toronto Hydro's cost allocation appropriate?

**Partial Settlement:** For the purposes of settlement, the intervenors, with the exception of the SSMWG, accept THESL's cost allocation for 2010 rates.

**Evidence:** Exhibit L1, Tab 1-2; Exhibit R1, Tab 1, Schedule 93; Exhibit R1, Tab 10, Schedule 4; Exhibit R1, Tab 3, Schedule 41, 50-51

**Supporting parties:** THESL, AMPCO, BOMA, CCC, EP, SEC and VECC.

**Party taking no position:** PP.

**Opposing party:** SSMWG.

**Opposing party notes:** The SSMWG views THESL's treatment of residential customers residing in individually metered multiple unit residential units (i.e. "suite metered customers") as inappropriate.

THESL and SSMWG agree that that the scope of this issue can be narrowed to:

**"Is Toronto Hydro's cost allocation in respect of residential customers residing in individually metered multiple unit residential units ("suite metered customers") appropriate?"**

7.2 Are the proposed revenue to cost ratios for each class appropriate?

**Partial Settlement:** For the purposes of settlement, the intervenors, with the exception of the SSMWG, accept THESL's proposed revenue to cost ratios for each class as the basis for 2010 rates.

**Evidence:** Exhibit L1, Tab 1-2, Exhibit M1, Tab 1, Schedule 1; Exhibit R1, Tab 1, Schedule 96; Exhibit R1, Tab 3, Schedule 50; Exhibit R1, Tab 11, Schedule 52

**Supporting parties:** THESL, AMPCO, BOMA, CCC, EP, SEC and VECC.

**Party taking no position:** PP.

**Opposing party:** SSMWG.

**Opposing party notes:** The SSMWG views THESL's treatment of residential customers residing in individually metered multiple unit residential units (i.e. "suite metered customers") as inappropriate.

7.3 Are the fixed-variable splits for each class appropriate?

**Complete Settlement:** As part of this settlement proposal, THESL agrees to maintain the existing fixed-variable split for all rate classes (with the exception of the GS50-999 class) as included in its 2009 rate design. The company's original proposal for fixed portion of rates was informed by the outputs of the Cost Allocation model for fixed rates. All parties agree that maintaining the split is acceptable.

Regarding the GS50-999 class, THESL agrees that the fixed charge will be increased from the current \$32.69 per 30 days to no more than \$40.00 per 30 days. While this increase is not as large as would be suggested by the outputs of the cost allocation model, it moves the fixed rate in the correct direction, and is an acceptable increase. Therefore, all parties agree that THESL's revised fixed variable splits for each class are appropriate.

The proposed rates, subject to adjustment of the revenue requirement with respect to the unsettled issues, are set forth in Appendix B.

**Evidence:** Exhibit M1, Tab 1-2; Exhibit R1, Tab 11, Schedule 53

**Supporting parties:** THESL, AMPCO, BOMA, CCC, EP, SEC and VECC.

**Parties taking no position:** PP and SSMWG.

# 4. SUITE METERING ISSUES

## Background

The Smart Sub-Metering Working Group (the "Working Group"), an association of companies[43], has intervened in this proceeding and claims that the rate that THESL is charging for condominium smart metering is not recovering the costs of these services. They argue that the cost of providing service to condominium corporations is greater than the cost of providing service to residential consumers. THESL charges the same rate for smart metering to condominium corporations and their unit-holders as they do to ordinary residential customers.

The members of the Working Group compete with THESL in the provision of these services. They argue that THESL is subsidizing these services and as a result has an unfair competitive advantage in the marketplace. Given this dispute, the following issue in the Settlement Agreement was set out as an unresolved issue;

- Is THESL's cost allocation in respect of residential customers residing in individually metered multi-unit residential buildings ("suite metered customers") appropriate?

THESL claims that this market is not competitive, at least with respect to the service aspect as opposed to the equipment aspect of the service. That argument was also raised by THESL in the proceeding related to *Notice of Intention to Make an Order for Compliance against Toronto Hydro – Electric System Limited*, EB-2009-0308 (January 27, 2010). ("the Toronto Enforcement case"). There the Board found that the market was clearly competitive in both the service and equipment aspects.

[43] These companies are Carma Industries Inc., Enbridge Electric Connections Inc., Hydro Connection Inc., Intellimeter Canada Inc., Provident Energy Management Inc., Stratacon Inc., and Wyse Meter Solutions.

THESL also argues that there is no evidence that competition will in fact promote conservation which is one of the objectives that the Board must now consider in its decisions. This argument was also rejected by the Board in the *Toronto Enforcement*[44] case in the following terms:

> Installation of smart meters in individual condominium units offers significant gains in energy conservation. The Legislature has signalled the advantage of competing suppliers and specifically allowed regulated utilities to engage in the service directly. Implicit in this direction is a belief that competing suppliers will promote price competition and improve service quality.
>
> It is also significant that this is a new market with new competitors. It would be unfortunate (and contrary to the public interest) if competitors were disadvantaged or even eliminated in the early days of this market.[45]

The Working Group called as a witness Philip Hanser, an economist with the Brattle Group, who provided evidence regarding the degree of cross-subsidization (Exhibit K6). The conclusion of this evidence was that since THESL charges the same rate for smart metering to condominium corporations and their unit-holders as they do to ordinary residential customers, "whether viewed from an incremental standpoint for 2010 or viewed cumulatively, it appears that THESL is not recovering sufficient revenues from its suite metered customers to offset the increased capital and OM&A expenditures associated with the installation and operation of the suite meters." [46]

THESL and two of the intervenors, CCC and VECC, argue that the evidence is insufficient and cannot be the basis for a conclusion that there is cross-subsidization.

THESL submitted that the Working Group had failed to produce any meaningful evidence to support its proposition that THESL is cross-subsidizing its suite metered customers. THESL also stated that the proper treatment of cost allocation for smart sub-metering requires a generic proceeding. THESL cited both the Board's May 15, 2008 Decision on its previous cost of service application and the Decision of the Majority Panel of the Board in its July 27, 2009 Decision in respect of Powerstream's 2009 cost-of-service rates, in which the Working Group raised similar issues. THESL stated that in

[44] *Notice of Intention to Make an Order for Compliance against Toronto Hydro – Electric System Limited,* EB-2009-0308 (January 27, 2010).
[45] Powerstream Inc. EB-2008-0244, July 27, 2009, pp.14-15
[46] Prefiled Evidence of the Smart Sub-Metering Working Group, Filed December 15, 2009, p 10

both these decisions, the Board agreed to take a generic approach in addressing this matter as it was an issue of Board policy.

THESL observed that the issue raised by the Working Group is such an important public policy issue that the Ontario legislature is currently debating Bill 235, its proposed *Energy Consumer Protection Act, 2009*[47] to directly address specific concerns related to the regulation of suite metering activities. THESL submitted that the Board should maintain its existing position that the issues raised by Working Group are best addressed in a generic proceeding involving the appropriate stakeholders once the relevant framework is established by the Ministry, particularly given the policy uncertainties raised by the Bill 235 debate.

The Working Group argued that a generic proceeding was not necessary. This was because Mr. Hanser's evidence had confirmed the existence of a cross subsidy.

The Working Group submitted that THESL had failed to demonstrate that its rates for suite metering were just and reasonable. THESL had done nothing to demonstrate that its suite metering program was not being cross-subsidized by other ratepayers. Under the circumstances, the Working Group argued the Board had three options. First, it should exclude the program unless and until a fully allocated cost (FAC) study had been completed that justified associated costs and convincingly demonstrated that there is no cross subsidization. Second, the Board could decide that THESL's suite metering program be transferred to an affiliate, thereby removing the need to address the cross-subsidization issue. Thirdly, THESL could be required to create a new rate class for smart metering services to residential multi-unit buildings.

The Working Group submitted that the appropriate remedy in this case would be for the Board to adopt the first of these options that is to exclude the program unless and until a FAC study has been completed. The Working Group further suggested that this could be combined with its proposed second remedy and that THESL could continue with its Suite Metering Program, but through an affiliate.

VECC, CCC and SEC also made submissions on this matter.

[47] Government Bill 235, An Act to enable the Energy Consumer Protection Act, 2009 and to amend other acts is currently in Second Reading and has been referred to Committee for review and consideration.

VECC stated that on the basis of the evidence filed, the issue as to whether THESL's cost allocation is appropriate with respect to suite metered customers cannot be answered. Where the Working Group evidence is concerned, VECC argued that it could at most conclude that there may be a cross subsidy. VECC submitted that this evidence was flawed because Mr. Hanser was double counting some costs which he had attributed to smart metering. VECC expressed the belief that there was a real possibility that the suite metered customer may in fact be over contributing, relative to the costs that would be appropriately assigned to them in a cost allocation study, rather than under contributing as posited by the Working Group and, as such, the Board should not act until a cost allocation study is undertaken.

CCC agreed with VECC that insufficient evidence had been produced in this proceeding to conclude that there was a cross subsidy and submitted that the Board should approve THESL's metering costs. CCC submitted that the Board should hold a generic proceeding following the finalization of the new rules regarding suite metering that will be determined through the new *Energy Consumer Protection Act, 2009.*

SEC submitted that smart sub-metering is contestable and the applicant should not be allowed to use its preferred status to influence the market for this contestable service.

In its reply submission, THESL responded that the remedies proposed by the Working Group, which it characterized as one-sided and self-serving, were clearly designed for no other purpose than the economic advantage of its members. THESL noted that in the *PowerStream* decision of July 27, 2009[48] the Board had already rejected the concept of the separate subsidiary. With respect to the proposal for a separate rate class, THESL responded this should only be considered in the context of an extensive generic cost allocation proceeding.

**Board Findings**

This is not the first time that this issue has come before the Board. It was first addressed in THESL's last rate case[49] and then in the Powerstream case one year later[50]. In both cases the Board deferred the matter to a generic proceeding. This is now

[48] *Decision with Reasons*, EB-2008-0294 (July 27, 2009).
[49] *Decision of the Board,* EB-2007-0680 (May 15, 2008).
[50] *Decision with Reasons*, EB-2008-0294 (July 27, 2009).

the third time that the matter has arisen in a rate case. For the reasons that follow the Board finds that THESL should undertake a cost allocation study related to its provision of suite metering services. The study shall include an analysis of the implications of creating and maintaining a separate rate class for those customers served in this manner. The Board is of the opinion that the potential for cross-subsidization is ongoing and that there may be merit in the establishment of a separate rate class for multi unit-residential customers that are served directly by THESL through its suite metering provision. This should be filed as part of the next cost of service application, which THESL intends to file later this year, but in any event no later than six months from the date of this Decision.

The Board is not convinced the evidence of Mr. Hanser established cross-subsidization of suite metering by residential customers, as argued by the Working Group. In making this finding, the Board is mindful of the limitations of Mr. Hanser's study, as acknowledged by Mr. Hanser himself, given the Working Group's inability to obtain from THESL all the information he considered relevant to his study. Accordingly, the Board will not adopt the remedy proposed by the Working Group and require THESL to exclude the suite metering program until a cost allocation study has been completed. However, the Board has been convinced that there is a pressing need for THESL to file such a cost allocation study in order for this matter to be properly addressed.

The regulatory structure of the *Energy Consumer Protection Act, 2009*[51] ("ECPA"), which is currently before the Legislature, leads the Board to conclude that the Government wishes to promote a competitive market to encourage the rapid expansion of this service. Restrictive conditions of service are one possible barrier to that development. The Board has addressed this issue in the Toronto Compliance proceeding. Potential cross-subsidization is another issue the Board must consider.

The Board believes that continual delay is not useful. It is significant that the Board recently completed an extensive compliance proceeding against THESL[52] which, amongst other things, required THESL to alter its Conditions of Service and to make it clear that condominium developers and unit-holders are able to choose between

[51] Government Bill 235, An Act to enable the Energy Consumer Protection Act, 2009 and to amend other acts.
[52] *Notice of Intention to Make an Order for Compliance against Toronto Hydro – Electric System Limited*, EB-2009-0308 (January 27, 2010).

THESL as a suite metering supplier and a smart sub-metering regime that includes competing suppliers for these services. In other words, the Board has clearly stated that a utility does not hold a monopoly for individual metering in multi-unit buildings. It would defeat the purpose of that exercise to allow cross-subsidization, (if it exists), to exert a negative impact on competition.

The Board also notes that this case concerns the City of Toronto which likely accounts for the majority of condominiums in Ontario. Therefore, a cost allocation study examining the specifics of THESL's experience is warranted. The Board also believes that the results of a study completed by THESL will be informative to other utilities and to the Board as to how to advance utility rate structures on a province wide scale in response to the introduction of this competitive sub-metering business.

In summary, no judgment can be made regarding cross-subsidization without a proper cost allocation study. That information will be important regardless of how the policy initiatives relating to this activity unfold in this province.

The Board accepts that the Government intended this to be a competitive market and believed that competition would result in better service quality at lower prices. The clear objective of this legislative framework is to create a regime that will promote the rapid introduction of this technology. If individual condo units are responsible for the costs of the electricity they consume, greater conservation would inevitably result than under the current situation where there is absolutely no incentive to conserve because total costs are simply divided between all unit-holders.

**EB-2009-0139**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998,* S.O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010

## ARGUMENT OF THE SMART SUB-METERING WORKING GROUP ("SSMWG")

### Introduction

1. The Smart Sub-metering Working Group ("SSMWG") consists of the following licensed smart sub-metering ("SSM") providers: Carma Industries Inc., Enbridge Electric Connections Inc., Hydro Connection Inc., Intellimeter Canada Inc., Provident Energy Management Inc., Stratacon Inc., and Wyse Meter Solutions.[1] The SSMWG represent the majority of private-sector non-electricity distribution company owned SSM providers. As the Ontario Energy Board ("OEB" or the "Board") has noted previously on a number of occasions, SSM providers operate in a competitive market and compete not only amongst themselves, but also with electric local distribution companies (LDCs) and affiliates of LDCs that are licensed SSM providers.[2]

2. Toronto Hydro-Electric System Limited ("THESL") has itself admitted that suite metering in condominiums is competitive, as noted in the Project Plan it prepared for its Suite Metering Program in EB-2007-0680, which is filed in this proceeding as part of SSMWG Interrogatory No. 15. Specifically, THESL states:

---

[1] Of the 19 licensed SSM providers, 8 are owned by or affiliated with the SSMWG, several are affiliated with electric LDCs, and one operates under licence with Toronto Hydro

[2] The Board has said SSM is a competitive market in its Notice of Proposal to Amend a Code and Notice of Proposal to Issue a New Code (EB-2007-0772), January 8, 2008, p. 3; Notice of Revised Proposal to Amend a Code and Notice of Revised Proposal to Issue a New Code (EB-2007-0772), June 10, 2008, p. 4; and OEB Majority and Minority Decisions with Reasons, July 27, 2009, EB-2008-0244 (PowerStream), pps. 5 and 11, respectively; OEB Decision and Order, January 27, 2010 (Compliance Proceeding) EB-2009-0308, pps. 13, 16

noted in a response to Vice Chair Kaiser, collecting the $160 for "plain vanilla" meters in rates would not solve the competition problem.[46]

**Relief Sought**

41. As explained herein, THESL has failed to provide sufficient information to approve the inclusion of its Suite Metering Program in rates for 2010.

42. There are a number of options available to the Board to address THESL's failure to justify the inclusion in rates of the costs of its Suite Metering Program.

43. The SSMWG submits that the appropriate remedy in this case is to exclude the program unless and until a Fully Allocated Cost (FAC) Study has been completed that justifies associated costs and convincingly demonstrates to the Board that there is no cross subsidization. As noted, THESL could still satisfy its regulatory obligations, including Section 5.1.9 of the DSC, by offering to install the much less expensive traditional smart meters, and including all associated costs in determining whether a capital contribution is required from a developer, building owner or condominium corporation.

44. Another option is for the Board to simply order that THESL's Suite Metering Program be transferred to an affiliate, thereby removing the need to address the cross-subsidization issue.

(a) This could be combined with the SSMWG's suggested remedy, so that THESL could continue with the Suite Metering Program through an affiliate, in compliance with the Affiliate Relationships Code, until such time as THESL demonstrates that the program is not being cross-subsidized.

(b) THESL itself could continue to offer to install the traditional socket-type smart meter but would be required to include the $160 cost in its economic evaluation undertaken for new developments. This is consistent with the suggestion made by Mr. Hanser that one answer to the competition and cross-subsidy problem would be to allow THESL to offer two levels of service: one with the $160 smart

---

[46] Tr. 3, p. 123, lines 1-126

meters, and the other with the $400 to $700 meters. Mr. Hanser further noted the importance of allocating costs to such service on a fully allocated basis.[47]

45. A third option to address the cross-subsidization issue is to require THESL to create a residential multi-unit high rise sub-rate class. The rates for service to these customers would be determined on the basis of the fully allocated costs of service. That would require the creation and approval of FAC study. This approach is appropriate for several reasons.

(a) As noted by Mr. Hanser, because suite metering is a different kind of service that requires a significant capital investment, the creation of a separate rate class might be advisable.[48]

(b) In addition, because suite metering is a competitive business activity, it is appropriate that the amounts charged by a regulated participant in that field should not be subsidized by that participant's other activities. Otherwise, the other players in that market will not be able to fairly compete. The Board has recognized the importance of a competitive suite metering industry in two recent decisions, stating:

> "Installation of smart meters in individual condominium units offers significant gains in energy conservation. The Legislature has signalled the advantage of competing suppliers and specifically allowed regulated utilities to engage in the service directly. Implicit in this direction is a belief that competing suppliers will promote price competition and improve service quality. It is also significant that this is a new market with new competitors. It would be unfortunate (and contrary to the public interest) if competitors were disadvantaged or even eliminated in the early days of this market..."[49]

(c) Finally, such an approach would protect other THESL customers by ensuring that they are not being required to fund THESL's competitive suite metering activities through the rates that they pay.

---

[47] Tr. 3, pp. 123/124
[48] Tr. 3, p. 121
[49] 2009 PowerStream rate proceeding decision – EB-2008-0244, dated July 27, 2009, at pp. 16-17. This passage is reproduced and relied upon in the January 27, 2010 Decision in the Compliance Proceeding against THESL (EB-2009-0308), at pp. 12-14.

46. The SSMWG submits that a generic hearing, as suggested by THESL in its argument, is not required for several reasons. First, the evidence adduced by the SSMWG confirms the existence of a cross-subsidy and anti-competitive conduct. This should be addressed immediately. Second, as THESL admitted, its service territory is by far the largest new and conversions market, and therefore the most important.[50] Many LDCs have no comparable program to THESL because they have few or no multi-unit high rises. Third, any concern about cross-subsidies occurring in other service territories can be addressed by the Board signalling in this proceeding that it will, in future, require every LDC that seeks approval for a suite metering program to first file a FAC study which identifies all of the costs to install, operate, maintain the systems, and provide service to the suite metered customers.

**All of which is respectfully submitted.**

"Dennis O'Leary"

Dated: February 19, 2010

Dennis M. O'Leary
Aird & Berlis LLP
Counsel for the SSMWG

[50] Tr. 3, p. 8, lines 5 - 18

Toronto Hydro-Electric System Limited
EB-2010-0142
Exhibit L1
Tab 3
Schedule 1
Filed: 2010 Dec 1
(27 pages)

# *COST OF SERVICE STUDY <u>FOR INDIVIDUALLY METERED SUITES IN MULTI-UNIT RESIDENTIAL BUILDINGS</u>*

***Submitted to Toronto Hydro-Electric System Limited November 29, 2010***

BDR

*BDR*
*34 King Street East*
*Suite 1000*
*Toronto, ON M5C 2X8*
*416-214-4848 phone*
*416-214-1643 fax*

## Table of Contents

# 1 REPORT SUMMARY

This study was undertaken by BDR NorthAmerica Inc., at the request of the Toronto Hydro-Electric System Limited ("THESL"). THESL was ordered by the OEB to file a Cost of Service study to determine the separate revenues and costs for suite-metered residential customers, who are presently served by THESL as part of its residential customer class.

BDR has now performed the study, based on 2009 cost and operating data, and 2009 consumption data from billing records. In the absence of a definition instituted by THESL and/or approved by the OEB, the suite-metered sub-class ("SMSC") was defined for purposes of the study as consisting of units in multi-unit residential buildings with more than six residential units, which are separately metered by THESL. The customers meeting this definition were identified from THESL's customer database, and their annual consumptions determined. From this population of nearly 120,000 customers, a random sample of 597 customers were selected and their hourly load shapes aggregated to produce a load shape representative of the SMSC load shape. Once applied to the consumption of the SMSC population and weather normalized, this load shape was subtracted from the weather normalized residential load shape to create a load shape for residential customers other than the SMSC. The demand statistics required for allocation of demand-related costs were computed based on these load shapes.

The OEB-approved cost allocation methodology and model were used in this study to make the results easily comparable with the study filed by THESL for its 2009 test year and for an updated base case.

The consulting team then reviewed each type of cost with THESL management or supervisory staff in various departments to determine what differences existed between SMSC and other residential customers in terms of either the assets or the business processes that serve them. It was determined that few significant differences exist in the area of customer service, but that there are significant differences in the assets providing services to the two types of residential customers.

The SMSC customers attract significantly higher costs for meter capital, meter-related expenses and meter reading, but it was discovered that these costs are more than offset by significantly lower costs associated with secondary infrastructure. Large multi-unit buildings are most frequently served at primary voltage and therefore have no secondary infrastructure. Wiring within the building is the property of the building owner or condominium corporation, and is not a cost to THESL. Based on information from THESL management, a determination was made of the number of smaller multi-unit residential buildings served through secondary infrastructure, and on that basis an estimate was made of the cost of secondary lines that should be allocated to the SMSC.

# INTERROGATORIES OF ONTARIO ENERGY BOARD STAFF

**INTERROGATORY 1:**

**Reference(s):** **Section 7 – Intended Services**

Please provide a detailed business plan for the smart sub-metering services Toronto Hydro intends to provide under the authority of this licence.

Please provide Toronto Hydro's expected customer base.

**RESPONSE:**

a) THESL has not developed a detailed business plan for smart sub-metering services, and does not intend to grow such a business organically. Substantially all of THESL suite metering activities will continue to be comprised of smart metering under the auspices of THESL's distribution licence.

THESL's requirement for a sub-metering licence stems from the Board's requirement under the Smart Sub-Metering Code at Section 3.4.1, where the Board states:

> "3.4.1 A smart sub-metering provider shall not sell, transfer, or assign a contract with a consumer to another person who is not a licensed smart sub-metering provider."

It is possible that THESL may seek to acquire the business of a smart sub-metering provider if the business were to become available for sale. However, the transaction could not be concluded without THESL being a licensed sub-meter provider. In turn, the licensing process is a protracted one and could prove to be an impediment to the conclusion of a sale to THESL of a sub-metering business if the licence application process were commenced only during the process of negotiations.

# INTERROGATORIES OF ONTARIO ENERGY BOARD STAFF

Therefore THESL seeks to acquire a sub-metering licence simply to meet the Board's code requirements were such a transaction to be pursued and not for the purpose of establishing a new sub-metering business.

b) Presently THESL does not have an estimate of its expected sub-metering customer base. While THESL will honour any customer contracts acquired as part of a transaction in which an existing sub-metering business is sold, THESL intends that any such customer accounts and/or accounts for successor customers to the premises would be converted to a smart metering configuration at the first opportunity. THESL intends to use direct communication to fully inform any acquired customers of THESL's plans and the rights and obligations of both parties.