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

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[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.