

EB-2014-0214

Wyse Meter Solutions Inc. Response

August 27, 2014

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 Wyse Meter
Solutions Inc. for a Unit Sub-Metering licence.

**Response by Wyse Meter Solutions Inc. (“Wyse”) to Submissions by Toronto
Hydro_Electric System Limited (“THESL”)**

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AND IN THE MATTER OF an application by Wyse Meter Solutions Inc. for a Unit Sub-Metering licence.

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BACKGROUND

1. On July 4, 2014, Wyse submitted an application to the Ontario Energy Board (“Board”) in accordance with s. 60(1) of the *Ontario Energy Board Act, 1998*¹ to renew the Unit Sub-Metering licence ES-2009-0134 which it has held since 2009 (the “Application”). Wyse’s Application describes the services it intends to provide under this licence renewal, and confirms that Wyse is currently providing these services under its existing license, as follows:

“Wyse will be providing full end-to-end sub-metering, billing and collection services to various types of real estate in Ontario including residential, commercial and industrial properties.”²

2. There is nothing unusual about Wyse’s Application. The licence that Wyse has and seeks to renew is the same as the “Sample Unit Sub-Metering Licence”, found on the Board’s website.³

¹ 1998, c. 15, Sched. B

² Wyse Meter’s Application for a Unit Sub-Metering Licence (June 11, 2014), p.4. Wyse’s current licence was to expire on August 12, 2014, but was extended by way of interim decision and order of the Board dated August 12, 2014, until November 11, 2014 or until the renewal application is determined.

³ See http://www.ontarioenergyboard.ca/oeb/_Documents/Licences/ES_sample_licence.pdf

3. Nevertheless, in response to the Board's Notice of Application and Written Hearing dated July 18, 2014, THESL filed a late request for intervenor status on August 8, 2014, which was denied by the Board by way of Procedural Order No. 1 dated August 13, 2014. However, the Board in Procedural Order No. 1 did extend the deadline for THESL to file written submissions in relation to the Application.

4. On August 20, 2014, THESL filed written submissions and requested an oral hearing. Wyse submits that THESL's submissions are improper and an abuse of process. In particular:

- a. this Application is not a proper means for determination of the issues sought to be raised by THESL, and THESL has provided no evidence or submissions relevant to the matters properly before the Board;
- b. THESL is using this Application as a platform to advance its own commercial interests, and thereby improperly expanding the scope and implications of this standard license application; and
- c. specifically, by using this Application as a forum to attempt to limit Board-authorized competition in the sub-metering business, THESL improperly seeks to turn this Application into a broad policy hearing designed to seek reconsideration of, or to collaterally attack, this Board's prior determinations regarding the proper scope of licensed sub-metering activities, generally.

THE PROPER ISSUE BEFORE THE BOARD

5. The only issue properly before the Board in this Application is Wyse's suitability to be granted a Unit Sub-Metering licence.

6. The Board's role upon receiving an application for a licence is to ensure that granting the application is in the public interest in terms of the ability of the applicant to hold the licence for which it applied, in terms of financial and technical viability and conduct. As this Board has stated in the context of licensing electricity generators:

"In the exercise of its licensing function, the Board's practice is to review the licence application based on the applicant's ability to own and/or operate a generation facility and to participate reliably in the Ontario energy market, i.e. the Board assesses the applicant's financial viability, technical capability and conduct."⁴

⁴ EB-2014-0027/EB-2014-0033/EB-2014-0054 (Decision and Order dated May 1, 2014) at p. 3. See also

These same considerations also apply to licence applications for Unit Sub-Metering.⁵

7. As such, the only proper issues before the Board relate to Wyse's ability to continue to act as a Unit Sub-Metering provider, as it has under the terms of its current licence.

8. THESL has provided no evidence to challenge Wyse's ability to act as a Unit Sub-Metering provider.

9. The submissions by THESL do not raise any issues within the scope of matters properly considered by the Board in deciding applications for Unit Sub-Metering licences. Therefore, THESL's submissions are irrelevant to Wyse's Application, and should be dismissed, and this Application should be granted without the need for any hearing or further proceedings.

THIS APPLICATION IS NOT ABOUT THESL'S BROADER INTERESTS IN ONTARIO'S ELECTRICITY MARKET

10. THESL's submissions not only fail to outline any legitimate interest in Wyse's Application, ~~they also make it clear that the basis for THESL's submissions is its own interest~~ "in the regulation of electricity rates in Ontario". However, this Application is not about the regulation of electricity rates in Ontario.

11. THESL asserts, without foundation, an interest in "all decisions of the [Board] that may affect its operation in the electricity market." Again, however, this Application is not about THESL's broader operations in the electricity market.

12. THESL makes submissions about the proper interpretation of provisions of the *Energy Consumer Protection Act* and Regulations made thereunder, that relate to suite-metering.⁶ Again, however, this Application is not about the proper interpretation of these statutory provisions

13. THESL's focus on these interests in the present Application is problematic, because they have the potential to involve the interests of ratepayers, and of other licensed suite meter providers, and possibly many other stakeholders. There is no factual record before the Board in this proceeding which would allow for the determination of any such issues.

14. Wyse submits that the assertion of these broad interests simply has no place in a simple license application by a single, established service provider.

⁵ See e.g. EB-2013-0299 (Decision and Order on Appeal dated December 23, 2013)

⁶ *Energy Consumer Protection Act, 2010*, S.O. 2010, C. 8; Ontario Regulation 389/10.

THESL'S POSITION IN THIS APPLICATION IS AN IMPROPER COLLATERAL ATTACK

15. Even if the Board were to consider the broader issues raised by THESL on this Application, THESL's submissions would have to be rejected in any event. Contrary to THESL's contention, Wyse has not "demanded that THESL remove its meters" from any building. Rather, Wyse has, with appropriate authorization, requested that THESL install bulk meters.

16. Wyse submits that, by refusing these requests, THESL has acted improperly, and contrary to this Board's prior determinations regarding the proper scope of licensed sub-metering activities, in a transparent attempt to limit competition in the sub-metering sector. Its submissions in this Application improperly seek a reconsideration of, or mount a collateral attack upon, those prior determinations by this Board.

17. The legal right and authority to require that THESL provide a bulk-meter connection is explicitly recognized in THESL's own Board-approved Conditions of Service.⁷ Those Conditions of Service necessarily and properly reflect the law as interpreted by this Board.⁸ Whether or not THESL chooses to remove its individual meters once a bulk meter is installed is its own business.

18. THESL's claim that the law surrounding sub-metering is unclear is also without merit, given the Board's existing decisions and the governing legislation. This Board has already determined the key issues sought to be raised, specifically in a proceeding involving THESL and all other interested stakeholders. In *Re Toronto Hydro-Electric System Limited*, the Board indicated as follows:

[49] In the PowerStream decision, this Board specifically addressed the question of whether the sub-metering market was contestable. The Board concluded that the scheme of the legislation leaves no doubt:

An existing condominium wishing to be smart metered or a developer of a new condominium building has the choice of choosing suite metering with PowerStream or sub-metering with another company, such as one of the SSMWG member companies. So, the metering market is contestable. The fact that PowerStream is allowed to carry [on] this

⁷ Toronto Hydro-Electric System Limited, Conditions of Service (Revision #13, Effective May 1, 2014), section 2.3.7.1.1

⁸ *Energy Consumer Protection Act, 2010*, S.O. 2010, C. 8, s. 33; Ontario Regulation 389/10, s. 38(1); *Re Toronto Hydro-Electric System Limited*, EB-2009-0308 (January 27, 2010)

activity as part of its distribution business does not take away from the fact that the metering of condominium units is a contestable market.⁹

The minority decision in that case went on to state:

While the Legislation states that utilities can carry out these activities through the regulated entity, there is no indication that the Legislature intended to promote or condone anti-competitive markets with a large number of supplies in order to best promote the rapid introduction of this technology. Put differently, utilities were allowed to enter the market directly to promote competition, not lessen it.

[...]

This is an important service. Installation of smart meters in individual condominium units offers significant gains in energy conservation. The Legislature has signaled 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...¹⁰

[50] In summary, it is clear that Toronto Hydro is refusing to provide certain types of connections. In this Board's view, that refusal is not justified by the statute or any associated codes or regulations. In fact, in our view the statute prohibits it.¹¹

19. In summary, the Board has already determined the key issues THESL now seeks (improperly) to raise in this Application, in broader proceedings with all interested parties and public interest stakeholders represented. The Board's comments with respect to competition in the sub-metering market apply equally to all multi-unit residential buildings and condominiums, and the legal principles governing these markets are the same.

⁹ Majority Decision dated July 27, 2009, EB-2008-0244 at p.5

¹⁰ Minority Decision dated July 27, 2009, EB-2008-0244 at pp. 12 to 14.

¹¹ Re Toronto Hydro-Electric System Limited, EB-2009-0308 (January 27, 2010) at paras. 49-50.

20. Although THESL attempts to cloak its concerns in the language of consumer interests, it is in fact trying to prejudice customers by limiting the competitive market to suit its own selfish interests.

21. Finally, to the extent that any issues regarding the regulation of the sub-metering market remain unclear, which Wyse denies, there is no factual record before the Board in this proceeding which would allow the Board to properly adjudicate the matter.

CONCLUSION

22. In conclusion, this is not the appropriate proceeding in which the issues raised by THESL should be determined. The only proper issue before the Board in this Application is Wyse's ability to act as a Unit Sub-Metering provider, which THESL does not contest. Any other issues can properly await another proceeding in which they are properly raised.

23. As such, Wyse requests that the Board renew its Unit Sub-Metering license without further hearing or modification.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 27, 2014



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TORONTO HYDRO ELECTRIC SYSTEM
LIMITED (“THESL”)**

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