

April 13, 2018

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

via RESS and Courier

Re: Protecting Privacy of Personal Information and the Reliable Operation of the Smart Grid in Ontario; Reporting Requirements – Cyber Security Readiness Interim Certification Report (OEB File No.: EB-2016-0032)

The Coalition of Large Distributors (“CLD”)¹ has engaged actively in this consultation, in support of the development of the Ontario Cyber Security Framework (“Framework”) governing cyber risk management and mitigation, and protection of the privacy of customer information. CLD members commend the work of the Ontario Energy Board (“OEB”) and all stakeholders to finalize the Framework, and remain committed to participating in the evolution of the Framework going forward.

Notwithstanding its support for the progress achieved to date, the CLD has concerns with aspects of a recent development in this proceeding. The CLD has reviewed the correspondence dated March 29, 2018 that was sent to all licensed electricity transmitters and distributors, concerning new cyber security reporting requirements. Attached to this correspondence as Appendix A is a copy of the Interim Certification Report which transmitters and distributors will be required to complete and submit to the OEB by June 15, 2018.

The CLD’s concerns with the Interim Certification Report are both procedural and substantive in nature. In light of these concerns, the CLD is respectfully requesting that the OEB refrain from employing modified language set forth in the Interim Certification Report and instead revert to a prior version of the interim reporting language.

1. From a due process perspective, the CLD is concerned with recent modifications that have been made to the wording of several provisions in the Interim Certification Report.

The CLD observes that the wording of several provisions in the Interim Certification Report has been modified significantly, relative to prior versions of the proposed interim reporting language which the OEB presented to stakeholders during earlier stages of this consultation.

¹ The CLD consists of Alectra Utilities Corporation, Hydro One Networks, Hydro Ottawa Limited, Toronto Hydro-Electric System Limited, and Veridian Connections Inc.

More specifically, there is a substantive contrast between the wording of the provisions associated with the third and fourth boxes under the “Acknowledgement of Status” section and the predecessor versions of these provisions. These prior versions were proposed in conjunction with the following major milestones in this consultation: (1) issuance of the Notice of Proposal to Amend a Code (dated December 20, 2017); and (2) release of the *Staff Report to the Board On a Proposed Cyber Security Framework and Supporting Tools for the Electricity and Natural Gas Distributors* (dated June 1, 2017).

To facilitate comparative review, the CLD has prepared the following table which outlines the changes in wording to the provisions in question.²

Provision	Staff Report ³	Notice of Proposal to Amend a Code ⁴	Interim Certification Report
Box 3	I have prepared an interim plan to certify and confirm I will furnish an annual certification of compliance.	I have prepared a plan to be able to certify my cyber security capability against the Framework.	I have assessed my current cyber security posture against the Framework and developed a plan to address risks that exceed the company’s risk tolerance.
Box 4	I have taken steps to plan and implement compliance with Cyber Security framework requirements that apply.	I have taken steps to incorporate information sharing actions in order to increase knowledge of threats and solutions, and share lessons learned.	I am implementing a plan to improve my current cyber security readiness to address risks that exceed the company’s risk tolerance.

Stakeholders had the opportunity to comment on the interim reporting language that was proposed in both the Staff Report and the Notice of Proposal to Amend a Code. This ensured that the OEB had the benefit of input from those entities which would be subject to these requirements, for purposes of undertaking any subsequent refinements to the language that the Board may have deemed to be appropriate. In both of its submissions to the OEB, the CLD expressed support for the interim reporting language. Indeed, a review of the public comments filed in this consultation indicates that there was a robust level of stakeholder support expressed for the versions of the interim reporting requirements that were previously shared by the OEB.

² To confirm, the CLD has no concerns with the provisions associated with the first and second boxes under the “Acknowledgement of Status” section in the Interim Certification Report. The CLD views these provisions as being substantively and directionally consistent with the prior versions shared by the OEB.

³ The proposed wording for interim reporting was included as Appendix E in the June 2017 Staff Report.

⁴ The proposed wording for interim reporting was included as Attachment D in the December 2017 Notice of Proposal to Amend a Code.

However, when it finalized its policy action in this consultation on March 15, 2018, the OEB did not convey an intent to modify the wording of the interim reporting.⁵ Moreover, the correspondence from the OEB dated March 29, 2018 does not clarify the basis for the modified language.

As a result, interim reporting requirements have now been adopted that have not been informed by stakeholder input, and affected stakeholders do not have any insight into the rationale for these requirements.

The CLD therefore believes that the modification of the wording of these provisions, as set forth in the Interim Certification Report, presents concerns from a due process perspective.

2. The CLD is concerned by the substantive modifications to the scope of the interim reporting requirements, as the actions required under the modified language are much more rigorous and prescriptive than those previously contemplated.

As illustrated in the table above, the scope of the recent modifications to the interim reporting language extends much further and deeper than prior versions of the language. The interim reporting language presented in June 2017 and December 2017 included attestations that a utility was taking steps to begin implementing the Framework and to achieve certification in the future.

Conversely, the modified language in the Interim Certification Report will compel a utility to proceed directly to completing its risk assessment, and then prepare and initiate implementation of a plan to address its risks (including those which exceed the company's risk tolerance) – all within a three-month timeframe. An argument can be made that the modified language will have the practical effect of obligating a utility to achieve *de facto* certification with the Framework 10 months prior to the deadline for initial self-certification (April 30, 2019).

The CLD believes that the modified interim reporting language does not comport with the earlier expectations fostered by the OEB regarding the types of activities for which an interim status report would be sought. Among the key statements from the OEB which the CLD relied upon to inform our understanding of the anticipated scope of action that would be required for interim reporting purposes were the following:

- “To provide the OEB assurance that the Framework is being worked on, OEB staff is recommending that industry provide an initial report within three (3) months after the framework is issued acknowledging that it:
 - has reviewed and understood the framework;
 - has taken steps to plan and implement compliance;

⁵ See: Notice of Amendments to Codes, *Amendments to the Transmission System Code and the Distribution System Code to Address Cyber Security for Electricity Transmitters and Distributors* (March 15, 2018).

- has assigned a team to assess risk and their current capability in implementing the framework objectives to achieve such compliance; and
 - confirmation they will furnish an annual certification of compliance.”⁶
- “The OEB is proposing that an initial report is submitted to the OEB three (3) months after these Code amendments come into force. The OEB believes this initial report will ensure all licensed transmitters have reviewed and understood the Framework, and are taking steps to assess their cyber security readiness against the Framework.”⁷
 - “The OEB is of the view that cyber security is too critical, given the evolving technology in the sector, to delay implementation of reporting. An interim (3 month) progress report is critical to ensure that all have reviewed and understood the Framework, and are taking steps to assess their cyber security readiness.”⁸

The aforementioned statements convey a clear intent for the interim report to serve as a means for utilities to provide assurance to the OEB that they have taken action to review the Framework, understand their obligations under it, and begin the heavy-lifting associated with implementation. The CLD is not aware of any prior policy statement in the record of this consultation which suggested that the OEB expected utilities to have undertaken actions such as completion of a risk assessment and preparation of an implementation plan prior to the interim reporting deadline.

The CLD is therefore concerned by the substantive changes to the scope of the interim reporting requirements, as reflected in the modified language in the Interim Certification Report.

3. The CLD is concerned that it may be difficult for some utilities to complete the actions required under the modified interim reporting language prior to the June 15, 2018 deadline.

As discussed above, based upon the proposed interim reporting language and accompanying policy direction included in the Staff Report and Notice of Proposal to Amend a Code, utilities had formed a specific understanding of what actions would be required of them leading up to the interim reporting deadline. In turn, utilities had begun to inform and organize their applicable resources and personnel accordingly.

With the scope of action having now been substantively modified, the CLD is concerned that some utilities may not be able to complete the required activities prior to the June 15, 2018 deadline. The publication of the Interim Certification Report on March 29, 2018 leaves utilities with less than two and a half months to finalize necessary actions and preparations for

⁶ Staff Report, pp. 27-28.

⁷ Notice of Proposal to Amend a Code, p. 10. Following its discussion regarding planned reporting requirements for transmitters, this Notice confirmed that the same requirements would be applied to distributors (see page 11).

⁸ Notice of Amendments to Codes, p. 3.

reporting. Completion of a fulsome risk assessment and preparation of a comprehensive implementation plan are resource-intensive activities that must be planned, organized, and executed carefully and methodically. The CLD does not believe that it is reasonable to expect utilities to complete such consequential actions in a timeframe stretching just over two months, particularly when prior policy signals from the OEB had induced utilities to anticipate a set of requirements of a much different scale and character.

4. The CLD is concerned that modifications to the interim reporting form have resulted in unclear instructions for utilities to follow.

Both the Staff Report and Notice of Proposal to Amend a Code included illustrative examples of the intended form of the interim report. In addition to similarities in substance, these forms were similar in format and layout. In particular, in both versions the “Acknowledgement of Status” section included a statement which instructed the signatory to “Check all that apply” – that is, check all of the boxes corresponding to statements describing actions that the signatory has undertaken.

However, in the updated Interim Certification Report, the instruction to “Check all that apply” has been removed, with only the “check one” instruction remaining at the top of the page. As a result, it is unclear to the CLD whether the OEB expects utilities to certify against all of the four statements or only a single statement.

5. For the reasons stated above, the CLD respectfully requests that the OEB refrain from employing the modified language set forth in the Interim Certification Report and instead revert to a prior version of the interim reporting language.

The CLD believes that the arguments and discussion outlined above provide reasonable grounds for reversion to an earlier iteration of the proposed interim reporting language. Of the two previous versions, the CLD recommends adoption of the language proposed in the Staff Report, as this language is clearer and is fully consistent with the OEB’s articulation of its policy direction to date.

In closing, the CLD appreciates the OEB’s consideration of the concerns and requests outlined in this letter, and respectfully requests that the Board proceed in a manner consistent with the comments set forth herein. Once again, the CLD wishes to affirm its robust support for the extensive work undertaken by the OEB to facilitate development of a sector-wide cyber security Framework, and to underscore its commitment to ongoing collaboration with the Board and other stakeholders in relation to the Framework’s evolution and strengthening.

If you have any questions with respect to the above, please contact the undersigned.

Sincerely,

Original signed by Gregory Van Dusen

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