The Sub-Metering Council of Ontario

The Hon. Glenn Thibeault MPP
Minister of Energy
Hearst Block 4th Floor
900 Bay St
Toronto, ON
M7A 2E1

RE: Proposed amendments to O. Reg. 16/08 made under the Ontario Energy Board Act, 1998 (OEBA).
Proposal Number: 17-ENE010

Dear Minister:

Thank you for the opportunity to provide comments to the Ministry's proposed amendments to O. Reg. 16/08 made under the Ontario Energy Board Act, 1998 (OEBA).

The Sub-Metering Council of Ontario (SCO)[1] is the voice of Ontario's leading sub-metering providers, who are at the forefront of creating a culture of energy conservation across our Province. For over a decade, Ontario's sub-metering leaders have demonstrated the value of sub-metering for both electricity consumers, and Ontario's electricity system, by capturing the energy conservation potential in the Province's multi-residential sector.

Overall, the SCO supports a focused, efficient and effective effort that would expand OEB oversight over Ontario's growing sub-metering industry, introduce stronger consumer protection, and ensure a competitive market. We have had the opportunity to speak with Ministry officials, before and immediately after the LTEP announcement, to determine how the industry can support the government with expanded OEB oversight. However, based on how the consultation document and the regulation are currently drafted, we are much less clear on the objectives the Province has regarding unit sub-metering in Ontario.

Oversight and regulation must be appropriate for a highly competitive market; that is, one more akin to the model used by the CRTC in the telecommunications space. Expanding the OEB's decades old mechanisms used to regulate monopolies would

[1] The Sub-Metering Council of Ontario includes the following companies: Enercare Connections, Priority Billing Solutions, Carma Billing Services and Provident Energy Management.

be unworkable, ineffective, destroy Ontario's highly competitive sub-metering industry, and ultimately lead to higher costs for electricity consumers. Unfortunately, the proposed regulations suggest that such is the likely outcome. We outline a better path forward that would accomplish the Ministry's goals, while ensuring the sub-metering industry and its conservation benefits continue to grow.

Our submission is set forth as follows:

1. The Benefits of Sub-Metering in Ontario;
2. Ontario's Multi-Residential Sector;
3. Expanded Oversight Should be Driven by Guiding Principles;
4. Response to Regulation Proposals; and
5. A Path Forward.

1. The Benefits of Sub-Metering in Ontario

As the Ministry is well aware, most multi-residential buildings (rental apartments and condominiums) are bulk-metered, with electricity use captured in rent or condominium fees. The introduction of sub-metering in Ontario has allowed these residents to control their own energy use and thus benefit from energy conservation (i.e., contribute to Ontario's green culture and personally save money), and participate in the Province's numerous energy consumer initiatives (i.e., Ontario Electricity Support Program (OESP), Fair Hydro Plan, etc).

The benefits of sub-metering include:

Fairness: residents only pay for the commodities consumed, and do not subsidize other wasteful residents in the building through higher rent or condominium fees;

Energy conservation: when sub-metering is introduced in a bulk-metered multi-residential building, the total average electricity use is reduced by approximately 40%.[2] There are few measures available today that can reduce electricity use to this degree without the associated costs of major infrastructure upgrades;

Innovation: unit sub-metering providers (USMPs) are able to sub-meter existing buildings, often offering innovative metering solutions that would otherwise not exist but for USMPs;

Multiple commodities: USMPs often provide multiple metering services, including measuring other commodities such as water, gas, and thermal energy. The additional benefits include cost effectiveness (one bill vs. multiple), and in some cases, USMPs are the only entities that can provide this service (e.g., water and thermal);

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[2] Navigant (2016). "Evaluation of the Impact of Sub-metering on Multi-Residential Electricity Consumption and the Potential Economic and Environmental Impact on Ontario."

Access to consumer programs: sub-metering creates the opportunity for residents to participate in and benefit from numerous consumer programs. Low-income sub-metering customers have access to government programs such as the Low-income Energy Assistance Program (LEAP) and the OESP, and all sub-metering customers have access to the Fair Hydro Plan (and its predecessor programs);

Competitive pricing: USMPs compete with each other as well as with LDC-owned suite-metering companies. In each market, USMPs typically have lower rates than their LDC-owned competitors.

2. Ontario's Multi-Residential Sector

As USMPs provide services in the multi-residential sector, it should be noted that there are some distinct differences between this space and other residential/small business customers served by LDCs.

First, there is a significantly higher move-in/move-out rate (turnover), which increases the volume of customer interactions.

Second, the multi-residential sector has a different income strata and age distribution, compared to the traditional LDC residential customer.

As a result, the level of bad debt and bad debt recovery (once a customer moves) are unique to the multi-residential sector and sub-metering industry. These unique features mean that this market cannot be directly compared to the LDC market, whether for the purposes of consumer complaints or as a model for regulation.

3. Expanded Oversight Should be Driven by Guiding Principles

While we support and applaud initiatives that enhance consumer protection, provide transparency and are fair, oversight and regulation must be appropriate and designed for a highly competitive market. Our industry is very different from the LDC monopolies and oversight and regulation must be thoughtful and reflective of this unique industry. Expanding the existing regulatory and oversight structure for LDC monopolies is not appropriate; a better model would be one more akin to how the CRTC regulates and oversees competition among telecommunication carriers. That model is designed to ensure customer protection (e.g., good service levels and access to services) and allows for companies to compete with one another for customers.

As you may know, the purpose of LDC rate regulation by the OEB is to provide a proxy for competitive market based price setting, as LDCs are monopoly service providers. Essentially, the OEB represents the customer, or customer class in negotiating rates with the LDC. USMP services are negotiated in an openly competitive marketplace and master agreements reflect negotiated service metrics and pricing. To date this has resulted in rates that are typically in-line or lower than LDC suite-metering rates.

As well, we must emphasize that we cannot simply fold in the cost of additional regulation and oversight into our rates. As explored further below (please see Section 4.1), USMPs often have long-term fixed master agreements with building owners/condominium corporations. We do not have the ability to simply pass on these costs to our customer base.

Overall, we are supportive of expanded OEB oversight and regulation, but it must be guided by the following principles:

- *Appropriate for a competitive industry.* Oversight and regulation must be appropriate for a highly competitive market. Expanding the OEB mechanisms used to regulate monopolies would be unworkable, ineffective, destroy Ontario's highly competitive sub-metering industry and ultimately lead to higher costs for electricity consumers. Unfortunately, the proposed regulations suggest that such is the likely outcome. We outline a path forward in Section 5 that would accomplish the Ministry's goals;
- *Focus on consumers.* Oversight should be focused on consumer needs/interactions, service standards, etc.;
- *Cost-effective and efficient.* OEB oversight must be cost-effective, efficient and focused;
- *Industry consultation.* Developing an appropriate OEB oversight model will be achieved if the Ministry makes a greater effort to consult with the sub-metering industry.

These principles should guide the development and framework for OEB oversight. They will ensure stronger consumer protection, a competitive market, and allow Ontario's sub-metering industry and its conservation benefits to grow.

4. Response to Proposals

1. Cost Recovery proposal

A focused, efficient and effective strategy that would expand OEB oversight, protect consumers, and ensure a competitive market, ***would not*** incur additional costs, if it is implemented thoughtfully.

Imposing regulatory costs on the industry would be punitive, since this revenue cannot be reflected in sub-metering rates. Unlike LDCs where the cost of OEB oversight is simply passed down to consumers, USMPs have long-term master agreements that are, in the vast majority of cases, fixed and do not permit the ability of cost recovery. As such, USMP fees are not re-set periodically on a cost-of-service basis and the ability of USMPs to increase their own fees is either very limited or prohibited by these master agreements. Even in cases where USMPs can increase their fees, they must be sensitive as to how an increase would impact its customers.

As a result, USMPs do not have the same ability as LDCs to increase their fees to compensate for the costs of new regulatory oversight and by imposing such costs, the Ministry would be placing an undue and potentially ruinous burden on USMPs.

2. Expanding OEB Oversight via 78(2.3), (3), (6), (9)

Using the framework of existing OEB legislation, which has been designed over decades to regulate monopolies, the Ministry is considering amendments to four sections to expand oversight of USMPs. The sections are briefly outlined below:

78 (2.3): would mean that USMPs would not be able to charge for sub-metering services, except in accordance with an Order of the Board;

78 (3): would give the OEB authority to approve or fix rates for unit sub-metering or unit smart-sub-metering, for classes of consumers (as per regulations), and for different circumstances (as per regulations);

78 (6): clarifies the OEB's power respecting rates, which would mean that the OEB can include conditions, classifications or practices, or rules respecting the calculation of rates for USMPs;

78 (9): establishes that the burden of whether rates are "just and reasonable" on USMPs, in proceedings that are either commenced by the OEB or by request of the Minister.

As has been stated above, the SCO supports a focused, efficient and effective effort that would expand OEB oversight over Ontario's growing sub-metering industry.

However, the proposals contained in the consultation document demonstrate that this effort has not been well thought out. Candidly, we are very surprised and dismayed that the Ministry would ever consider issuing such a document without engaging with the industry to identify issues, opportunities or concerns. After all, the industry is *already* regulated by the OEB and has had regular interaction with the Ministry for over a decade.

The SCO's key concerns with the proposals as drafted include:

1. **The potential elimination of the sub-metering industry in Ontario.** As 78 (2.3) is currently worded, it would prohibit USMPs from billing in accordance with its current contracts, unless a rate order was issued by the OEB. Without such a rate order, this sub-section would effectively shut down the entire sub-metering industry in Ontario if it came into force. If it is the

Ministry's intention to enact these provisions "just in case" they are needed, it will need to address this significant issue to avoid this scenario.

2. **Lack of understanding that sub-metering rates cannot be determined for classes of consumers or for different circumstances.** USMPs must set their rates on a building-by-building basis. A rate structure based on classes of consumers is not feasible as USMPs operate across a number of municipalities in Ontario and in new construction and in retro-fitted buildings, each of which are unique. USMPs set their rates based upon a number of factors, which include:
    a. length of the master agreement (typically 5 to 15 years);
    b. complexity of the sub-metering solution (e.g., age and location of existing mechanical/electrical infrastructure, number of units, shared facilities, commercial spaces, etc.);
    c. number of units in the building;
    d. responsibility for bad debt;
    e. responsibility for payment of the bulk bill;
    f. number of services (e.g. electricity, water, gas and/or thermal metering);
    g. competitive factors, such as negotiations with the property manager/developer/condominium corporation, the prevailing LDC rate in the municipality, as well as services and rates offered by other USMPs.

    The requirement to regulate sub-metering rates for a class of consumers or for different circumstances is clearly designed for a monopolistic LDC and is not appropriate for USMPs. Unlike LDCs, USMPs work in a highly competitive industry and, as such, rates are very competitive and negotiated with the building in fixed long-term contracts. In addition, attempting to establish whether rates are "just and reasonable" does not make sense for a competitive industry, as all rates are "just and reasonable" due to their reflection of market conditions and the factors outlined above.

3. **Adverse impacts on the competitive nature of the sub-metering industry.** Beyond price, USMPs compete for business in various ways, often on the same street. Some providers bundle services; others may guarantee paying the bulk bill on behalf of the condominium corporation/property owner; some offer ancillary services, such as energy management. In short, there are several ways that USMPs compete for business and distinguish their offerings, which makes a uniform one-size fits all regulatory framework unworkable.

    Crucially, sub-metering pricing is always building specific and unique to that property's characteristics (as noted above). Rates cannot be limited to a sector, area or particular customer class.

A system whereby the OEB sets rates is unworkable in a highly competitive market, and customers would lose the benefits of this market competition. It is worthwhile noting that for a vast majority of properties USMP rates are lower than the corresponding LDC-owned suite-metering rates.

4. **Inherent assumption that sub-metering rates are unfair or in need of oversight.** As we have stated repeatedly, sub-metering in Ontario is a highly-competitive industry that has grown over the last decade in response to a provincial desire to promote energy conservation. Indeed, studies have shown that sub-metering has been very successful as a conservation program with average electricity usage being reduced by up to 40%.[3]

   However, if there are concerns about the rates being charged to achieve this success, the only real question is how do the rates compare between USMPs and LDC-owned suite-metering companies? Unsurprisingly, LDC-owned suite-metering providers consistently have higher rates than USMPs. In other words, if the assumption is that USMP rates are too high, and in the vast majority of cases our rates are in fact lower than LDC rates, then clearly the assumption is wrong.

Unless the Province's intention is to end the competitive market for sub-metering, or force customers to pay more in sub-metering fees, we are unclear why the Ministry is considering such a haphazard approach to regulation. It is akin to "placing a square peg in a round hole"; the current proposals are unworkable because the proposed draft is attempting to place a highly competitive industry into the historical legislative framework used to regulate uncompetitive LDCs.

5. A Path Forward

A key foundational step should be a workshop with the Ministry, OEB and USMPs (January 2018) to explore appropriate models for regulation of this competitive industry. We suggest including representatives of the CRTC and other regulators, to share options for regulation and enhanced consumer protection that are appropriate for this industry.

The principles outlined in section 3 (above) should guide the work that the Ministry, OEB and USMPs undertake to create an appropriate oversight system.

Additional discussions should involve the participation of the SCO and other USMPs and include the following:

Information sharing: in a manner that is appropriate for a competitive industry;

[3] Navigant (2016). "Evaluation of the Impact of Sub-metering on Multi-Residential Electricity Consumption and the Potential Economic and Environmental Impact on Ontario."

OESP pilot: exploring the possibility of a pilot co-led with USMPs to expand the number of OESP recipients in the multi-residential sector;

Scoping and objectives: a discussion with the Ministry, OEB, and USMPs, on potential goals and objectives. For example, we are aware that the Ministry is interested in implementing a "no disconnections policy" for sub-metering customers during the winter. This should be a topic of detailed discussion to determine what is possible, and the best mechanism for implementation;

Working groups: creation of one or more working groups to explore areas for more detailed work, such as enhanced consumer protection mechanisms, developing an efficient oversight model for USMPs (similar to the CRTC approach in the telecommunication sector), the benefits of sub-metering and energy conservation impact, etc.;

In summary, while we strongly disagree with the proposed approach in the draft regulations, the Sub-Metering Council of Ontario would like to work with the Ministry and the OEB, to develop an effective oversight and regulatory system for Ontario's sub-metering industry. We believe by working together, and through *effective* consultation, we can develop a system that strengthens consumer protection, preserves a competitive market that will continue to benefit consumers, and ensures Ontario's sub-metering industry and the many benefits it brings, including conservation, continues to grow.

Sincerely,

The Sub-Metering Council of Ontario

C: Mr. Serge Imbrogno, Deputy Minister
Ms. Sunita Chander, Director (Acting), Distribution and Agency Policy Branch
Mr. Matt Whittington, Director of Policy, Office of the Minister