LEGISLATION AND REGULATIONS COMMITTEE
BRIEFING NOTE

Energy
Unit Sub-Meter Providers

Cabinet July 26, 2017	LRC December 11, 2017	Cabinet December 11, 2017	In force April 1, 2018

Summary of Proposal

This proposal is consistent with Cabinet direction [TBC]

Context for Decision:

Unit sub-meter providers (USMPs) are privately owned companies that provide metering services to multi-unit residential buildings so that individual unit residents can be billed for electricity based on their individual consumption levels. USMPs are licensed by the Ontario Energy Board (OEB) and must conduct their business in compliance with the OEB's Unit Sub-Metering Code but they are not rate regulated. Therefore, they can charge customers in multi-unit residential buildings an administration charge that is not reviewed nor approved by the OEB.

Through its Long-Term Energy Plan (LTEP) submission, Cabinet directed the Ministry of Energy (ENERGY) to increase consumer protection by proclaiming provisions in the Ontario Energy Board Act, 1998 (OEBA) to increase the Ontario Energy Board's (OEB) regulatory authority over USMPs.

To fulfill this direction, the ministry is proposing for approval:

1. An Order in Council (OIC) to proclaim sections of the Energy Consumer Protection Act, 2010 (ECPA) which amends sections of the OEBA to bring them into force; and,
2. Amending the Assessment of Expenses and Expenditures Regulation (O. Reg. 16/08) under the OEBA.

Why does Ontario need these changes? Why now?

On July 26, 2017, Cabinet directed ENERGY to prepare a 2017 LTEP with an objective of ensuring affordable and accessible energy. The 2017 LTEP was released October 26, 2017 and included a commitment to enhance consumer protection by giving the OEB increased regulatory authority over USMPs.

USMPs are currently licensed by the OEB but not regulated. Consumers have told both the Province and the OEB that they would like to know more about what they are being asked to pay for by USMPs. In addition, Market participants including Local Distribution Companies (LDCs), transmitters, electricity retailers and gas marketers are currently assessed OEB costs, but USMPs are not. However, USMPs are a driver of OEB work as the OEB must allocate resources for licensing USMPs and to handle consumer complaints made to the OEB with respect to USMPs. Accordingly, ENERGY proposes to add USMPs as an entity to which the OEB can assess costs, consistent with how other consumers and market participants are treated.

How will this proposal impact Ontario?

The regulatory amendment and the proclamation of sections in the ECPA amending the OEBA would provide increased protection to Ontarians who are serviced by USMPs. By allowing the OEB to rate regulate USMPs, the process would be transparent and open to consumers. Many customers now do not know the details of the amount that is charged by the USMPs. Consumers serviced by USMPs (326,000 approximately) may or may not see an increase to their bills with this proclamation and regulatory amendment, as it is anticipated that USMPs would experience added costs due to the regulatory oversight of the OEB. However, the ministry advises that the impacts on electricity bills are anticipated to be minor if any. The OEB may also experience increased costs associated with enforcement of the new provisions, as USMPs transition to a new regulatory framework.

Commented [HT1]: Please provide an estimate of the number of consumers serviced by USMPs

Commented [DC2]: Agree this is what is anticipated but ultimately it will depend on decisions made by OEB.

What is the expected cost to government?

The ministry advises that the proposal does not have any direct cost to government.

What are the key steps to deliver this proposal?

- December 2017- March 2018, OEB to work internally and with USMPs to prepare for the deployment of the new regulatory framework.
- April 1 2018, sections of the ECPA come into force amending sections of the OEBA. Amendments to the Assessment of Expenses and Expenditures Regulation under the OEBA would also come into force. This coincides with the beginning of the OEB's fiscal year would allow for sufficient time for the OEB to stakeholder where necessary and update codes and guidelines for the USMPs.

How will the changes be communicated?

- In late October 2017, ENERGY posted the proposal to the Regulatory Registry for 27 days. The posting received 7 comments. Local distributors and their Association supported the changes to the regulation, and the one customer advocate organization (Advocacy Centre for Tenants of Ontario) also supported the changes.

Commented [HT3]: Please advise. Any major issues raised? CD – see notes

The USMPs support the expanded oversight of the OEB, but caution that the regulation needs to be implemented appropriately for the competitive market.

- Further activities to be directed by the OEB as needed in the lead up to April 1, 2018.

- Ministry communications will be reactive and will include Q&As, key messages and a issues management plan.

Commented [HT4]: Correct?

Commented [DC5]: CO Comms informed us there was no Comms Snapshot required for this item.

Terms you need to know

- **Local Distribution Companies (LDCs) –** Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.) LDCs recover their costs through distribution rates. LDCs are licensed to serve a specific geographic area by the Ontario Energy Board (OEB). An LDC must receive Ontario Energy Board approval to charge a distribution rate.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to participate in quasi-judicial proceedings and formal stakeholder consultations.
- **Unit sub-meter providers (USMPs) –** Privately owned companies that provide metering services to multi-unit residential buildings so that individual unit residents can be billed for electricity based on their individual consumption levels.

Cabinet Office Analysis

Introduction:

The proposal is consistent with government direction and implements commitments made under the 2017 Long-Term Energy Plan (LTEP).

Proposal:

Proclamation OIC

The ministry is proposing an OIC, which would name April 1, 2018 as the date upon which Sections 38(13), (14), (16), and (17) of the *Energy Consumer Protection Act, 2010* (ECPA) come into force. These sections amend the Ontario Energy Board Act, 1998 (OEBA) as follows:

- Section 38 (13) amends section 78(2.3) of the OEBA to prohibit USMPs from charging for unit sub-metering without an order from the OEB;

- Section 38(14) amends section 78(3) of the OEBA to authorize the OEB to make orders approving or fixing rates for unit sub-metering;

- Section 38(16) amends section 78(6)(c) of the OEBA to authorize the OEB to include conditions, classifications or practices to a rate order issued to a USMP;

- Section 38(17) amends section 78(9) of the OEBA to allow the OEB of its own motion or at the request of the Minister to commence a proceeding to determine if rates are reasonable.

There are two provisions of the ECPA which also amend the OEBA that the Ministry does not intend to proclaim at this time as they are either considered to be unnecessary or take actions currently no longer contemplated. The ministry has indicated that it intends to seek amendments to the OEBA at a later date to repeal the un-proclaimed amendments.

Assessment of Expenses and Expenditures Regulation (O. Reg. 16/08)

To support the additional work that the OEB would undertake as a result of the proposed strengthened regulatory authority over USMPS, ENERGY also proposes to add USMPs as entities that are liable to pay OEB cost assessments under section 26 of the OEBA. The OEB recovers the majority of its regulatory expenses and expenditures from entities that it regulates, and the proposed amendment would allow the OEB to assess costs related to the oversight of the USMPs and invoice them accordingly. The amendments to the regulation also provide greater clarity to the frequency and timing of assessments.

Linkages:

- *LTEP* – Ontario released the 2017 LTEP on October 26, 2017. The LTEP identifies needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP is intended to balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

- Other Consumer Protection Initiatives – On October 5, 2017, the government introduced the Strengthening Protection for Ontario Consumers Act, 2017 which is an omnibus bill including a number of initiatives to:

  - Modernize the travel sales industry under the Travel Industry Act, 2002;

  - Provide additional protections for consumers regarding potential conflicts of interest in multiple representation scenarios (double-ending) in the real estate sector under the Real Estate and Business Brokers Act, 2002; and

  - Enhance and reform the Tarion Warranty Corporation's administration of new home warranties, and regulation of builders and vendors under the Protection for Owners and Purchasers of New Homes Act, 2017 and New Home Construction Licensing Act.

  In addition, effective January 1, 2018:

  - Regulatory amendments under the Consumer Protection Act, 2002 (CPA) and the Protecting Rewards Points Act (Consumer Protection Amendment), 2016, will protect consumers from the expiry of rewards points based on the passage of time alone, with certain exceptions; and,

- Regulatory amendments under the Payday Loans Act, 2008 (PLA), CPA, and OICs to proclaim sections of the Putting Consumers First Act 2017 (PCFA) and of the City of Toronto Act, 2006 (COTA) will enhance consumer protections for financially vulnerable consumers of payday loans and cheque cashing services and provide municipalities more tools to regulate this industry as appropriate.

– *Other Jurisdictions* – USMPs operate in other provinces in Canada, including British Columbia and Alberta, but are not rate regulated.

Stakeholder response:

– LDCs (2) and the EDA (1)– support the regulation

– USMPs (3 (one of which is a coalition of 4 USMPs)) – support the expanded oversight of the OEB, but suggest that a fulsome stakeholder process be completed to explore appropriate models for regulation of the competitive market.

– Advocacy Centre for Tenants of Ontario – support the regulation

Commented [HT6]: Energy please advise

Risks:

Costs

Commented [HT7]: This is the main risk that I see. Any other that the ministry thinks should be raised?

There is a risk that the increased regulatory oversight will increase costs for the OEB and the USMPs and that this will have a corresponding impact on rates. This is potentially sensitive as the government has made it a priority to cut electricity costs through Ontario's Fair Hydro Plan. Any actual impact on rates will depend on the extent of the regulatory activities implemented and deemed prudent by the OEB, and the ministry advises that bill impacts, if any, are expected to be negligible. The ministry also advises that the increased oversight by the OEB and the assessment of costs to the USMPs would be offset by the consumer protection that would benefit all consumers that interact with USMPs.

Transition

Depending on the approach taken by the OEB, there could be transitional issues that could create uncertainty with regards to contractual relationships between USMPs and their client buildings. The Ministry would expect the OEB to take steps to address this uncertainty.