

CANADIAN CONDOMINIUM INSTITUTE
Toronto and Area Chapter

2175 Sheppard Avenue East, Suite 310
North York, Ontario M2J 1W8

Telephone: (416) 491-6216
Fax: (416) 491-1670

November 17, 2006

Ministry of Energy
Write2us@energy.gov.on.ca

**Re: Smart Meters in Condominiums
Recommendations Re Proposed Draft Regulations**

CCI

These Recommendations pertaining to smart meters and smart sub-metering programs in condominiums are provided to the Ministry of Energy on behalf of the CCI-Toronto Chapter, the CCI-Golden Horseshoe Chapter and the CCI-Huron Chapter of the Canadian Condominium Institute. Those three Chapters represent approximately 200,000 voting adults living in our member condominium corporations. We expect that other Chapters of the Canadian Condominium Institute in Ontario (such as the Windsor, Ottawa/Kingston and Thunder Bay Chapters), as well as all of the condominium corporations they represent throughout Ontario would concur with these Recommendations. The Canadian Condominium Institute Chapters speak for the condominium community at large, which we estimate consists of more than 1.4 million adults living in more than 7,800 condominiums registered in Ontario.

ACMO

Moreover, these Recommendations are provided on behalf of the Association of Condominium Managers of Ontario (“ACMO”) representing Ontario’s leading condominium management companies and Registered Condominium Managers who manage a substantial majority of condominium corporations and their hundreds of thousands of individual units throughout Ontario.

Support for Energy Conservation

CCI-Ontario and ACMO support the concepts of energy management and conservation which form the basis for the *Energy Conservation Leadership Act, 2006*, and its Regulations. During the past 5 – 10 years, condominium managers and boards of directors of numerous condominium corporations have undertaken a wide range of electricity, gas and water energy conservation programs, typically with significant energy savings and rapid pay-back periods with respect to the cost of purchasing and installing energy efficiency equipment, when not precluded from doing so by the *Condominium Act, 1998*.

Recommendations

This letter addresses our proposed recommendation with respect to the following four concerns:

1. Solutions where condominium unit residents would incur excessive costs and minimal energy consumption savings, in situations where smart metering does not provide any significant benefits;
2. The need to characterize individual consumption energy fees as lienable common expenses;
3. Avoidance of owner-warfare by confirming boards of directors’ power to implement smart

metering and other energy-saving solutions as “maintenance” and “major repairs and replacements”, rather than as “alterations”;

4. Clarify that condominium corporations are exempt from licensing.

SMART METER SOLUTIONS

Smart Meter Concerns

Recognizing the forthcoming Ontario Electrical Consumption Program will be based on flexible, time-of-use pricing for electricity, we support installation of smart sub-meters in condominiums where practical, and where energy consumption can thereby be significantly or measurably reduced without exorbitant cost. The following comments are intended to achieve those objectives, despite the problems that will be caused by smart meters in some situations.

Impact of Smart Metering on Condominium Corporations

Under separate cover, we are forwarding a copy of the Discussion Paper to the Standing Committee on Justice Policy pertaining to the Impact of Smart Metering on Condominium Corporations which was prepared by The Canadian Condominium Institute and ACMO and presented by Andrew J. Roman on February 6, 2006. That Discussion Paper identified some specific problems which make installation of smart meters a serious concern in certain circumstances. The comments set out in this letter presume that you are aware of those concerns, which have been so ably expressed to Ministry officials by our representative, Mr. John Oakes. We are also forwarding a copy of our letter dated February 23, 2006, addressed the Honourable Donna Canfield, providing additional information about related legal concerns having regard to problems caused by the *Condominium Act, 1998*.

Uncontrollable Central Systems

Perhaps you are not aware that in multi-residential unit buildings having a central heating and/or air conditioning system, sub-metering will, on average, tend to roughly double the cost of the consumption of electricity in a unit, while permitting only an insignificant capability for residents to reduce their actual electrical consumption. Boilers in such buildings are typically gas-fueled and are very seldom fueled by electricity. Both boilers and chillers usually function at 80%-90% capacity. Where residents adjust thermostats to more energy-efficient settings, there will be no measurable effect, because the chillers and boilers will continue to function at high capacity. Even when chillers and boilers operate at a lower capacity, they will function inefficiently to consume unneeded electricity. Even if a unit owner can control an in-suite heating/air conditioning fan, the fan consumes extremely little electricity and can only minimally reduce electricity consumption in the unit. Air conditioning constitutes a significant portion of the overall consumption of electricity and other energy within condominium units during the summer season, but where central systems cannot effectively be affected by the unit owners, smart meters provide no incentive or ability to reduce energy consumption.

Controllable Heat and Air Conditioning

Smart meters make more sense in those condominiums, particularly townhouses, where the owners have their own self-contained and controllable electricity-fueled heating and air conditioning systems, or where heat pumps are used, or in the few cases where electric baseboard heating is applicable; in such cases, there can be a real incentive to raise air conditioning temperatures in the summer and reduce heating in the winter season.

More Than One Smart Meter/Unit

In some cases, individual units may be wired by two or three separate electrical circuits, each requiring its own separate smart meter, with a consequential increase in cost to install and read additional smart meters.

In-Series Wired Units

In some cases, a group of units are all wired together in series to one central electrical source, rather than by means of separate parallel wiring circuits. We understand that smart meters will not be able to measure individual consumption of electricity in these situations.

Discretionary Control of Consumption

The resident of a unit can, to a certain extent, control electrical consumption with respect to lighting, clothes dryers and washers, dishwashers, computers and other appliances and devices, but the proportion of such electrical consumption in the average unit would be less than 50% of the total electricity consumed in the unit when consumption of gas for heating and electricity for air conditioning is factored back in. For example, in a typical unit, the discretionary portion of the electricity controllable by the resident may cost in the range of \$15 - \$30 per month. Smart meters can be expected to cost in excess of \$400 per smart meter (but many units will require two or three separate smart meters for the different electrical systems servicing the unit). Motion detecting devices and digital display devices (as discussed below) can help reduce discretionary electricity controllable by residents in their units.

Motion Detector Devices

Motion detector devices are currently in use in the United States and other countries, which result in heat or air conditioning being activated when a person moves in a room over a defined period of time. Such motion detecting thermostats reduce heat (or raise the air conditioning temperature) by several degrees in the event of non-motion after an hour or two, and then by several more degrees after several more hours of non-motion, with significant reductions in heat or increases in air conditioned temperature after a number of hours of non-motion. In other words, electricity consumption is automatically reduced when the resident is away and can be significantly reduced for longer periods of time, such as in the absence of weekenders or snowbirds. Motion detector devices can be useful in situations where energy consumption will actually be reduced.

Digital Display Devices

An alternate type of device has a digital display, which displays the real time, current energy consumption cost (a consumption-cost device). Residents can see the actual reduction in energy costs that occur by reducing discretionary electricity costs, such as by turning out a lamp. Residents thereby have a strong visual incentive to reduce consumption.

Excessive Cost

The cost of installation and administration of the smart metering system, devices, computers and software (including the cost of meter readings, record keeping, notices to owners, collections and other administrative factors, as well as extensive and expensive renovations to re-wire, retrofit and repair premises) can be guesstimated overall to amount to roughly \$18 - \$20 per unit per month (approximately \$360 per year). These smart metering costs can be expected to cost far more than the potential savings of even the most frugal consumer who turn out lights and only use their

dishwashers, clothes dryers, washing machines and other facilities on weekends or in the wee small hours. In summary, it is widely expected within the condominium industry that the cost of installing and monthly administration of smart meters will far exceed any potential discretionary savings, while actual reduction of electricity consumption can be expected to be minimal.

Winners/Losers

Smart metering will create inequities and conflicts within condominium buildings. Common expenses are typically paid on the basis of proportionate shares allocated to each unit, typically based upon each unit's square footage, as set out in Schedule "D" of most declarations. Large units inhabited by two residents in a building having a central heating/air conditioning system will consume very little more discretionary electricity than two residents of a small unit in the same building. The result of installing smart meters will be to remove the cost of electricity from a corporation's common expenses where the larger unit paid a higher percentage of the costs than the smaller unit – by reason of the proportionate shares set out in the declaration. However with meters, the smaller unit will now pay a disproportionately higher amount for electricity consumption than the owners of the larger unit. In other words, the wealthier penthouse owner wins and the fixed-income senior or the low-income owner (who was only marginally able to afford a smaller condominium unit) loses.

Avoid Discord

As unit owners in multi-residential unit buildings realize that the smart metering initiative is not a meaningful conservation measure and that they are paying an additional \$13 - \$20 per month to support something that really is not reducing electricity consumption, they will express their anger in the media and at the polling booth against an ill-conceived plan unless alternative energy-saving devices can be implemented. The large number of condominium unit owners in Ontario who represent a large voting block must be taken seriously. The number of condominium units is increasing rapidly (at the rate of approximately 40% of all new construction).

Win/Win

Our recommendation is to promote smart meters in cases where they should inherently be effective, but provide alternative solutions by means of other devices in those circumstances where the impact of smart meters upon consumption will be minimal and the cost will be excessive. That recommendation should minimize voter anger, while allowing any cost-effective, energy consumption-reducing solutions. Smart meters should not be required where there is a shared central heating and/or air conditioning system, or where consumption of energy is beyond the unit owner's personal control, or where more than one smart meter per unit is required, or where more than one unit is wired in series. In reality, overcoming the existing provisions of the *Condominium Act, 1998*, which thwart building-wide energy efficiency solutions will be far more productive for those condominiums where smart metering programs are counter-productive.

Recommended Regulations

We therefore recommend that the following Section 3 (1) (c) be inserted into the proposed draft Consultation Regulation pertaining to Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums:

“3 (1) (c) In cases where:

- (i) a shared heating and/or air conditioning system services two or more units; or

- (ii) consumption of energy is beyond the unit resident or owner's personal control; or
- (iii) more than one smart meter or smart sub-meter would otherwise be required with respect to more than one separate electrical circuit within the unit; or
- (iv) a smart meter will be unable to measure individual consumption of electricity where a group of units are wired together in series to a shared electrical source,

the board of directors of a condominium corporation may instead elect to install within such units of a multi-unit building an alternate energy-saving device (such as a motion detector device, or digital display device which displays the actual current energy consumption cost governing consumption of energy) or such other energy-saving device as may be designated by Regulation.”

COMMON EXPENSE AND LIEN COLLECTION SOLUTION

Other Solutions

The same Regulation pertaining to Installation of Smart Meters and Smart Sub-Metering Systems in Condominiums should address other crucial problems applicable to smart metering, or installation of other energy savings devices within condominiums. Section 53.17 of the *Energy Conservation Leadership Act, 2006*, failed to circumvent some of worst problems caused by s. 3 (4) of that Act and the *Condominium Act, 1998*.

Super-Priority Lien

One of the most crucial provisions applicable to collection of condominium common expenses is the super-priority condo lien conferred by s. 85 and 86 of the *Condominium Act, 1998*. Neither the *Energy Conservation Leadership Act, 2006* nor the Proposed Draft Regulations address the need to adopt the normal solution of the super-priority condo lien to ensure collection of common expenses which must be borne by the condominium corporation for such expenses as smart metering installation and administration costs.

Characterize As Common Expenses

Since the electricity is delivered through the condominium corporation's main meter and there is an obligation on behalf of the condominium corporation to pay the LDC for the entire cost of all metered electricity consumed by all of its units, the Regulation should characterize all individual consumption fees and smart meter-related fees as common expenses, even though unit owners will be remitting payment contrary to their statutory and declaration-required proportionate shares, as set out in Schedule “D” of the declaration.

Lien Right Avoids Wasted Fees

If the smart metering costs and individual user pay fees are not specifically characterized in the Regulations as common expenses (which are lienable under s. 85 and 86 of the *Condominium Act, 1998*), then unit owners will waste approximately \$1 per month each on account of unnecessary phantom collection costs charged by hydro administrators when the standard lien super-priority does not exist. Although s. 53.17 of the *Energy Conservation Leadership Act, 2006* recognizes that its provisions supersede the requirements of the *Condominium Act* and a condominium corporation's declaration and by-laws, there must be a Regulation which characterizes individual consumption fees as common expenses (to overcome case law to the contrary).

Problems To Amend Declarations

Many condominium corporations have wanted to adopt energy savings programs and encourage energy savings, but were unable to do so because their declarations characterize hydro consumption as a shared common expense payable by the owners in accordance with their Proportionate Shares. Most condominium corporations have been unable to amend their declarations, because s. 107 of the *Condominium Act, 1998* contains a mandatory requirement that the written consent of 90% of all unit owners must be obtained when it is intended to amend unit owners' Proportionate Shares of common expenses, as referred to in an existing declaration.

Regulation Solution

Thus, a Regulation is required in order to carry out the intent of s. 53.17 of the *Energy Conservation Leadership Act, 2006*, and to overcome the practically impossible criteria established by the *Condominium Act, 1998*, which has thwarted many conservation measures and cost Ontario condominium unit owners millions of dollars as an impediment to energy efficiency. The following provision should be added to the Proposed Draft Consultation Regulation as paragraph (5):

“(5) Any expense incurred by a condominium corporation or its unit owners arising with respect to any aspect of the smart-metering or smart sub-metering program (including any individual consumption expense designated by the condominium corporation’s board of directors) shall constitute a common expense of the condominium corporation collectible as such by the condominium corporation or its agent, in accordance with s. 85 and 86 of the *Condominium Act, 1998*, as amended, and the declaration and by-laws of each condominium corporation are hereby amended accordingly.”

Confirm Directors’ Powers

It is necessary to empower boards of directors to decide which portion of the smart-metering program expenses should be allocated as individual consumption expenses, since those criteria will vary in different buildings. Such decisions should fall within the purview of the board of directors, as is the case with all other budgeted common expenses of a corporation, as confirmed in each condominium corporation’s general by-law and s. 27 of the *Condominium Act, 1998*.

CONFIRM BOARD’S POWER TO MAKE “ALTERATIONS”

Renovations Not Characterized as Alterations

It can be predicted that the smart metering program will be resisted by a number of unit owners who will attempt to vote down any renovations to the common elements required to implement a smart metering program. To preclude arguments by disgruntled unit owners that a substantial alteration has occurred pursuant to s. 97 (4) – (6) of the *Condominium Act, 1998*, or that notice must be given to the owners (pursuant to s. 97 (3) - subject to their rights of requisition to overthrow the smart-metering program), a Regulation should preclude owner-warfare by specifically stating:

“(6) The acquisition and installation of smart meters and smart sub-metering systems, equipment, technology and associated equipment, system and technologies within a condominium corporation’s common elements, assets or units and any applicable renovation, maintenance, repair, addition, alteration or improvement to the common elements, units, assets or services of the condominium corporation shall be undertaken in accordance with

the condominium corporation’s maintenance and repair obligations as a major repair and replacement expense or as an operating expense as determined by its board of directors, notwithstanding any addition, alteration, improvement or change to the common elements, assets or services of the condominium corporation made with respect to such smart-metering program.”

As you may be aware, many conflicts have arisen within condominium corporations as to whether unit owners or directors are empowered to make such decisions, as reflected in a number of court cases. It is essential to characterize the smart metering program as a “maintenance obligation” in order to avoid the complexity of all of the “alterations” disputes. Moreover, the capital costs of acquiring and installing smart meters and renovating the premises can be expected to give rise to substantial costs at some corporations least able to afford such additional expenditures. It can be expected that the number of requisition meetings to remove directors will increase when boards raise annual budgeted expenses on account of smart metering-initiatives or as they are forced to levy special assessments. Those financial pressures can be alleviated to the extent the cost of acquisition and installation of smart-metering equipment, devices and systems and the cost of required renovations are paid from its existing reserve fund.

EXEMPT CONDOMINIUMS AS LICENSEES

Licensing

At the present time, we cannot tell whether s. 1 (2) 1. and 2. of the Licensing Sub-Metering Proposed Draft Consultation Regulation apply to require licensing of individual condominium corporations who install or operate smart sub-metering systems, equipment and technology. If that is the case, yet one more burdensome and costly layer of administration will be imposed upon condominium corporations, LDC’s and the Ontario Energy Board. Please reword the Licensing Regulation and confirm that individual condominium corporations are exempted from being licensed.

Contacts

We would be pleased to discuss any of these provisions in greater detail. Our lead on this project has been John Oakes (416-510-8900 joakes@brookfieldresidential.com). Our Government Relations Representative is Steve Moran (905-897-7724 steve.moran@sympatico.ca). Our legal advisor is J. Robert Gardiner (416-363-2614 x. 226 bob.gardiner@gmalaw.ca)

Thank you for the opportunity to submit these Recommendations.

Yours truly

**CANADIAN CONDOMINIUM
INSTITUTE**



Per: Janice Pynn, R.C.M., ARP, ACCI, FCCI
President

**ASSOCIATION OF CONDOMINIUM
MANAGERS OF ONTARIO**



Per: Harold S. Cipin, M.Sc., Hons., B.A., R.C.M.
President

cc Rosalyn Lawrence, Assistant Deputy Minister
Ministry of Energy

Marion Fraser, Senior Policy Advisor
Office of the Ministry of Energy

Aaron Dobbin, Special Assistant, Energy & Economic Policy
Office of the Premier

Justin Rangooni, Senior Policy Advisor
Office of the Minister of Government Services

M:\Irene\DATA\ABC\CCI\Bill 21\Ministry Brief Submetering nov 17 06.doc