

January 18, 2019

Michael Helfinger
Intergovernmental Policy Coordination Unit
Ministry of Economic Development, Job Creation and Trade
900 Bay St., 7th floor, Hearst Block
Toronto, Ontario M6H 4L1

Dear Mr. Helfinger,

Re: Proposal, Environmental Registry of Ontario, 013-4293 - Schedule 4, of Bill 66,
Restoring Ontario's Competitiveness Act, 2018

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) to express our concerns regarding the impacts on low-income tenants of the proposed amendments contained in Schedule 4 of Bill 66 to the **Ontario Energy Board Act, 1998**. These changes would remove the provisions that currently give the Ontario Energy Board (OEB) rate regulation authority over unit sub-meter providers (USMPs). We recommend that this Schedule not be enacted and the OEB continue with its consultation on the regulation of USMP rates, fees and charges in order to keep the cost of electricity down.

ACTO is a community legal clinic, funded by Legal Aid Ontario, with a province-wide mandate to provide legal assistance to low-income tenants and people who are homeless. ACTO is also a founding member of the Low-Income Energy Network (LIEN) and continues to play an important role in this organization.

The government's media release announcing the introduction of Bill 66 indicated that repealing the Board's authority in Schedule 4 "...would reduce the regulatory burden on USMPs and save them an estimated \$1.3 million per year" and "would also reduce a barrier to investment by giving investors greater confidence in the competitiveness of this market". However, there was no mention of how this repeal would impact the customers of USMPs. ACTO believes this is a significant omission in view of the ongoing affordable housing crisis for low-income renters in our province. We believe that it will mean higher electricity costs for them.

Ontario has the highest proportion in Canada of renter households paying over 30% of income on housing, including utilities. One out of five renter households in Ontario spends 50% of their income on rent, placing them at risk of homelessness.

Persons on social assistance, single mothers, elderly women, visible minorities, immigrants and persons with disabilities are all over-presented in the population of low-income tenants. These vulnerable households, in particular, can be disproportionately hurt by sub-metering and rising energy costs.

The Ontario Electricity Support Program (OESP) benefit – in place since January 1, 2016 – was introduced to help mitigate the impact of rising electricity costs on low-income households. However, there is a lack of data on how effective the OESP is proving to be in assisting low-income tenants who are sub-metered in paying their bills and avoiding arrears and disconnection of service.

Having utilities (i.e. electricity, water) included in the monthly rent provides tenants with some degree of certainty with respect to expected costs in order to make crucial household budget decisions. It is a fundamental and valuable term in residential rental contracts. Transferring the responsibility for paying for electricity from the landlord to the tenant can contribute to the housing affordability crisis in Ontario for low-income tenants who struggle to pay for other basic necessities such as food, clothing, transportation and medicine. Taking away OEB oversight with respect to rate regulation in this area threatens to increase costs to tenants even more.

When the provincial government announced in April 2004 that its energy conservation plan included the installation of Smart Meters into “every home by 2010”, it was unclear if this initiative would also include installing these meters in multi-residential buildings (rental and condominium). In most of these buildings, electricity service was billed through a single bulk meter and the customer/master consumer who paid the local distribution company was the property owner or condominium corporation.

In fact, the ***Energy Conservation Responsibility Act, 2005*** prohibited the installation of suite meters in multi-residential rental buildings as of November 3, 2005, unless legally authorized. Despite this prohibition, unit sub-metering providers continued to install suite meters in multi-residential rental buildings until the Ontario Energy Board took action.

The Board issued a compliance bulletin on March 24, 2009, asking that this illegal installation of Smart Meters in rental units cease or they would take enforcement action. A Board Order (August 13, 2009) authorized electricity sub-metering in multi-residential rental buildings following a written hearing on May 5, 2009, setting rules on how this should be done. However, the Board said it considered this Order to be an interim solution and that provincial legislation was required to govern the rollout of Smart Meters/suite meters in the multi-residential rental sector. The ***Energy Consumer Protection Act, 2010*** established a legislative and regulatory framework intended to allow for an orderly, incremental installation of electricity suite meters in the multi-residential rental sector, effective January 1, 2011.

ACTO and LIEN have continuously questioned the policy rationale behind the decision to expand the Smart Meter initiative to the multi-residential rental sector. The installation of time-of-use or sub-meters behind bulk meters does not, in and of itself, save energy. Time-of-use meters or sub-metering works no magic on heating or cooling equipment, appliances, lighting or plumbing systems in a multi-residential dwelling. The theory behind the energy conservation potential of Smart Meters or sub-metering is based on the effectiveness of price signals that would be sent to tenants. The premise is that the

tenants who do not pay for utility service directly are wasting energy and that the transfer of utility costs to tenants will foster more frugal use of energy.

Suite metering energy savings claims vary –10% to 40%, 15% to 25%, average of 25% to 33% - but, no expert, neutral study has been undertaken to date with detailed analysis of how suite metering savings are being achieved. Study should include cost-benefit analysis of suite metering vs. energy efficiency retrofits vs. energy conservation education and examine:

- the characteristics of the buildings and individual units where suite meters are installed,
- who is or is not achieving energy savings and why, and
- the impact on housing and financial security of the residents

Tenants are not well-equipped to respond to price signals because they do not have the authority to undertake in-suite energy efficiency retrofits and cannot afford to invest in energy conservation.

The incentive structure for energy conservation in the residential rental sector is significantly different than for home and condominium owners or in social housing. In the case of condominiums and single family dwellings, the owner and resident are one and the same. In the social housing sector, there is a community of interest between social housing landlords, the funder of tenant subsidies, and the tenants. In contrast, in the rental housing sector, the owner/landlord and resident are separate people with markedly different interests: the landlord's purpose is to make a profit, while the tenant seeks a safe, comfortable and affordable home.

This split incentive creates a barrier to energy efficiency in the private rental market. The concern, at its most basic level, is that if the landlord does not pay for the electricity, the landlord will have no incentive to conserve, but conversely, if the tenant does not pay, they have no incentive to conserve.

It is our position that sub-metering puts the financial incentive to conserve in the wrong place. With bulk metering, the landlord pays for electricity, and the financial incentive for conserving lies primarily with the landlord because it is the landlord who will make the decisions about any energy conservation measures undertaken at the property.

In the case of sub-metering, the incentive to conserve is shifted from the landlord to the tenant. This shift shields the landlord from the responsibility to provide and maintain an energy-efficient building and appliances for the use of tenants, and represents a lost conservation opportunity. If the goal is maximizing electricity conservation, the incentive should be left with the landlord. It is landlords, not tenants, who have control over most of the high impact and persistent sources of energy conservation, such as the upgrading of HVAC and lighting systems, weatherization, and installation of energy efficient windows.

Despite our concerns, suite metering in the multi-residential rental sector is growing. According to the OEB, as of spring 2018, 18 licensed USMPs were active in the market with:

- 371,000 individual units sub-metered (of which 262,000 units were being actually billed for their usage. The others had meters installed, but usage was not being paid to a USMP by the resident or owner)
- 3,390 individual properties were sub-metered

Disparities in knowledge and bargaining power between low-income tenants and USMPs and landlords leave them vulnerable to sharp business practices. Tenants have complained that they:

- do not understand what the relationship is between the landlord and the USMP;
- are unaware of the Unit Sub-Metering Code (USMC) and Conditions of Service documents;
- are confused about tenants' rights and landlords' responsibilities under the suite metering provisions in the RTA and ECPA and how to coordinate between these two separate legislative/regulatory regimes;
- don't know where to go to get information and/or remedies regarding meter installation, accuracy of meters; and
- have no idea whether the USMP fees and charges are "reasonable".

Tenants welcomed the announcement in the 2017 Ontario Long-Term Energy Plan that the provincial government intended to broaden the OEB's regulatory powers over USMPs so that consumer protection would be strengthened - especially with respect to oversight on rates, fees and charges. The OEB embarked on a consultation on USMP regulation that came to a sudden halt when the Minister of Energy announced the proposal to enact Schedule 4 of Bill 66.

We strongly recommend that the government not proceed with the proposed amendments in Schedule 4 of Bill 66 and that the OEB move forward with its current consultation on USMP regulation in proceeding EB-2017-0371.

Thank you for your consideration of our submissions.

Yours very truly,

Advocacy Centre for Tenants Ontario

per:



Kenneth Hale,
Director of Advocacy and Legal Services