

SUMMER 2007

# CondoNews

O F T H E G O L D E N H O R S E S H O E

## ENERGY ISSUE

AGREEMENTS & CONTRACTS

INDIVIDUAL METERING

SMART & SUB METERS

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## ARE YOU ASKING THE RIGHT QUESTIONS?

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Superior Energy

It has become increasingly apparent that condominium boards and managers alike are required to invest greater effort in order to procure an agreement that will best serve the unit holders.

With energy markets in an ever volatile state, supply agreements are becoming increasingly complex and potential pitfalls can be very costly. It is quite common for a manager to initiate the procurement process with "I need a contract and what's your price?" Price is only one item to be considered when contemplating a supply agreement. Additional focus is required to assess other important factors that can yield benefits.

### NATURAL GAS

Supply agreements should contain basic information such as: Price in cents/m<sup>3</sup>; Term – 1 to 5 years and Flow Date .

We won't delve into the best buying strategy at this point ... so apart from these 3 items, we have the best contract! Maybe not! If the condo board is a member of ACMO/CCI then a large volume discount should be factored into the price. Secondly, the natural gas supply date should *coincide* with the agency agreement. A single document should be produced which contains both term of supply and term of agency. This will protect the condo board from having the agency term expire prior to the gas supply term.....which typically will require the board to renew the agency past the gas supply term. This staggered renewal process will prove to be frustrating in the event the board does not wish to renew the natural gas supply. Agency fees for energy management should *not* be a prerequisite from the vendor. Flow date should be optimized to capture the best possible market condition and *not* a prescribed " pool" flow date.

With natural gas costs on the rise, if we reduce our consumption we will save money...right? Not always! Your supply agreement should contain *annual load balancing* which protects you from potential over/under consumption charges applied by the utility. If for example the hallway air make-up temperature is reduced at nighttime or the pool/sauna temperature is turned down, you will reduce your natural gas consumption.

However, the utility has a minimum usage requirement for certain rates and if you do not meet this minimum threshold, additional charges are assessed by the utility. Conversely, if increased comfort is requested from the membership and natural gas usage rises past the predetermined threshold, then overuse charges are applied. The solution lies with your natural gas supplier. In order to avoid potential over/under consumption charges, your natural gas supply agreement *should include full 100% annual load balancing*. This will allow you to operate your building with the full assurance that you will only pay for what you use at the contract price. Period!

In the event that you are part of a large volume group, it is imperative that your condominium is not exposed to *pool balancing charges*. This means that regardless of how accurate you are in predicting your annual volumes, you are still exposed to the entire group of buildings in your natural gas supply pool and the associated over/under consumption charges. These additional charges are usually assessed after the contract anniversary date.

**AUTOMATIC RENEWAL CLAUSES SHOULD BE DELETED.** It is in your best interest that any renewal process requires a new separate document. This further involves you in the procurement strategy and eliminates any *premium rates* assessed for the renewed term. You tend to find out about these things after the

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fact because you did not notify your vendor 90 or 120 days prior to term end.

If you then pursue cancellation of the contract, the vendor will usually invoke *early termination* charges which penalize you for the balance of all unused volumes. This clause usually dissuades you from early cancellation.

In the event that there is a downturn in market prices and your supply price is substantially higher, the Blend & Extend Option becomes an effective pricing tool which allows you to capture a discounted future supply, blend it with your existing contract price to produce a new lower price.

The above noted items usually constitute the greatest exposure to a condominium however, additional clauses contained in the Terms & Conditions should be reviewed and discussed.

### **ELECTRICITY**

Supply contracts for electricity have similarities with natural gas. The same principles apply with a few exceptions.

Electricity can be purchased or hedged based on a pre-set volume for a specific period which equates to a *block purchase*. A common purchase would be for 24 hours x 7 days per week. This purchase does not account for over consumption and potential premiums could be paid to cover the unhedged volumes. Further segmentation of the 24x7 block would be achieved with coverage for non-peak hours as well as week-end blocks. This would require extensive analysis of historic consumption patterns.

Depending on the condominium board's risk tolerance, the *full requirement* purchase would provide a hedge program which would follow your exact consumption profile and fully protect the board from over/under usage premiums.

Pool balancing charges should be investigated so as to minimize your building's exposure to penalties attributed to other facilities.

Sub-Metering is not typically an Energy Supply component. However, potential ramifications to your supply agreement should be investigated and posed to your vendor of choice.

### **SUMMARY**

We tend to get into trouble with questions that we don't ask or don't know to ask. Diligent investigation helps but don't be afraid to ask your future supplier "*What is the worst case scenario for us as a purchaser and for you as a supplier?*" Then wait for the reply! This will probably be the start of sourcing the best supply agreement for your condo!

## LEGISLATION WILL MANDATE A SMART METER FOR EVERY UNIT

Andrew Hall  
Business Development  
Manager

Carma Industries Inc.

### Most Condominium Buildings have a bulk meter installed by the Local Distribution Company (LDC) in the main electrical room.

It measures the electricity used by the building including all common elements and residential suites. Pending legislation in Ontario will mandate that every unit be outfitted with a smart meter or a smart submeter. A smart meter is an electrical meter that is capable of measuring electrical consumption based on the time of day the electricity is consumed. (In the coming years, every residence in Ontario will pay for electricity in this way as part of the Governments Smart Meter Initiative). A submeter is a meter that sits behind the LDC bulk meter and measures the consumption of individual suites.

Typically, Condominium Buildings will install electronic submeters. Unlike the traditional glass meter used in single family residents, electronic meters will be located in the electrical closets and have no moving parts. They utilize current and voltage sensors to calculate the consumption in each suite. A current sensor, which contains wound wire and resembles a donut, is placed on each electrical conductor running to the suites from the breaker panel in the electrical closets. These current sensors measured the current or amps drawn by the suite. The voltage on these conductors is also measured using similar voltage sensors. The electronics of the submeter calculates the consumption or kWh by multiplying the current by the voltage (Ohm's Law). For smart meters the readings are calculated and stored by the submeter on hourly bases.

Most submeter panels are capable of metering between 12 and 20 suites. These panels are networked together and connected to a telephone line or Internet connection to allow

the Billing Services Provider to read the meters remotely.

### Installation Consideration

Most electronic submetering panels will be located in the electrical closets. There is no need for any equipment in the suites and generally no requirement to enter the suites to install the meters. There will be brief power interruptions as the current and voltage sensors are installed in the breaker panels, and when the breaker-to-suite check is performed to ensure the correct correlation between the meter and the suite.

When installing submeters, space in the electrical closets is of prime concern. There must be sufficient wall space to mount the panels (usually the size of a medicine cabinet) and the associated wiring. The panels also have to be networked together. If cables can not easily be run between the panels powerline carrier technology can be used. Powerline technology uses the existing electrical cabling in the building to transmit data.

In buildings where there is insufficient space or no electrical closets, special enclosures may have to be installed in the hallways and recessed into the wall to provide a secure and accessible location for the metering panels.

### Measurement Canada

All electricity meters that are used to bill individuals for consumption must comply with the Weights and Measures Act and the Electricity and Gas Inspection Act. Simply put, each manufactured meter must be tested and approved by Measurement Canada, every meter that is manufactured must be tested for accuracy by Measurement Canada, every meter must be inspected after installation by Measurement Canada and every six years the meter must be retested for accuracy by Measurement Canada.

Measurement Canada has accredited some Vendors and their technicians to perform the verification and inspection requirements on their behalf. Condominium Boards should check with the Vendor to ensure the meters meet all requirements and ensure the Vendor is accredited to perform these services. The cost of the verifications and inspections should also be included by the Vendor. Some costs especially re-verification every six years, can be very expensive.

### **Billing and Collections**

Most Condominium Boards will subscribe to the service of a Billing and Collections Service Provider, often affiliated with the meter Vendor. The Service Provider will handle all aspects of the billing and collecting of residents including taking responsibility for collecting of delinquent accounts and any bad debt incurred.

Generally there are two business models that Billing and Collecting Service Providers follow. Under the first model the Service Provider acts as a Billing Agent for the Condominium Corporation. They distribute the costs on the bulk meter bill from the LDC to the residents based on their individual consumption and charge a flat monthly fee for the service.

The fee may also include meter rental or financing charges allowing the Corporation to install the meters with no up front capital cost.

Under the second model the Service Provider takes on the role as the electrical Distributor within the building. They become the customer of the LDC and bill Residents for their usage and the Corporation for the common area usage. They charge a flat rate administration charge as well as a Delivery Charge that is dependent on the Residents peak demand per day and their consumption. The meters are usually installed at no cost and are paid for through the delivery charges.

Each model has its benefits and it is important for the Board to fully investigate both models to determine which will best suit the needs of the Corporation. Any contract should be reviewed by a lawyer familiar with both the Condominium Act and Billing Services Agreements.

Installing submetering can be a simple and painless exercise, but Property Managers and Condominium Boards must do their due diligence to insure they select the vendor that will meet the Corporation's needs today and into the future. The Condominium Board should request presentations from several Vendors to ensure they fully understand the business model and the contract.

# submetering contracts

## KEEPING ALL THE LIGHTS ON ... FAIRLY

Robert M. Mullin  
Smith Valeriote  
Law Firm LLP

Few could argue that for many condominium corporations, keeping the heat and lights on, represents a 'core responsibility'.

If performed well and without interruption, nary a thought or complaint is lodged. If performed poorly or with interruption, directors may raise the ire of the unit owners, or worse. Although no two condominiums are exactly alike, traditionally, the vast number of corporations purchase utilities, in bulk, for their unit owners. Water, gas and electricity, are commonly delivered to the condominium's front door, metered once, and then distributed to each unit. Either monthly or quarterly the condominium corporation receives an invoice which unit owners indirectly pay, via their monthly common element fees. For some, this proposition seemed fair, as each unit owner would pay for these utilities in proportion to the size of their unit, as set out in corporation's declaration. For others, especially the careful conservationists, this seemed unfair, as the there was little reward for one's conservation, or penalty for another's lack of it.

The adage, 'change is the only constant', recurrently applies to condominiums. In keeping with the growing worldwide concern for the environment, the Legislature for Ontario recently passed the Energy Conservation Responsibility Act. In essence, it mandates that no later than December 31, 2010, all condominium units shall have a hydro 'sub-meter'. Rather than having one global meter, hydro shall be metered as it is consumed by each individual unit. The intention is that all unit owners shall be individually responsible for their specific consumption of hydro, regardless of a condominium's particular declaration. By removing the pooling of the utility, it is intended that those who conserve are rewarded with a lower bill, while those who don't, are not.

From a legal vantage, condominium corporations shall be faced with a new level of issues as all condominiums prepare for December 31, 2010, deadline. These issues revolve around two points, being;

1. the need to purchase and install the hardware, or sub-metering, and;
2. the need to hire an administrator in order to generate and collect each unit owner's hydro bill.

As with all things legal, the purchase of a good or service falls to the contract to ensure that the condominium corporation is both served and protected. To this end, every condominium corporation would be mindful to consider the following when considering the installation and administration of sub-meters.

First, retaining an experienced engineer is an advantage. A skilled and experienced engineer, comfortable in both the field of condominiums and hydro supply would be an invaluable guide. Like the purchase of a car or a home, there are lots of options on the market, and every seller promises that their product is the best. Having an independent engineer advising between what are genuine needs and what are genuine options, would serve both the condominium corporation and the unit owners ably. A skilled engineer also brings with him or her the knowledge of who is both reputable and skilled. Finally, engineers can also provide excellent insight into the installation of smart-metering. Although installing sub-meters shouldn't be intrusive, having a skilled and trusted engineer looking over the proposed installation is worthy of consideration.

Secondly, retaining an experienced condominium lawyer is also an advantage. Many people

# submetering contracts

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wonder when it is time to retain the services of a lawyer to review a contract. One lawyer has commented, "If you have no problem with the proposed contract falling to the ground and shattering into a million pieces, then you probably do not need a lawyer." Many might think keeping the lights on would not fall into this category.

Thirdly, the contract must be carefully reviewed to determine who will own the sub-metering hardware and wiring. For many sub-metering contracts, ownership is ambiguous. There are many pros and cons to having the hardware owned by either the installer or the condominium corporation, but if the purpose of a contract is to avoid ambiguity and risk, this issue should be squarely met. 1

Fourthly, understand the terms of the contract, especially payment and costs. Aside from paying the utility to provide the electricity, there is now going to be the payment of the sub-meter installation and the new administration. Leave no doubt as to the costs for such. The fine print is famous for lurking charges and fees never mentioned by the savvy sales staff. Will the installation be paid up-front or will it be factored into the administration contract?

Fifthly, know and understand, "who does what". The majority of companies that offer the installation of sub-meters also offer the administration service. Often the installation of the hardware is factored into the administration service as a 'sweetner', styled as "we will do the installation at no charge if we can do the monitoring." Know that the installer does not have to be the administrator. It may often make sense that these two go hand in hand, but as with your car, all repairs do not have to be done by the dealer. Sub-metering administration could be the purview of another group.

Sixthly, be mindful of the warranties that come with the sub-metering or hardware. If and when

the sub-meters break-down or require repair, the first question will be if a warranty covers the work. Know the answer now.

Seventhly, it will also be important to spell out in the contract the manner in which any overall charges will be paid. In contrast to sub-metering, which attributes a figure to each unit based on consumption, the overall charges will need a method of allocation and payment.<sup>2</sup>

Eighthly and lastly, be wary of looking to the condominium corporation's reserve fund to pay for the installation of the sub-metering. The Condominium Act, 1998, S.O. 1998, c.19, clearly spells out that the reserve fund may only be looked to for, "major repairs or replacement of the common elements". The installation of a new electrical monitoring system does not strike the writer as falling into that category, rather, it appears to be upgrade, albeit legislatively mandated. Regardless, it is doubtful that the reserve fund study for any condominium corporation has allocated the cost of installing sub-metering. Even if your condominium lawyer can see his or her way clear to using the reserve fund, then using it will represent an unanticipated liability, so repayment to the reserve fund will be required.

In closing, many have seen the new sub-metering demand to be a positive development. Individual conservation, environmental responsibility and the prospect of lower utility bills are very attractive to many. That said, a variety of legal issues require that the condominium corporation thoughtfully and carefully wade into these new waters so that swimming with the sharks is replaced with dancing with the dolphins.

NOTES: 1. & 2. WITH SPECIAL THANKS TO JEFF JEFFCOAT, P. ENG., OF CONSTRUCTION CONTROL INC. FOR "SMART METERS - WHY ME?" CM CONDOMINIUM MANAGER MAGAZINE, SPRING 2007.