Electricity Canada | Électricité Canada

Mr. Benoit Desforges
Acting President, Measurement Canada
151 Tunney's Pasture Driveway
Ottawa, ON K1A 0C9

Dear Mr. Desforges,

RE: Consultation on the modernization of the Weights and Measures Act and the Electricity and Gas Inspection Act

On behalf of Electricity Canada, thank you for the opportunity to comment on Measurement Canada's (MC) proposed modernization of the *Weights and Measures Act* and the *Electricity and Gas Inspection Act*.

Electricity Canada (formerly the Canadian Electricity Association) is the national forum and voice of Canada's evolving and innovative electricity business. Electricity Canada members generate, transmit, and distribute electrical energy to industrial, commercial, residential, and institutional customers across Canada. We currently represent 41 members and 90 corporate partners, which include integrated electric utilities, independent power producers, transmission and distribution companies, power marketers, system operators, technology vendors and service providers.

The modernization of the *Electricity and Gas Inspection Act* (EGIA) and the *Weights and Measures Act* (WMA) (together referred to in this letter as "*the Acts*") will have a significant impact on our members, and Electricity Canada is enthusiastic to work with Measurement Canada to update *the Acts*, as this will align *the Acts* with the intent of The *Canadian Net-Zero Emissions Accountability Act.*

For the last four years Electricity Canada, via its Metering Technology Policy Committee which includes representation from 23 utilities and 8 meter manufacturers (who are all identified at the end of this letter), has called for the modernization of *the Acts* and associated Regulations.

- In 2019, Electricity Canada released "Recommendations for Modernizing the Electricity & Gas Inspection Act (EGIA) and Associated Regulations". This report identified four key areas where the EGIA requires updates to properly address developments in the electricity marketplace and technologies. Those areas were:
    - Revise the definition of "contractor"
    - Clarify the distinction between the retail and wholesale markets

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- Modernize the definition of “meter”
- Revise the definition of Legal Units of Measurement (LUM) (as set out in Section 3 of the EGIA).

- In 2020, Electricity Canada released “Electric Metering in Canada: Unrealized Opportunities for Innovation, Environmental Benefits and Lower Costs to Customers” which drew attention to the fact that modernization of the EGIA is required to overcome several market inefficiencies caused by the current legislation.

- In 2021, Electricity Canada released “Catching Up: Modernizing Canada’s Electricity Marketplace Rules and Regulations to Grow & Decarbonize the Economy” and its associated infographic which put forward twenty tactical recommendations for legislative, regulatory, and administrative actions that in our opinion would resolve the “contractor” definition issue identified in 2019.

Electricity Canada is encouraged by the direction of the discussion paper released by Measurement Canada on the principles and proposals to guide the modernization of the Acts. Most notably, Electricity Canada agrees with Measurement Canada’s intention to propose revised legislation that is “outcome-based, agile and technology-neutral”. Electricity Canada has made no secret of our position that the EGIA as well as its attendant regulations (the EGIR), as written, have not kept abreast of the evolution of the electricity market in the past forty years nor where the market will continue to evolve to meet Canada’s net zero commitment.

Electricity Canada notes that there is no reference in the discussion paper to the need to distinguish retail and wholesale markets. In our 2019 report on modernizing the EGIA and EGIR, Electricity Canada suggested the following:

> *“The retail vs. wholesale designation impacts load settlement, aggregation, totalization, virtual metering points and various other system-level trade transactions, both at the sophisticated and unsophisticated customer level. Much of this discussion is being driven by regional and provincial renewable energy programs, the rollout of which could be accelerated with MC regulatory clarity… The benefits to Canada of doing so are not limited to renewable energy generation, but also encompass energy efficiency programs, such as adaptive street lighting, supporting the electrification of the transportation sector with extensive electric vehicle (EV) charging infrastructure, and allowing new generation opportunities through micro-generation programs. Each of these technologies will allow Canadians to more easily and cost-*

effectively access, sell, and use electricity as well as reduce GHG (greenhouse gas) emissions."

Electricity Canada remains of the view that any updates to *the Acts* should include distinguishing between retail and wholesale markets; determining where the role of Measurement Canada ends, and the role of the provinceterritory begins. A key goal of modernizing *the Acts*, as stated in the discussion paper is that "innovations need to be encouraged for the government to reach its ambitious net-zero emissions targets and to show that it is preparing for and embracing the emerging digital economy". This will require clarity regarding roles and rules and will be difficult to achieve if *the Acts* continue to perpetuate confusion around retail, wholesale markets, and the role of the provinces and territories.

Electricity Canada must also draw attention to the fact that once *the Acts* are updated, the regulations and specifications that flow from *the Acts* must also be updated, to enable Canada's plan to reach net-zero commitment and overcome the market inefficiencies caused by the current legislation framework. In our 2019 and 2021 reports, we determined that the EGIA needed to be modernized in conjunction with the EGIR to achieve comprehensive change. Those identified sections of the EGIA and EGIR are included here in Table 1.

Table 1. Areas of the EGIA and EGIR that need modernization

Recommendation	Location of needed Modernization in Legislation and Regulation
Revise the definition of Contractor, and all definitions dependent on Contractor	Applicable sections of the EGIA 2(1), 2(3), 6(1), 6(3), 9(1), 9(2), 9(3), 14, 16(1),16(2), 26(3), 28.1(1) 39 Applicable sections of the EGIR 9(2), 9 (all), 10(all), 11(7)(a), 11(2)(b)
Clarify the distinction between retail vs. wholesale markets	Applicable sections of the EGIA 2(1), 28(Q) Applicable sections of the EGIR 2(1), 9 (2,c), 29(1)
Modernize the definition of Meter	Applicable sections of the EGIA 2(1), 9(1), 9(2), 12(1), 25, 28(1), 28(q) Applicable sections of the EGIR 2(1), 5(1), 7 (a-d), 31 (1,a), 46
Revise the definition of Legal Units of Measurement (LUM)	Applicable sections of the EGIA 2(1), 3(1), 9(1), 9(4), 12(1), 16(2), 17, 25 Applicable sections of the EGIR 5(1), 11(1), 31(1)A, 46

Recommended Guiding Themes for Modernization

With a view to "future-proofing" *the Acts* and allowing Measurement Canada to be more flexible, agile and adaptive to innovation. Electricity Canada recommends that Measurement Canada considers the following four themes, which we believe will empower Measurement Canada to effectively oversee innovation in the marketplace and will allow entities that transact electricity, so-called electricity market participants (which include large, small, and casual actors), to adapt to meet the demands of Canadians while still effectively protecting them.

1. **Measurement Canada's mandate is to ensure accurate source measurement, and not to regulate what is done with a processed measurement.**

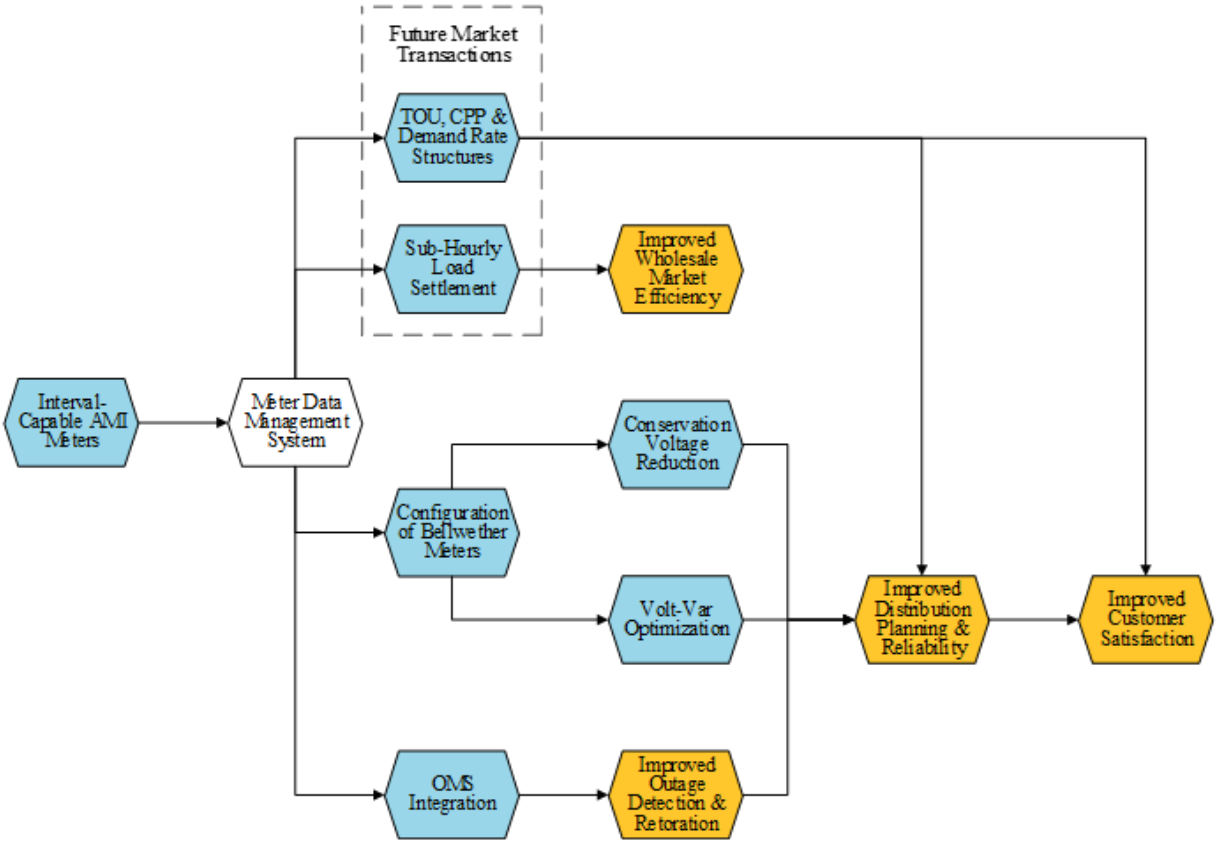

Figure 1 Model of how the new grid will use LUMs measured and derived from Interval Capable Meters

Figure 1 shows how electrical utilities propose using electrical meter Legal Units of Measure (LUM) data to operate the smart grid and best serve consumers. While LUM data is used in all operations

only the left-most box contains source LUM data and as such only the left-most box, the metrology of a meter, producing a source LUM should be in the scope of MC's authority under modernized Acts. To be more direct, it is our view that MC should restrict itself to the oversight and regulation of the measurement function (or source of a LUM) of electricity meters and avoid regulating downstream- uses cases required for either wholesale market transactions or retail billing or engineering purposes or customer/utility side applications.

When the EGIA was originally written, the electricity grid was a one-way system, from generators to consumers as were metering systems. Today's smart grids are continually evolving to enable two-way energy flow and measurement of energy and data using various communication technologies, monitoring and reacting to changes in usage, energy flow and multiple other use cases including distributed renewables, EV chargers, energy storage, and consumers that can interchangeably become producers.

The smart electricity grid vision uses meters not only for billing but as monitors for grid management and optimization. The management and optimization features of the electricity grid rely on calculated measurements (i.e. deductive totalization (E-27)[1]) to determine net energy and net demand. However, this future is currently restricted due to existing regulations that largely prevent the use of calculated values, that are applied to source LUM's. Calculated measurements are critical to net zero because they allow the configuration and control of grid segments that:

- contain both loads and generation; (i.e., distributed renewables and/or energy storage)
- need to bill on both energy and demand charges; (i.e., EV charging and energy efficiency programs), and
- need to calculate, and either add or deduct, losses (i.e., virtual power plants where the capacity of any one power plant element to contribute to the grid will be materially impacted by its local distribution circuit); and
- need to determine coincidental demand from multiple points-of-custody transfers (i.e., real-time monitoring of the grid with distributed renewables, EV charging, virtual power plants, casual market participants that interchangeably switch between consuming and producing energy, etc.).

[1] Deductive totalization is a calculation that results in high mathematical errors significantly greater than 3%, but with negligible monetary impact.

Electricity Canada believes that Measurement Canada should focus on its core measurement mandate. Doing so would best serve the public and industry and ensure Measurement Canada is not a barrier to net zero technologies.

2. Measurement Canada must move from prescribed actions to a risk-based approach.

The Acts were written when the only device one could call an electricity meter was a mechanical round socket ANSI device, with one form and one measurement point, compared to current electricity meters that support ANSI tables with over 100,000 data definitions available from a single meter. This has led to some interesting quirks in the market. For example, our 2020 report "Electric Metering in Canada: Unrealized Opportunities for Innovation, Environmental Benefits and Lower Costs to Customers" included seven illustrative case studies.

To avoid replicating such market quirks, or creating new ones, Electricity Canada recommends that Measurement Canada's market oversight and regulatory activities follow a risk-based approach as opposed to a prescriptive approach. Under a risk-based approach, high-risk activities involving high dollar values have greater oversight than low risk- or low-volume activities. Measurement Canada has already shown this as a viable path forward with its risk-based- framework developed to deal with COVID-19, which has recently adapted to deal with ongoing supply chain disruptions. Electricity Canada also sees Measurement Canada speak to this with its text dealing with casual market participants – we applaud this direction.

One way Measurement Canada should, in our view, start moving to a risk-based approach is to adjust the 3% accuracy requirement for the point of metering from the EGIR to state that breaches of that limit that do not cause significant monetary harm to the purchaser or seller are permissible. We have some example text, in bold, to that effect below.

- 31 (1) For the purposes of subsections 24(1) and (2) of the Act, an error that is greater than
    - (a) 3% of the amount of electricity or gas supplied through the meter, and
    - (b) where the amount of electricity supplied and the time-related demand for electricity supplied are the joint basis of a charge for electricity sold to a purchaser, with respect to a time-related demand, two and one-half per cent of the maximum point of the electricity meter's demand scale
    - **In each case, where such error results in significant monetary harm to a purchaser or seller using a meter, is not permitted.**

This provision would give Measurement Canada the flexibility to allow for calculated measurements and virtual metering points supporting both additive and deductive totalization (I.e. E-27) in addition to fostering innovation for Electric Vehicle (EV) chargers, adaptive streetlights, energy storage, and inverter-based resources (such as rooftop solar) which will all benefit from this change. Before any new requirements are implemented, further stakeholder engagement would be required by MC.

In keeping with our previous guiding theme number 1, accuracy tolerances should pertain only to source LUM values originating from Measurement Canada approved and verified meters with an understanding that subsequent additive and deductive calculations are acceptable - despite their potential impact on overall error.

3. **This modernization must start a cascading review of all existing Measurement Canada documentation including regulations, approval documents, specifications etc.**

The work of modernizing measurement will not finish with updating the legislation. Before *the Acts* are amended, Measurement Canada must review and revise all of its existing documents as currently published “Laws and Requirements”, as many of the challenges the market experiences are caused by elements in regulations, specifications, policies, bulletins, and procedures. All of these legal and policy documents must also be modernized and aligned with the modernization of *the Acts*.

A regulatory impact analysis statement (RIAS) must be undertaken to ensure all the downstream effects are captured and rapidly enabled. Electricity Canada recommends that Measurement Canada use S-E-11 as part of its RIAS. Although S--E--11 remains in draft, it succinctly outlines many best practices jointly developed with Measurement Canada and Electricity Canada to address issues with current regulations and specifications. It is important to note that the measurement of fundamental or non-fundamental energy is unresolved and does not have a consensus amongst Electricity Canada members, and the S--E--11 best practices suggested are related to VA and LUM recommendations within the specification.

4. **Measurement Canada must use this legislation as a key piece of Canada's net-zero strategy and modernize the Acts accordingly.**

The net zero economy will rely on electricity meters of all forms and the data from those meters. As such, the legislation that governs electricity meters is, in fact, net zero legislation. The modernized legislation needs to recognize this and establish Measurement Canada's role in Canada's collective net zero commitment.

To this point, Electricity Canada recommends that the modernized Acts include an objectives and/or policy section that clearly states the purpose of *the Acts.* An example of this can be seen in Section 7 of the *Telecommunications Act*. Additionally, the objectives sections should contain a reference to Canada's net zero objectives.

Conclusion

In addition to these four themes, please find in the attached Appendix A, our responses to the questions posed in MC's discussion paper. Our process for capturing responses was as follows:

1. After MC released the consultation, Electricity Canada notified its members and formulated a plan for response based on Measurement Canada's 30-day deadline.
2. Electricity Canada drafted an initial response for members.
3. Electricity Canada "chunked" Measurement Canada's questions throughout its paper into three sections. After a 1-hour discovery session, Electricity Canada distributed these questions as surveys to its members and consultants so that they could respond in detail.
4. A series of 1.5 hour sprint sessions were then organized, with the goal of each session to form a discussion around each question posed by Measurement Canada.
5. A second draft was then formulated and distributed for members and consultants to respond directly to, with further discussion sessions lasting 1 or 2 hours.
6. Drafts were then locked by Electricity Canada, refined, and the final draft was proposed to the Electricity Canada executives.
7. A final plenary session is planned amongst members, after submitting to Measurement Canada, for debriefing and gathering feedback on the consulting process.

Electricity Canada recognizes that this consultation is a preliminary step in the process of drafting new legislation. The responses provided are based on the situational background descriptions provided in the document, and the extensive cumulative experience of our contributing members. That said, many

of the questions sparked further discussion and questions amongst the group. Electricity Canada has attempted to include some of that in our Appendix A responses. Once Measurement Canada has had a chance to review all submissions, Electricity Canada would welcome an opportunity for a real-time meeting to further discuss and clarify our positions.

Thank you again for this opportunity to provide input.

Sincerely,

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Chair, Metering Technology & Policy Committee, Electricity Canada

Francis Bradley
President and Chief Executive Officer
Electricity Canada

This consultation response was prepared by Electricity Canada's Metering Technology & Policy Committee which is comprised of the following organizations.


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Appendix A
Reducing barriers for business

Creating a forward-looking framework for smaller businesses (p5)

Though solid in its intent, the existing framework, as described above, does not serve the needs of the current market and where it is headed. There is a steadily growing number of smaller businesses, including home-based and casual businesses, that should not be required to fulfil the same legal requirements as large utilities. Legislative change is required to create a new framework that recognizes these new market participants and lays the groundwork for proportional regulatory and administrative requirements.

Legislative proposal for consideration and feedback

1. Authorize MC to establish exemptions and conditions under the EGIA for smaller and casual market participants whose main business is not the sale of electricity or gas.

    - Electricity Canada agrees with the above proposal in principle but needs to see the proposed mechanism for defining small/casual market participants before providing further comment. In certain jurisdictions, smaller market participants provide utility-like services. While we admit that we do not have a complete definition of utility-like we intend that utility-like means a business that owns and/or operates the grid in their territory but may not be fully regulated by the provincial regulator, while casual participants are transient sellers and buyers to the grid.

    - We believe it is very important for MC to differentiate based on the concept of utility, utility-like, and casual. Utility-like participants should be subject to the same rules as utilities while casual participants can be safely exempted. To do otherwise would provide an unfair competitive advantage to such smaller participants. It would be unfair if a utility and a non-utility had the same business but were held to different regulatory requirements. We believe our recommendation whereby exemptions/conditions are determined based on risk allows both casual market participants, and utilities, to take advantage of any innovation.

    - However, concerning retail-style businesses (casual participants), increased flexibility afforded them by exemptions or minimal conditions would remove a significant barrier to entry for new market participants. In April of 2021, Electricity Canada posted its

report, Catching Up: Modernizing Canada's Electricity Marketplace Rules and Regulations to Grow & Decarbonize the Economy, where this was a key recommendation from our group.

- In our response we also add that the principle of crafting these exemptions/conditions should be based on risk as opposed to any particular business category. Low-risk activities, such as intermittent small dollar value transactions, should have low, or potentially no requirements in the EGIA, while higher-risk activities will have proportionally more regulatory oversight.

Prompting discussion questions

2. Should certain businesses that are exempted under the EGIA be required to register in a separate registry than the one for registered contractors?

    - Noting our comments to the previous questions, yes but only if such registration is simple, intuitive, and can be done by any business owner no matter their level of sophistication. The goal of exemption should be to reduce the regulatory burden on businesses and Measurement Canada alike. That goal is undermined if new bureaucratic processes simply replace the old. Transparency and methods for disputes and audits must remain.

    - Our members remain somewhat ambivalent over the potential equity of exemptions but suggest a regulatory system that can recognize market participants by risk, where greater regulatory oversight is given to riskier businesses.

    - If Measurement Canada does require registration of exempt businesses, then, for the purposes of transparency, Measurement Canada should maintain a public list of those granted exemptions. If there are smaller entities that would escape this public framework, Measurement Canada should still retain the ability to audit them.

3. Should registered contractors and certain exempted businesses be required to renew their registration at specified intervals?

    - Yes, registered contractors and certain exempted businesses should be required to renew their registration wherever there is a substantial change in business, but prescribing a time interval may be costly, especially if registration is tied to a license to

act. If an entity misses its renewal deadline, it will have to forfeit any earnings after the point of non-compliance, or face an administrative monetary penalty, until compliance is re-established.

- Electricity Canada also believes that Gen-45, or another marketplace monitoring system already in place, could be used as an annual re-registration without a legislative change.

- Regarding registration renewal, and potential penalties, MC should align this section with the excellent direction taken regarding compliance agreements as opposed to monetary penalties.

Influencing compliance with fairness in mind (p5)

Large companies and small businesses each face different pressures and challenges while trying to remain compliant with trade measurement laws and regulations. The current legislation's provisions regarding administrative monetary penalties (AMPs) are too prescriptive and rigid for businesses to return to compliance, especially in cases when a heavy-handed approach is not necessary. Businesses deserve compliance and enforcement approaches that are both fair and graduated where possible.

Legislative proposals for consideration and feedback

4. Allow regulated parties who commit multiple minor violations to enter into a compliance agreement as opposed to being imposed an AMP.

    - Yes, Electricity Canada agrees. Currently, the maximum Administrative Monetary Penalty (AMP) per violation is $2000.00, with the purpose of promoting compliance instead of acting as a punishment. Therefore, the proposed aim of entering a compliance agreement is a welcome step to reduce the regulatory burden on business. Electricity Canada notes, however, that there is already a stipulation with the EGIA that allows a business to voluntarily enter into a compliance agreement and that the Measurement Canada Compliance Policy already outlines how AMPs are the last resort after other options are exhausted. Since this exists, what does Measurement Canada wish to do further?

5. Allow regulated parties who commit less serious violations to be imposed an AMP rather than face prosecution.

- Electricity Canada welcomes the decriminalization of errors. To this point, a definition of “less serious violations” will be required in the updated legislation. Upon our reading, the most serious violation is theft of stamp or seal, as it has its own section in the act, and may also prescribe jail time. That would leave all others mentioned in 33 (1)(a) …(m) as less serious violations, Electricity Canada asks Measurement Canada to confirm that this is the case?

- We do wish that the removal of the seal for purposes of theft, should be maintained as a prosecutable offence. It is our view that this criminal activity is serious enough to retain special distinction generally related to the theft of electricity or a sign of possible tampers that may result in unsafe installations and danger to the general public. The main risk is of fire as we move to EV charging, and many of these installations could be in very public locations.

- Electricity Canada also notes that for case: (l) on summary conviction, to a fine not exceeding one thousand dollars, an AMP could potentially be more expensive than the summary conviction.

6. Authorize the power to revoke an AMP if the regulated party returns to compliance.

    - Electricity Canada notes that to our understanding there is already a provision in the EGIA that effectively grants this authority in sections 29.1(e) and 29.16(2) of the EGIA. Is the goal to allow such decisions to occur at a level below the Minister?

    - Electricity Canada requests clarification on what extra authority Measurement Canada is seeking and why? Is it to revoke an AMP as opposed to reducing an AMP to zero dollars? If Electricity Canada is correct in our assumption, then we support this proposal.

Testing new technology in markets (p6)

Industry often wants to test new technology in the market in order to determine whether it is viable for wider distribution and use. MC examines devices before approving them for use in trade, but sometimes there are requests from businesses to test devices before seeking full approval. Legislative change is needed for MC to accommodate these requests while balancing the need to protect the public interest.

Legislative proposals for consideration and feedback

7. Provide for a temporary permission under the EGIA to allow new measuring technologies to be introduced into the market under conditions and without prior approval or examination.

    - Electricity Canada supports the concept of new technologies being introduced to the market, with the proper controls and oversight, without prior approval, as this can allow for new measuring technologies to be used in a fashion akin to an Interim Order. Electricity Canada sees this as the evolution of the dispensation clause. However, in crafting any risk framework for allowing new technology into the market without prior approval the risk and benefits must flow accordingly such that the parties taking the risks are also the ones that may benefit. It would not be equitable if electrical distribution companies were made to absorb the risk of unapproved devices but could not see benefits from those technologies. Measurement Canada will need a risk assessment framework or methodology to consider how much market risk a new technology could pose.

    - Electricity Canada asks if previously approved devices could be allowed to enter the market under these temporary permissions if those devices are used for new applications.

    - In the interest of equity for our members, we suggest that after one of these technologies has been in the market for a certain length of time, or sufficient performance data is available that technology must have conditions applied based on its risk framework, or access to the market will be withdrawn.

    - Electricity Canada agrees under the further condition that this mechanism is used to promote innovative technologies and businesses, to allow for flexibility and resilience in adverse conditions, and is not used to compel market uptake of certain technologies.

Resolving disputes (p6)

MC investigates all disputes and complaints about suspected inaccurate energy measurement and, at the request of contractors or consumers ("purchasers" under the Act), investigates the condition and registration of meters used to determine the amount of electricity or natural gas supplied by the contractor or sold to the purchaser. However, many disputes turn out to be about a different matter

than originally presented. Legislative changes are necessary for MC to clearly establish the criteria and conditions for disputes to proceed and for contractors and purchasers to better understand what falls within and outside MC's mandate.

Legislative proposals for consideration and feedback

8. Add a broad statement in the EGIA that clearly states MC's role in disputes.

    - Electricity Canada agrees that this would be a useful legislative change, but we ask that Measurement Canada goes further, and add a goals/objectives section to the EGIA stating why the Act exists and what Measurement Canada's role and scope is. As part of that section, Electricity Canada recommends that net zero be a key consideration.

    - Electricity Canada must ask: what does Measurement Canada perceive to be its role in disputes? In our previous submissions to Measurement Canada, Electricity Canada recommended that Measurement Canada should investigate disputes, but restrict themselves to only investigating whether a measurement is accurate. All other elements of the dispute process should move to the province, as it is the province that governs the businesses in their jurisdiction. Electricity Canada does not see this clarity as hindering Measurement Canada's ability to investigate and resolve measurement disputes. If a party under investigation can prove that it billed a customer correctly based on the metered value, then the investigation would be satisfactorily concluded. If that party cannot prove their measurement, they will fail the investigation. And should the complainant still believe they have been wronged even though the measurement is correct then that dispute is no longer a measurement question and thus not within the scope of Measurement Canada's concerns.

9. Authorize Measurement Canada to set criteria outside of legislation that qualifies contractors or purchasers to open a dispute resolution process to provide for increased transparency to stakeholders.

    - How does Measurement Canada intend to create such a process? What best practices are they following? Electricity Canada has also previously drawn attention to the fact that contractors can also be purchasers. Electricity Canada has provided guidance on how to resolve this issue, in our 2021 Catching Up report.

- Per our response to the previous question, what does Measurement Canada perceive to be its role in these disputes?

10. Authorize MC to set conditions outside of legislation, such as access to relevant records, that it would require before proceeding with the dispute resolution process.

    - In general, Electricity Canada supports moving requirements such as these from legislation to regulations or administrative rules. Although Electricity Canada understands the intent of this proposed legislative change, which is to ensure a standardized and fair dispute-resolution process, Electricity Canada is concerned that prescribing certain documents and evidence can be used to subvert the dispute-resolution process. Disputes may arise where certain records are simply not available, due to various market rules or provincial privacy legislation – we note that this is an issue in de-regulated markets in particular, and with E-27 – how will these disputes be resolved?

    - Understanding that retention requirements introduce risk to businesses, Electricity Canada suggests that a guidance document or tool be produced by Measurement Canada to aid small businesses in managing their records. This should act as guidance only, and not be prescriptive.

    - In general, Electricity Canada recommends that this principle be used to promote innovative technology, such as adaptive streetlights where the number of streetlights may be a valid record in a dispute but not one found in legislation.

    - Electricity Canada does note that there is still uncertainty amongst our members, all with different lenses. From the viewpoint of metering manufacturers, there is a concern that quality documentation or other confidential information (such as trade secrets) may be requested by competition or the public. How do you intend to protect or redact this information to protect all involved?

11. Authorize MC to define outside of legislation the scope of what can be reported as part of resolving a dispute.

    - Electricity Canada is pleased to see consideration given to defining items outside of legislation. This is what regulations are best suited to. Regarding this issue, however,

Electricity Canada is still wary of being prescriptive about what constitutes an acceptable dispute, given the unknown quality of each potential case.

- In general, Electricity Canada recommends that this principle be used to promote innovative technology and business practice, and not used to increase the burden of routine audits. This can be managed by restricting Measurement Canada's scope to measurement only.

Prompting discussion questions

12. Should the dispute resolution process that applies to registered contractors also apply to smaller businesses who are exempted under the EGIA and consumers who purchase electricity or gas from those businesses?

    - In direct response to the question, Electricity Canada asks Measurement Canada to consider the potential clogging of its adjudication process by a great number of small claims. There may need to be multiple streams for different size providers, or only agree to intervene in certain cases where a value threshold in dollars is met.

    - Measurement Canada should consider intervening based on the tolerance of the technology, determined within a risk framework, rather than the size of the customer or contractor or a general 3% tolerance.

    - If the goal of Measurement Canada is to reduce the regulatory burden on small businesses, then those who are exempt under the EGIA should not have to also be regulated by the EGIA. However, if the goal of Measurement Canada is to serve customers, then a small claims dispute resolution process will be required. We suggest a fit-for-purpose adjudication process be put in place to allow for an expedient complaint process and the resolution of small claims.

    - Electricity Canada would like to point back to the potential of legislative change to define categories of operator-purchasers on a sliding scale determined by whether they are a utility, utility-like, or a casual participant, with appropriate regulation to capture the unique needs of each group.

Protecting consumers

Consumers – both buyers and sellers – want to be certain that they get what they pay for when purchasing goods and services. This is especially true at a time when the cost of living, which includes many basic goods sold on the basis of measurement, is rising and supply chains are unpredictable. Yet, supporting this premise is the implicit trust that buyers and sellers have in the various scales, gas pumps, electric vehicle chargers and other devices that measure or dispense the goods they purchase or sell. They trust that measuring devices are accurate and that those responsible for maintaining and keeping the devices in good condition are complying with the requirements.

This is where MC fits in. Our mandate is to protect the right of buyers and sellers to accurate and reliable measurements when goods are sold on the basis of measurement. We do this, in part, by approving and inspecting measuring devices, enforcing the laws related to measurement accuracy and investigating complaints of suspected inaccurate measurement. We aim through these activities to build consumer confidence in the marketplace.

Certain provisions within the current legislation are out of date and need to be revised in order to modernize our oversight and enforcement activities and to better protect consumers. The following proposals are considered with the interests of both consumers and regulated parties in mind, as well as the need for fair, balanced and appropriate regulatory oversight.

Remote locations and hybrid business practices (P7)

Measuring devices are varied and widespread across Canada. Legislative changes are needed to protect consumers in remote areas of Canada where there is often very limited access to authorized service providers (ASPs) and recognized technicians available to conduct inspections, in particular, for measuring devices due for mandatory recertification. Legislative changes are also needed to address different business practices, such as home-based businesses operating outside of traditional business hours, or certain types of verifications that do not require an inspector to be present on site.

<u>Legislative proposals for consideration and feedback</u>

13. Authorize inspectors to conduct an inspection or site visit remotely when and where necessary under both Acts.

    - Electricity Canada has no challenge to this proposal but wishes to comment that this appears to be a regulatory solution and not a legislative solution. The legislation should be prescriptive to the least amount. Electricity Canada defers to Measurement Canada on this point but do *the Acts* need to specify remote vs. in-person inspection? Could

they simply state that an inspection be performed?

- Electricity Canada recognizes the potential for cost savings for all involved in these remote inspections. Our members indicate that hybrid approaches would be helpful but are also concerned that this proposal may lead to an increased audit or inspection rate. Management of inspections should follow a risk-based approach as we have suggested elsewhere in our response.

- For consideration throughout your drafting period, an appropriate definition of "necessary" is required, with the goal of modernization. Electricity Canada members have noticed an inconsistency in the annual number of site inspections and inspector expectations.

14. Authorize inspectors to obtain a telewarrant in order to enter residences in a timely manner when access is denied.

    - Given that the *Electricity and Gas Inspection Act* already authorizes inspectors to request a warrant to enter a dwelling-house under section 26, that telewarrants would expedite processes at a reduced cost to Canadians, and understanding that this power is restricted to Authorized Inspectors (who we assume are Measurement Canada employees), Electricity Canada supports this proposal.

    - Electricity Canada also notes that the language may require change if Measurement Canada wishes to continue with the broader term "residences". Electricity Canada also notes that later consultation questions also draw attention to vehicles. Therefore, we ask, would a holistic term such as "inspectors may obtain a warrant to access a meter" be simpler and less prescriptive and grant MC the authority it needs? Such wording would also enable virtual audits, for when the meter is not mobile, or easily accessible, but the meter's register can be wirelessly accessed. Electricity Canada also feels that our suggestion would be important in the recognition of digital seals which we discuss later.

15. Review and clarify the meaning of the term "normal business hours" in the EGIA in order to accommodate enforcement activities that may need to be conducted at businesses that operate 24 hours a day or on weekends.

- For enforcement activities only, amending the term “normal business hours” would be appropriate, however, “business days” in any other part of the act should remain the same. This would ease deadlines for service standards and responses.

- Will this apply to on-site inspection and on-site sealings? This should be expanded to other Measurement Canada activities other than enforcement including audit and inspection. We note though that we don’t expect this change to compel Measurement Canada’s regulated parties to operate 24 hours a day or on weekends, however; is required from time to time to accommodate customer operations.

Sampling (p7, p8)

Instead of testing and rejecting randomly selected individual electricity and natural gas meters, inspectors regularly test and examine samples from a selected lot to better gauge compliance of the entire lot. Legislative changes are needed to allow inspectors to request information or data in order to help them predetermine sampling activities or to request a sample device so they can familiarize themselves with the work to be conducted before they arrive on site.

Legislative proposals for consideration and feedback

16. Authorize inspectors to request information and sample devices, and to access data virtually or without an on-site visit in order to carry out their duties.

    - Following our first theme, Measurement Canada’s mandate is to ensure accurate measurement and metrology – the language of this section should be limited to the scope of “a meter’s source LUM data” if used during a dispute. MC should not use this to request customer data outside of a dispute, data for billing purposes, raw data, data in quality management systems, screenshots, etc.

    - Electricity Canada notes that this proposal has the potential to support device approval submissions, which our members see as a great win and a reduction of their regulatory burden.

Fostering stronger relations with regulated parties (p8)

Large utilities governed under the EGIA are familiar with MC and have a good working relationship with the organization. However, small businesses are generally unaware of MC's existence and mandate. This prevents MC from establishing the rapport of trust that consumers need to feel they are being protected. Legislative changes are needed to help inspectors foster those relationships.

Legislative proposals for consideration and feedback

17. Add a provision to the EGIA that requires MC to provide its inspectors with a proof of their designation that they can produce when interacting with the public. This will align the EGIA with the WMA and increase the visibility of MC inspectors.

    - It is our understanding that MC inspectors already have a badge that they can (and should) produce upon request. Are inspectors under the Weights and Measurement Act considered separate entities from the Electricity and Gas Inspection Act? If this eases the harmonization of the acts, we have no objection, but would still request clarity on the rationale for including this as a recommendation.

Additional legislative proposals for greater consumer protection

18. Authorize inspectors to seize and detain non-compliant devices or meters under the EGIA provided they are not in use and supplying needed electricity or gas.

    - Inspectors are already authorized to seize devices under section 39 of the Weights and Measurements Act. Is this related to the proof of designation per question 17,

    - Electricity Canada recommends that the language of the Weights and Measures Act in this regard continue to serve – we do not wish to see the cost of seizures placed upon businesses, such as in sections 23 and 24 of the *Canada Consumer Product Safety Act.*

    - What Electricity Canada would suggest instead is to allow a provision that, if an inspector seizes a device during an audit, the device should be able to be replaced immediately.

    - Regarding *"habeas corpus"* or possession details of the seized devices, Electricity Canada recommends that regulations will suffice for the minutiae. A hierarchy should be developed to resolve potential issues where two or more governing bodies both request access to the seized device, e.g., a provincial fire marshal vs. Measurement Canada.

19. Authorize inspectors to enter vehicles or other means of conveyance equipped with measuring devices or meters, such as mobile recharging services, in order to inspect them.

- Electricity Canada agrees with this proposal if a specific caveat to the language is added such that reasonable grounds for entry is required by the inspection. An example of this language can be found in the Nuclear Safety and Control Act:

  > **30** (1) In order to verify compliance with this Act, the regulations, an order or decision made under this Act or a condition of a licence, an inspector may, at any reasonable time and in accordance with the inspector's certificate, enter and inspect…
  >
  > - (c) a vehicle or place in which the inspector believes on reasonable grounds there is a nuclear substance, prescribed equipment, prescribed information or a record that is required by this Act, the regulations, an order or decision made under this Act, or a condition of a licence.

- Electricity Canada also approves of the term "other means of conveyance" as a modernizing term and suggests also that the term "place" is included in the Act's legislative language.

- Our members highlight the benefit this brings to both them and Measurement Canada – it is more efficient for all involved to test *in situ* rather than removing a device to be tested in a Measurement Canada laboratory.

<u>Prompting discussion question</u>

20. Should notices of approval be valid for a specified period?

- In the opinion of our members, a notice of approval with a set expiry date would add a significant burden to all stakeholders, regardless of size.

Electricity Canada also believes this would force the scrapping of perfectly good equipment simply because an NOA expires, disallowing a re-service opportunity. Since meters already have a seal period and re-verification process this feels duplicative and burdensome.

- Electricity Canada urges MC to also consider the impact upon the procurement evaluation process and any introduction of risk to businesses. Our members express concern about tracking certificates: the NOA currently includes all information related to meter form and firmware – adding an expiration date on this would make the task of management much

more difficult.

- Notices of Assessment should remain valid unless there is a reason to disqualify the device – an arbitrarily prescribed time is not sufficient to warrant the NOA void nor does Electricity Canada feel it is in keeping with the stated goal of this modernization which is to move away from prescriptive language.

- Lastly, from the lens of a customer who can go online and check device details (including NOA), seeing an expiry date will give them undue concern. Seals already have a set lifetime and re-verification process – the customer would gain no benefit from having an NOA expiry date.

Delivering services effectively

As an organization, MC strives to deliver services in an effective, predictable and reliable manner. Doing so creates trust with Canadians because they know what to expect and the integrity of trade measurement is reinforced. Both the WMA and EGIA include outdated provisions that prevent MC from conducting its business as effectively as possible. Some of the provisions are too rigid and could be moved to the regulations, for example, to allow for greater flexibility. Some provisions need to be updated to take into account several decades of work and changes, while others are simply difficult to read and understand. Legislative changes are needed in order for MC to adopt a more responsive and client-centric digital approach as well as risk-based oversight and marketplace monitoring that better suits today's needs.

The following legislative proposals will strengthen relationships with ASPs, do more to recognize international standards and competent authorities, and modernize administrative powers.

Strengthening relationships with authorized service providers (p8, p9)

MC designates accredited and registered ASPs across Canada to deliver services under both Acts. This allows MC to use its resources effectively and focus on sectors of the economy that are new and emerging or have a lower compliance level. Legislative changes are needed to help MC respond to client needs and adapt more quickly to innovation within the industry and marketplace.

Legislative proposals for consideration and feedback

21. Authorize MC to cancel, revoke, suspend or not renew accreditation should it be required.

- Our understanding is that this is already the case based on surveillance audits – a surveillance audit from Measurement Canada noting critical non-conformances has the potential to lead to a suspension or revocation of accreditation. And that this power already exists in S-A-01:2017 so Electricity Canada does not understand the need for this change.

    - **S-A-01:2017, 11.4 Revocation of accreditation**

        - In the case of non-compliance with the conditions on which accreditation was initially granted, the organization concerned will be advised of this fact and the accreditation may be partially or fully withdrawn.

        - Measurement Canada may revoke the accreditation of organizations accredited to perform examinations in accordance with the Weights and Measures Act.

        - Measurement Canada may revoke the accreditation of organizations accredited to perform inspections in accordance with the Electricity and Gas Inspection Act and Regulations.

        - Accreditation may be reinstated once additional conditions have been met.

22. Remove training requirements from the WMA to align with the EGIA and agreements with ASPs.

    - Understanding the future human resource needs of Measurement Canada, but wishing to maintain quality and consistency of service, Electricity Canada suggests that if training requirements are removed from the act, there remains an expectation of a person being “qualified” to perform the work.

Recognizing international standards and competent authorities (p9)

An international standard is a technical standard developed, approved and published by globally recognized organizations. Standards cover almost every industry, from technology to food safety, agriculture to healthcare, as well as trade measurement. It's important for MC to have the legal authority necessary to use standards already made available to other countries.

Legislative proposals for consideration and feedback

23. Strengthen measurement traceability by accepting competent laboratory standards and internationally recognized standards.

- Recognizing international standards, and not being restricted to standards set only for the Canadian market, would be an excellent reprieve for all parties, and would help to bring innovation in this sector for years to come. Electricity Canada notes that, in other regulatory spaces, requiring a business to maintain separate quality systems and documentation for all of its marketplaces requires a significant investment of resources to manage - we can point to the medical device regulations of the US Food and Drug Agency recently looking to expand its accepted standards, from its own CFR 820, to including ISO 13485 - this allows for easier alignment amongst global peers, reduces training and legal costs, and allows businesses to more easily operate.

- We all must ensure that the quality of standards does not depreciate over time - whom the standards come from is an important and appropriate factor to consider. Electricity Canada recognizes CEN, the European Committee for Standardization, as one of these actors, the National Institute of Standards and Technology as another, and the American National Standards Institute (ANSI). Our manufacturers and vendors already work with these organizations and are already subject to their quality requirements. We specifically note that the majority of Canadian technology comes from the US and thus Canadian meter technology is most closely tied to ANSI standards.

- Because this proposal also opens the door for new device approvals being tested by third party laboratories, Electricity Canada's members support the proposal.

Modernizing administrative and operational authorities (p9)

MC requires modern authorities that better support the organization in what continues to be a very fluid operating environment. The following proposals will give MC added flexibility to prepare for and respond to change, and do so outside of a potentially cumbersome legislative framework.

Legislative proposals for consideration and feedback

24. Amend the EGIA and the WMA to allow any regulation made under these acts to incorporate by reference any document, regardless of its source, either as static or dynamic.

    - Electricity Canada generally supports this proposal, as it will ease MC requirements to host and publish materials.

    - This should not, however, reduce MC's requirement to publish bulletins and specifications. There must be a continuation of the promulgation of these updates.

25. Authorize MC to establish plans under the WMA for examining and certifying lots of devices based on statistical sampling or other sampling approaches.

    - Electricity Canada agrees with this, as it is already practiced under the EGIA.

26. Use modern technology to conduct inspection-related activities and save time (e.g., access data remotely rather than through paper records).

    - Our members appreciate the considerations for operations. With smart meters, data and defects can be easily retrieved remotely in a much more convenient way than paper records. Our members note that inspection results from Measurement Canada are still delivered in a paper format.

27. Authorize MC to prescribe legal units of measurement outside of legislation to allow for greater flexibility.

    - Electricity Canada supports this proposal and notes that this was one of our recommendations in our 2021 report Catching Up: Modernizing Canada's Electricity Marketplace Rules and Regulations to Grow & Decarbonize the Economy

        - Recommendation B-1: To allow MC to be the person prescribing the "conditions and manner of determination of units of measurement", rather than hard-coding these in regulations, revise EGIA subsection 28.1(1) by adding the bolded words: "the Minister may make regulations prescribing units of measurement for electricity and gas sales, in addition to the units specified in section 3;

prescribing the conditions and manner of their determination; or prescribing both."

- It is also important to note however that per our guiding theme number 2 that *the Acts* should allow the creation of a risk framework that considers market impact, Electricity Canada directs MC to note that if LUMs are moved to regulations, this will likely cause market uncertainty, but will allow greater market flexibility. Conversely, if LUMs remain in legislation, there is greater market certainty, but less flexibility.

28. Remove prescribed seal periods from the EGIA to allow for greater flexibility.

    - Prescribed seal periods have an impact on operations for compliance sampling processes (such as described in S-S-06). By removing the prescribed seal periods, the onus is on the meter owner (or contractor) to verify whether a meter should stay out in the field. This allows for a move to a risk-based framework, and Electricity Canada members support this proposal.

    - To ensure a future-proof revision to *the Acts* Electricity Canada also recommends that MC find ways to recognize digital seals. If digital seals can be used, then virtual audits and testing will be much easier and the requirements for retrieving devices in the field will be reduced.

29. Clarify provisions in the EGIA regarding the importance of approving devices before putting them into service and verifying them for accuracy.

    - As part of MC's regulatory tools, Electricity Canada would be pleased to accept a series of guidance and informative documents made available for the public. Is this, however, necessary to state in the legislation?

30. Repeal redundant provisions in the EGIA regarding offences to increase clarity.

    - Electricity Canada agrees in principle and seeks clarity and wishes to work together with MC on which exact provisions you intend to repeal.

Increasing clarity and correct outdated references (p9, p10)

Both the WMA and the EGIA contain provisions and references that date back to a time when certain practices and attitudes were more common. These elements should be updated to make the legislation easier to understand, more inclusive and subject to continuous improvement or regular review.

Legislative proposals for consideration and feedback

31. Repeal provisions in the EGIA whereby inspectors may test the voltage of the supply of electricity as this test is unnecessary and never performed.

    - Electricity Canada agrees in principle. The old text under section (25) of the Electricity and Gas Inspection Act, is too prescriptive for legislation. Tests should be laid out in regulations.

32. Repeal dated provisions in the EGIA regarding adaptation orders.

    - Our members would appreciate and expect to consult on the exact provisions you intend to repeal.

    - Electricity Canada notes such language as “Her Majesty” in section 39 (2), and section 44, and is not opposed to making appropriate changes, perhaps simply saying “the head of state” or instead “the monarch” would suffice.

33. Align legislative language in both Acts with government documents exchanged with regulated parties when there is a ministerial review of contested AMPs (Administrative Monetary Penalty).

    - Our members agree that aligning the language in both acts will improve the consistency of its application.

34. Update gender-specific references and discrepancies in both Acts.

    - On updating the gender-specific references and discrepancies, we suggest following the guidance document produced by the Department of Justice on gender-neutral language.