



Low-Income Energy Network

October 5, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms Walli,

Re: LIEN comments on the Phase 1 report of the OEB - Review of Customer Service Rules for Utilities (EB-2017-0183)

Please accept this letter (and accompanying attachments) as the comments of the Low-Income Energy Network (“LIEN”) regarding the *Report of the Ontario Energy Board, Review of Customer Service Rules for Utilities, Phase One* (EB-2017-0183, September 6, 2018) (hereafter “OEB Report” or “OEB Review”). In the attached text, LIEN comments on two different aspects of the OEB Report: (1) recommendations contained in the OEB Report; and (2) recommendations that appertain to the issues underlying the recommendations that are presented, which LIEN urges should be (or should have been) included in the OEB Report.

Thank you for allowing LIEN an opportunity to comment on the proposed Customer Service Rules in this docket. A summary of LIEN’s recommendations are attached as Appendix A. We always appreciate the opportunity to work with you. We look forward to continuing our productive conversations in the future.

Sincerely,

Per: Low-Income Energy Network (LIEN)

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Attachments

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OEB Proposal #1. Customer Service Rules for Gas Utilities.

Reference: OEB Report, Section 4.1: The OEB Report proposes that the Ontario Energy Board (“OEB”) develop customer service rules for gas distributors similar to the electricity rules. LIEN supports this proposal. LIEN agrees with the observation made by the OEB Report that the Customer Service Policies (“CSPs”) of Ontario natural gas utilities frequently lack details setting forth customer service protections that have been prescribed by the OEB for electricity utilities. (OEB Report, at page 9). In particular, areas in which LIEN undertakes considerable work (through its member organizations) demonstrate a lack of such details. These include, for example, the processes up to and including the disconnection of service for nonpayment (“DNP”) and the offer of arrearage payment agreements (“APAs”). The disconnection of service directly threatens the ability of a customer to maintain service. The offer of reasonable APAs is often the only way that a customer, both low-income and non-low-income, can successfully retire arrearages that have been incurred.

Customers with whom (and for whom) LIEN works frequently (if not generally) find that the customer service rendered for gas service directly influences the ability of the customers to comply with financial obligations owed to electricity service providers. To the extent that unreasonable demands are placed upon customers by gas utilities, those demands adversely affect the ability of customers to comply with their electric obligations.

LIEN agrees that customers do (and should) expect the same level of customer service from both electricity and natural gas service providers. The gas customer service Rules should be aligned with the electricity Rules where practical and appropriate.

OEB Proposal #2. Unit Sub-Metering Providers.

Reference: OEB Report, Section 4.2. The OEB Report proposes that all proposals made in the report apply equally to Unit Sub-Meter Providers (“USMPs”). LIEN supports this proposal. The previous government announced on October 27, 2017, in its 2017 Long-Term Energy Plan, that it was requesting the OEB to review and improve protections for customers of USMPs and to regulate their rates and charges. The government proclaimed Sections 78(2.3), 78(3), 78(6) and 78(9) of the *Ontario Energy Board Act, 1998* in force effective April 1, 2018. In response, OEB has initiated a proceeding (Regulation of USMPs, EB-2017-0371) in which ACTO/LIEN is an intervenor.

In that proceeding, ACTO/LIEN intends to seek consistency between the Customer Service Rules (“CSRs”) of Local Distribution Companies (“LDCs”) and USMPs. The proposal advanced in the OEB Report in this proceeding is consistent with that movement toward

consistency. LIEN recommends that all proposals made in the OEB Report should apply equally to USMPs.

Recommendation #3. Cash Security Deposits.

Reference: OEB Report, Section 5.1. The OEB Report makes a number of recommendations in its discussion of cash security deposits. LIEN endorses the following recommendations.

- LIEN endorses the decision of the OEB Report to make no changes to the instances where a utility may *not* request a deposit. Providing a letter from another utility in Canada to confirm a good payment history or providing a satisfactory credit check made at the customer's expense is an appropriate exemption. LIEN further endorses continuation of an exemption when requested by an eligible low-income customer. (OEB Report, pages 11 – 12).
- LIEN endorses the decision of the OEB Report that security deposits should be waived for new residential customers enrolling in the utility's equal billing and/or pre-authorized payment plan as determined by the utility." (OEB Report, at page 16). Enrollment in either an equal billing plan or a pre-authorized payment plan helps customers to maintain regular monthly payments. LIEN agrees with the OEB Report that such a decision, in other words, mitigates the non-payment risk posed by a utility. This recommendation should be adopted.

However, LIEN requests some clarification on the continuation of these particular cash security deposit Rules. In particular, LIEN recommends that the following two clarifications be added to the OEB Rules.

1. A letter from another utility in Canada should confirm "good payment history" using a definition of "good payment history" that is no more stringent than the OEB's definition. The OEB's definition is set forth in the OEB Report (page 12). A deposit should not be imposed because a different utility in a different part of Canada imposes a more stringent definition of "good payment history."
2. A "credit check" may only be used to establish a satisfactory credit history. A credit check may *not* be used to establish the need for a cash security deposit for an electric utility. The use of third-party supplied credit information as a basis for making utility deposit decisions constitutes a problem when the third party information is not itself comprised of utility payment histories. Several reasons support this conclusion. First, substantial research has found that consumers tend to pay their utility bills before

paying nearly any other outstanding credit (other than rent or mortgage obligations). Second, it has been found that low-income consumers frequently acquire poor credit ratings by refusing to complete payments on abusive credit card terms. Finally, persons who have never borrowed from a reputable institutional lender, or maintained a charge account at a large store, may have difficulty establishing that their credit is good.

Aside from the business aspects of the issue, to forbid the use of non-utility credit experience is consistent with long-standing utility regulatory principles proscribing the denial of service for "collateral" matters. It matters not to other ratepayers whether a household fails to pay its Exxon Oil bill, for example, if that household *will* pay its utility bill. Given the fact that nonpayment of non-utility bills has little relevance to whether utility bills will be paid, basic fairness requires that third-party credit information on non-utility transactions not serve as a basis for utility demands for a cash security deposit.

While LIEN believes that a deposit equal to 2.5 times a customer's estimated monthly bill is excessive, LIEN does not request any change in that Rule in this proceeding. However, LIEN does seek one clarification in the OEB Rule. The OEB Report recommends a continuation of the requirement that a deposit be 2.5 times the customer estimated bill based on the customer's average monthly load with the electricity utility during the most recent 12 consecutive months within the past two years. (OEB Report, page 12). One of the established effects of climate change¹ is the increasing prevalence of extreme weather.² Bills that are based on atypical extreme weather events should not serve as the basis for calculating cash security deposits, even if such extreme weather has occurred in the past twelve months. Such deposits would be excessively high if measured against an objective of protecting electric utilities against normal weather. LIEN recommends that the OEB cash security deposit Rule be clarified to ensure that temperatures underlying "the customer's average monthly load with the electricity

¹ Natural Resources Canada (2018). "Overview of Climate Change in Canada,"

www.nrcan.gc.ca/environment/resources/publications/impacts-adaptation/reports/assessments/2008/ch2/10321

² See, e.g., Sarah Rahomon, Yahoo Canada News (August 29, 2018). "What's with all this extreme heat? When the Ontario heat wave will break," <https://ca.news.yahoo.com/whats-extreme-heat-ontario-heat-wave-will-break-142058007.html>,

("It's almost September, but the last few days of August have seen parts of southwestern Ontario under an extreme heat warning from [Environment Canada](http://EnvironmentCanada.ca). The hot and humid conditions have been extremely uncomfortable, with humidex values up to 40 C and little to no relief with overnight temperatures.") See also,

"Environment Canada issues special weather statement for Toronto, May 27, 2018,

<https://globalnews.ca/news/4235196/southern-ontario-heat-wave-environment-canada/>, see also, CBC News,

September 25, 2017, "Heat Wave: Warning in effect after record-breaking temperatures continue Monday,"

("Windsor-Essex continued to break warm weather records Monday. The temperature at the Windsor Airport peaked at 31.2 C around 5 p.m., beating out the previous record of 30.8 C set on the same date in 2007. A heat warning remained in effect throughout the day after Windsor and Sarnia broke records Saturday and Sunday, according to Environment Canada.")

utility during the most recent 12 consecutive months within the past two years” be weather normalized such that unusually extreme weather, either hot or cold, not form the basis for a cash security deposit.

Finally, LIEN has serious concerns about one of the factors which, pursuant to OEB Rules, indicates that a customer fails to have a good payment history. The OEB Rule provides that a customer is deemed to have a good payment history unless, during the relevant period, “the customer has received more than one disconnection notice.” (OEB Report, at page 12). What this Rule fails to recognize, however, is that the computerization of the issuance of disconnect notices that results in thousands of disconnection notices being issued under circumstances where the utility issuing the notice has no intent, and no capacity, to follow-up on the notice.

The OEB acknowledges this phenomenon when it notes that, in objecting to an 11 day disconnection window, utilities argued that “the challenge of disconnecting customers within the permitted disconnection window [is too short] due to issues including *resourcing, equipment availability* and weather.” (OEB Report, at page 40). Utilities, in other words, acknowledge that they send more shutoff notices than they have the staffing and/or equipment to actually perform. This is not based so much on the risk posed by the customer as it is based on the belief by the utilities (wrongly so in LIEN’s opinion) that disconnection notices are effective collection mechanisms. Again, the OEB Report seems to acknowledge this when it reports that “most utilities agree that without the *threat of disconnection*, customers do not see the need to make any payment arrangements with their utility and, as a result, will face much higher bills when the ban ends.” (OEB Report, at page 44) [emphasis added].

Ontario’s electric utilities, in other words, do not use a disconnection notice as a warning of an impending loss of service, as they should (i.e., “it is important for the customer to have a reasonable expectation as to when service might be disconnected,” OEB Report, at page 41). They instead view disconnection notices as an effective threat to coerce payment, even though they have no intention, and no “resourcing [or] equipment availability,” to follow-through on that threat.³

Cash security deposits should not be required simply because utilities have the capacity to computer-generate such threats. LIEN believes the OEB intends the Rule to limit cash security deposits to circumstances involving more than a customer being “in arrears.” It would seem that if being in arrears was sufficient to require a cash security deposit, the Rule would have stated so directly. The advent of computer-generated disconnection notices, however, has largely eliminated the distinction between the risk that the OEB seeks to protect against and the issuance of a disconnection notice. Note the similarity between Ontario’s notices of disconnection and

³ LIEN will discuss the use of disconnection notices as a collection device in greater detail below.

those disconnect notices found, by one U.S. court, to be constitutionally invalid.⁴ Whether or not the applicable law is the same, the policy observations of the U.S. court are just as valid in Ontario.⁵

Deposits should not be based on the issuance of meaningless disconnection notices. LIEN recommends that the exception stating that “the customer has received more than one disconnection notice” should be deleted. In its stead, OEB should broaden the use of a disconnect/collect trip to include circumstances where “a disconnect/collect trip has occurred or has been scheduled.” [emphasis delineates proposed addition].

Recommendation #4. Minimum Payment Period.

Reference: Section 5.2.1. The OEB Report recommends that “the minimum payment period before late payment charges can be applied by a utility should be at least 20 days from the date the bill was issued to the customer.” LIEN supports this recommendation.

It can be demonstrated that late payment charges are an ineffective means to incent customers to pay their bills either more timely or in a more complete fashion. Utilities that impose late payment charges do not see an increase in either the number or the amount of payment in days immediately preceding the day on which the charge is to be imposed, as would happen if customers are seeking to avoid the imposition of the charge. Nor is a late payment charge tied to the carrying costs of an unpaid bill. If that were the case, even a 20-day deadline for imposing a late payment charge would be arbitrary. LIEN’s complete comments on late payment charges will be presented in further detail below.

With respect to the narrow issue of minimum payment periods discussed in Section 5.2.1, however, LIEN endorses the OEB Report’s recommendation.

⁴ In *Palmer v. Columbia Gas*, 479 F.2d 153 (6th Cir. 1973), implicitly overruled on other grounds, *Jackson v. Metropolitan Edison Company*, 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974), the court found that the company issued between 120,000 and 140,000 notices per year, only about 4% of which were followed by actual terminations. The Federal Circuit Court held that “it is clear that the flood of final notices sent out by the company was, as the District Court expressed it, ‘a wolf kind of notice’ which does not conform to the constitutional requirements that notice be truly informative and be given at a meaningful time.” As the *Palmer* court noted: “what we have here is a wolf kind of notice that is very convenient for the computer to issue, but is not, I think, what the statute contemplates, which. . . is a meaningful notice that applies to the person who is going to be affected by it and will be followed by some action.”

⁵ LIEN is obviously *not* recommending that utilities simply increase the number of disconnections they actually perform. This discussion cannot reasonably be read as promoting such an approach. LIEN’s observation is that utilities should not threaten to disconnect service when they have neither the intent to disconnect nor the resources (including equipment) to disconnect.

Moreover, LIEN endorses and recommends the OEB Report’s finding that the existing Rules for determining the date on which payment has been received from a customer “continue to be relevant and appropriate.” (OEB Report, at pages 18-19).

LIEN does have some concern about the requirement that customers choosing to enroll in pre-authorized payment plans be given a choice of at least two days within a month for the payment to be withdrawn. These concerns, while noted here, are discussed in more detail below with respect to pre-authorized payment plans.

LIEN further recommends that the OEB address the issue of when payments clear the bank. LIEN has previously corresponded with OEB regarding this issue. Many low-income customers unnecessarily default on their payments as they do not realize that the due date of their payments is actually the date that the payment needs to be credited, or posted, to their account. Posting, however, can take three or four days. Some LDCs add in “grace days” to account for this posting period, but doing so is at their discretion. LIEN offers two recommendations to address this problem. First, LIEN recommends that customers should be clearly informed by the LDC that they must provide their payment in time for their account to be credited by the due date *by their bank*. In addition, LIEN recommends that all LDCs be required to allow a “grace period” of five days for eligible low-income customers who pay their billings by the due date. Considering that the customer has the money, and has made the required payment, it would be counter-productive to categorize such a payment as a “default” in view of the penalties this may well trigger.

Recommendation #5. Equal Billing and Equal Payment Plans.

Reference: Section 5.2.2. LIEN largely endorses the multiple recommendations advanced in the OEB Report regarding Equal Billing and Equal Payment Plans. In particular, LIEN endorses:

- The distinction made in the OEB Report between equal billing and equal payment plans. In particular, LIEN endorses and recommends adoption of the OEB Report’s recommendation that customers have the choice of *either* an equal billing *or* an equal payment plan. In making this recommendation, LIEN agrees with the OEB Report that entry into an equal billing plan should not be contingent upon also entering into an automatic payment plan. (See generally, OEB Report, page 23). LIEN further endorses the recommendation that equal billing plans should be offered to *all* customers. (OEB Report, page 24).
- Allowing, but not requiring, distributors to cancel a customer’s equal billing plan after two missed payments under the plan within a single equal billing year is appropriate.

Customers should not be allowed to continue with equal billing irrespective of payment patterns.

LIEN has one concern about the discussion of offering two payment dates within a month for automatic payments to be withdrawn. While LIEN agrees with the benefits provided by allowing consumers to pick one of two dates for automatic withdrawal, LIEN notes that the two dates may *still* not work for some depending on when such customers receive their funds (e.g., CPP, Ontario Works, etc.). Utilities should not limit the two payment date choices to the same dates for all customers. Instead, utilities should become aware of the dates a customer reports receiving income and should tailor the resultant payment date choices to those customer-specific circumstances.

LIEN believes the OEB Report's comments on communication with customers regarding equal billing are well-founded. (OEB Report, page 26). However, the following additional information seems relevant. Residential payment patterns often indicate that seasonal variations in bills result in short-term arrears. While these unpaid account balances are generally retired in short-order, the offer of budget billing could be used as one mechanism through which the unpaid balances could be avoided in the first instance. Accordingly, LIEN recommends that the OEB require that at least one of the mandatory "twice a year" communications regarding equal billing plans occur immediately *before* expected high cost months. Those "high cost months" might include months with high heating costs or might involve months with high cooling costs.

In addition, LIEN seeks clarification of the OEB Rules in two regards when the OEB Report recommends that "Distributors should offer non-seasonal residential customers. . .an equal billing plan." LIEN seeks clarification on the following two issues:

1. Customers should be allowed to enter into an equal billing plan in any month of the year. The OEB Report seems to indicate that many utilities require customers to enter into equal billing plans *only* if the plan effectively requires the customer to pre-pay for service. The OEB Report notes that Enbridge's plan runs from September to July; Union reconciles its equal billing accounts in August; EPCOR does so in May of each year. LIEN suggests that, for example, an electric heating customer should be allowed to enter into an equal billing plan even if the first month of that plan is immediately before the heating season. The customer benefits from an equal billing plan flow from the levelized monthly payments, not from the prepayment of the next winter heating season's bill. Utilities should not be allowed to impose restrictions on the month in which a customer enters into a levelized equal billing plan.
2. In addition, the OEB Report recommends that equal billing plans be made available to small business customers unless, amongst other things, the small business

customers is “in arrears.” (OEB Report, page 26). OEB should make clear that *residential* customers in arrears are allowed to enter into an equal billing plan. Indeed, as LIEN indicates elsewhere, it is customers in short-term arrears at the end of high cost seasons that might most benefit from entering into an equal billing plan. A customer in arrears seeking to enter into an equal billing plan would, obviously, have to also agree to a arrearage payment arrangement (“APA”) through which to retire his or her arrears.

Having made the recommendation above, however, while being *allowed* to enter into equal billing plans, customers entering an APA should never be *required* to enter into equal billing plans. By its very nature, an APA requires a customer to pay the current bill along with a pre-agreed upon payment toward the customer’s arrearages in order to remain current on the APA. It is entirely possible, depending on the month in which a customer enters into the APA (and equal billing plan), that a customer might miss a monthly payment in such circumstances even though the customer has a credit on his or her bill for current service. To face the default on the APA, or even the possible disconnection of service (due to defaulting on an APA), even though having a credit toward their bill for current service, would seem eminently unfair. A customer should be allowed to choose to take that risk, but should not be required to take that risk.

Finally, LIEN endorses the recommendation that equal billing plans should be adjustable during the months during which the equal billing is in operation (OEB Report, page 24) (i.e., “Distributors may adjust the equal monthly billing at any time to accommodate a customer request or if the difference between the equal monthly billing amount and the actual amount is extraordinary,” OEB Report, at page 26). Prior to publishing a Rule incorporating that recommendation, LIEN encourages the OEB to engage in a brief consultation or collaboration with stakeholders to further quantify what “difference” might merit an adjustment. The word “extraordinary” seems to be too stringent. A difference might be “substantial,” for example, without being “extraordinary.” In LIEN’s opinion, surely there is room for consensus between stakeholders of a point at which any difference between an equal monthly budget billing amount, and the actual amount, would be sufficient to merit an intra-year adjustment to the budget billing amount. Making such an adjustment so as to minimize or eliminate an end-of-year balance would benefit both the customer and the utility. Utilities and customers, both, should be able to know when such an adjustment will be made, irrespective of whether such a difference is “extraordinary.”

Recommendation #6. Payment by Credit Card.

Reference: Section 5.2.3. LIEN supports the recommendations made in the OEB Report regarding the use of credit cards. As a general rule, the use of credit cards by low-income households to pay utility bills is a counter-productive action from both the perspective of the utility and the perspective of the low-income consumer. While credit card payments may result in a short-term payment of the immediate bill, they also tend to increase rather than to decrease the financial obligations owed by the household. Moreover, the service charges imposed for the use of credit card payments increase the overall financial obligations of the credit card user. Each of the OEB Report's three recommendations regarding payment by credit card should be adopted.⁶

Recommendation #7: Allocation of Payments.

Reference: Section 5.2.4. LIEN largely supports the recommendations of the OEB Report regarding the allocation of payments, with some clarification requested. LIEN believes it is appropriate to allocate payments first to electricity charges and then, only if funds remain, to other charges in the following order: arrearage payment agreements; outstanding security deposits; under-billing adjustments; and then non-electricity charges.

LIEN, in particular, endorses continuation of the current electricity rules which bar the imposition of late payment charges, or the use of the disconnection of electricity service, for charges other than electricity-related charges. Utilities should not be allowed to sell their control over essential electricity service to be used as a collection mechanism for non-electricity charges included on an electric bill. **Moreover, LIEN urges the OEB to extend this principle to natural gas utilities, such that a natural gas utility, too, would be barred from disconnecting service (or imposing late charges) for non-gas charges.**

Currently, only Enbridge Gas Distribution Inc., (EGDI) allows third party charges on their billings by companies providing energy-related products and services. LIEN participated in the OEB's hearing in 2011/12 regarding the continuation of these third party non-gas billings by EGDI and were assured that low-income consumers would not be disconnected for non-gas arrears. Unfortunately, this assurance was undermined by section 6.8 in the EGDI Conditions of Service which, in practice, meant payments were applied to the oldest outstanding amount, be that a non-gas charge, or a mix of gas and non-gas charges.

⁶ The OEB Report's recommendations include: (1) The credit card payment option should remain at the discretion of the utility; (2) that utility discretion should be constrained by the current Rule that where a distributor has issued a disconnection notice to a residential customer for non-payment, the distributor must, at a minimum, have the facilities and staff available during regular business hours so residential customers can pay overdue amounts by credit card issued by a financial institution; and (3) that discretion should further be constrained by the current Rule that when a distributor visits a customer's property to disconnect service during or after regular business hours, the distributor must have the facilities or staff available to allow residential customers to pay overdue amounts by credit cards issued by a financial institution. (OEB Report, at page 28).

LIEN entered into informal discussions with EGDI to address this issue and an amendment was made to section 6.8 of their Conditions of Service, but we do not believe this was a satisfactory resolution as you can see from correspondence from LIEN’s counsel to EDGI dated December 7, 2015 and attached to these comments for your easy reference.

Finally, LIEN agrees that customers should be allowed to specifically request that their payments be allocated in an order different from that specified above. LIEN’s agreement is for precisely the reason identified in the OEB Report; consumers should be afforded some level of flexibility in directing the application of their payments.

LIEN recommends one clarification to be made in the OEB Rules. The OEB Report notes only for natural gas providers that “for any charges in arrears, payment will be applied to the oldest charges first and any late payment fees will be applied to the outstanding balance.” LIEN recommends that this same principle be explicitly incorporated into electricity Rules. No outstanding balance that is, or could be, subject to a late fee should be left outstanding while payments are applied to a balance on which no late fee will be imposed. LIEN agrees that the oldest charges should be retired first, but within the constraints of the broader payment allocation hierarchy.

Recommendation #8. Arrears Payment Agreements.

Reference: Section 5.2.5. LIEN largely supports the Arrears Payment Agreement (“APA”) Rules as they are currently written, with some clarifications and data reporting important for their enforcement.

LIEN supports and endorses the recommendation of the OEB Report that distributors should not charge residential customers additional late payment charges on the amount that is covered by an OEB-prescribed APA.⁷ By entering into an APA, the customer and the utility have redefined what the customer’s payment obligations are. So long as the customer maintains that APA (as measured by whether an APA is “cancelled” as discussed elsewhere), the customer’s payment should be deemed to be “current.” No “incentive” function would be served by imposing a late payment charge since the customer is doing what he/she has agreed to do. In addition, no collection activities would be occurring, the cost of which would be offset by the late payment charge. And, the carrying costs would be no different from a customer who maintains an account balance through an Equal Billing Plan. LIEN urges that the OEB Report’s recommendation that no additional late payment charges be imposed on amounts covered by an APA be adopted.

⁷ This agreement should not be construed to be in contravention of LIEN’s recommendation that low-income customers be exempted from late payment charges in general.

LIEN supports the distinction drawn in the Rules between APAs offered to residential customers generally and to eligible low-income customers in particular. However, the following concerns are noted:

- While LIEN does not generally oppose the 10% down payment requirement for an APA for eligible low-income customers, LIEN urges that further limits be placed on down payments. If the down payment becomes an insurmountable barrier to entering into an APA, that down payment serves no-one's interest, utility or customer. LIEN notes that utilities are not allowed to *automatically* impose a 10% down payment. Rather, the Rules allow a down payment of *up to* 10%. The "up to" (i.e., not to exceed) language appears to impose a requirement that utilities engage in some inquiry regarding the appropriate level of a nonpayment. Moreover, the "up to" language recognizes that a 10% down payment may not be appropriate in all circumstances. Accordingly, LIEN recommends that a further restriction be placed on the 10% down payment such that a down payment may also not exceed those dollars which would have been required had a customer been required to post a cash security deposit. Utilities should impose a down payment of *up to* 10% *or* 2.5x the customer's average monthly bill, whichever is less.

In this regard, LIEN believes that the requirement that any security deposit must be applied to the amounts owing before entering into an APA allows that security deposit to be used as the APA down payment. The effect of the recommendation above, therefore, is simply to place those low-income customers who have previously posted security deposits and those low-income customers who have not previously posted security deposits on the same level playing field.

In addition, LIEN recommends that the OEB require utilities to routinely report the distribution of down payments they have required for low-income APAs. Only in this fashion can the OEB assure itself that utilities are using the 10% figure (or the 10%/2.5x figure recommended by LIEN) as a ceiling rather than using that 10% figure as both a floor and a ceiling.

- LIEN agrees with the existing Rules that customers should be given notice prior to an APA being "cancelled" and that the APA "must be reinstated if the customer pays in full before the cancellation date." (OEB Report, page 32). LIEN does have concern, however, about the 10-day notification period. A customer who has defaulted on more than one APA payment (more than two for eligible low-income customers) may well receive more than one type of collection "notice" from the utility. LIEN urges that the time frames contained within those notices not present different deadlines. Accordingly, LIEN recommends that the time within which an APA may be reinstated if the customer

pays in full be aligned with the collection notices proposed subsequently in the OEB Report. LIEN recommends that customers, in other words, should be given fourteen (14) days written notice before an APA can be cancelled.

- LIEN further observes that an APA stretching over a minimum of 12 - 16 months (i.e., 12 months or more; 16 months or more) for an eligible low-income customer runs the risk of the customer facing a change in financial circumstances during the term of the APA. It makes little sense for a customer facing such a change in circumstances to be forced into defaulting on their APA. Customers with low-incomes have two income attributes that are relevant to an APA. The first income attribute is the *level* of their income. The second income attribute is the *insecurity* of their income. The “insecurity” of income reflects the extent to which incomes for such customers may fluctuate, sometimes substantially, over time. LIEN urges that utility APAs should have sufficient flexibility to allow a customer to request a renegotiation of their APA. LIEN acknowledges, however, the reasonable applicability of other OEB Rules in this regard. If a low-income customer declines (or fails) to request a renegotiation, then the utility may proceed to cancel the APA and disconnect service and is not required to renegotiate the APA after disconnection.

The first serious area of disagreement that LIEN advances with the existing APA Rules involves the regulatory language regarding second APAs. LIEN urges that no purpose is served by requiring a customer to abide by a stay-out provision once an APA is successfully completed. For example, a customer who is unable to pay during high-cost electric months (whether those high-cost months are heating or cooling months) may well find it necessary to enter in an APA subsequent to each high-cost period to retire account balances that have gone unpaid during those high-cost months. So long as the APA is successfully completed, the utility is better off than it would be if it forces the customer into the disconnection/reconnection process. LIEN urges the OEB to reconsider its Rules regarding APA stay-out periods. LIEN recommends that once an APA has been successfully completed, the customer is treated as though no nonpayment had occurred in the first instance. In these circumstances, the customer has met all of his/her payment obligations and should be acknowledged as having done so.

A second serious area of disagreement that LIEN advances with the existing APA Rules is that the OEB has failed to incorporate an arrearage forgiveness program into its Rules. One critical component to a low-income initiative designed to address arrearages involves arrearage management. An arrearage management program component is designed to reduce pre-program arrears to a manageable level over an extended period of time. Through an arrearage management program, a customer earns credits toward his or her pre-program arrears over a period of time, so long as the customer makes their payments over a prescribed period of time.

By the end of the time period, the household's preprogram arrears will be reduced to \$0. An arrearage management program can be tied to participation in OESP.

An arrearage management program component is necessary to help get low-income customers "even" so they have a chance at future success in making payments. It makes no difference to have current bills be affordable if the total bill is unaffordable due to payment obligations required to retire past due bills incurred before the program began (known as pre-program arrears).

The 2006 evaluation of the New Jersey Universal Service Fund (USF) left little question but that that program's arrearage management provisions (called the "Fresh Start program") were necessary to help USF program participants successfully comply with the payment terms of USF bills.⁸ In the absence of Fresh Start, USF program participants would be responsible for complete payment of their pre-program arrears. These arrearage payments would be above and beyond the percentage of income burdens found to be affordable.

The New Jersey evaluation expressly found that increasing the percentage of income burdens charged to USF participants had an adverse impact on the ability of USF participants to maintain payment compliance under the program. As the evaluation noted, "more than 80% of households with a [net energy burden] below 3 percent covered 100 percent or more of their annual bill. Less than 60 percent of households with a [net energy burden] at or above 8 percent covered 100 percent of their annual bill." Indeed, while 25.6% of the participants with net energy burdens exceeding 8% of income paid between 50% and 90% of their bill, only 6.0% of households with energy burdens of between 2% and 3% had coverage rates that low.

The New Jersey evaluation reported the same types of results for gas/electric combination USF participants. While nearly 80% of participants with burdens of less than 4% paid 100% or more of their bills, only 43% of participants with burdens exceeding 12% did. While 31.1% of USF participants with burdens exceeding 12% paid between 50% and 90% of their bills, only 9.0% of participants with burdens less than 4% had bill coverage rates that low. The New Jersey USF evaluation documents quite clearly the need for an arrearage management program component in a low-income affordability program. As percentage of income payment responsibilities increase, payment compliance decreases.

While some utilities simply forgive all arrears brought into a low-income program at the time the program begins, most utilities provide arrearage management over an extended period of time. In the latter situations, the time period over which to provide preprogram arrears credits needs to

⁸ Apprise, Inc. (2006). *Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund*, prepared for the New Jersey Board of Public Utilities, Apprise, Inc.: Princeton (NJ).

stay within the reasonable planning horizon of the customer.⁹ LIEN recommends an arrearage management period of two years for Ontario. Arrearage credits are earned on a monthly basis.¹⁰

No prerequisite is proposed for the offer of arrearage management credits. While at first blush, it may seem desirable to make the grant of credits toward pre-program arrears contingent upon full and timely payment of current bills, there are both policy and operational reasons not to do this.

First, there are the operational issues. To implement such a contingent credit, the local utility would need to develop an information system process that determines, on a monthly basis, not only whether the full bill has been paid, but whether it has been paid on a timely basis. Depending on the answer to those inquiries, different bills will be generated by the utility (either one reflecting an arrears credit or one not reflecting such a credit). Layering a process for “curing” missed payments adds further administrative complexity.

Second, from a policy perspective, program administrators have learned that creating layer upon layer of “incentives” for payments clouds the fundamental underlying proposition. That proposition posits that, in recognition of the underlying unaffordable burden posed by utility bills at fully-embedded rates, the low-income customer is allowed to take service under the low-income OESP program. Given that response to unaffordability, customers then have the responsibility to make full and timely payment of their bills irrespective of any further “incentive.”

Accordingly, nonpayment for service provided under the affordable low-income rate will be met by placing the customer into the same collection process as that which would be faced by any other customer. Nonpayment does not result in suspension from the program. Instead, while the customer would continue to take service under the low-income rate, nonpayment under the low-income rate will place the program participant in the collection process.

In sum, the following critical elements of the proposed arrearage management component of a low-income affordability program are proposed above:

- Arrears are to be retired over a two-year period;
- No pre-condition is established for the grant of arrearage management credits; and

⁹ To suggest, for example, that arrears will be reduced to \$0 over a period of four or more years is outside the horizon within which low-income households do their planning.

¹⁰ While arrearage credits are to be *earned* on a monthly basis, they can be *credited* to the account (or “posted” to the account) on a quarterly or semi-annual basis. The point at which earned preprogram arrears credits are actually credited is often a matter of billing system programming rather than a program policy question.

- The appropriate response to nonpayment is to place the program participant in the same collection process as any other residential customer.

Recommendation #9: Disconnection for Nonpayment: Content of Disconnect Notice.

Reference: Section 5.3.1. LIEN endorses the recommendation of the OEB Report regarding the content of disconnection notices for nonpayment. The OEB Report recommends that the OEB Rules explicitly state that a disconnection notice that does not include that information prescribed by the Rules shall be considered invalid. As a result, any service disconnection that would follow such an invalid notice would be unlawful. LIEN agrees.

LIEN recommends, however, that OEB prescribe a “best practices” disconnection notice as a template for utilities. Such a “best practices” notice would provide a safe harbor for disconnections based upon such a notice. While not mandating the notice to be used in all instances, if the “best practices” notice were used by a utility, that utility would do so knowing that it would not subsequently be found to have used an invalid notice.

The “best practices” notice should not only contain the information prescribed in OEB Rules, but should be subject to review by sufficient adult education communication specialists to ensure the readability of the notice for customers of varying ages and educational proficiency. The issue involves not only *what* information is presented, but also *how* that information is presented. While OEB may wish to consider a brief stakeholder consultation about what information is presented, the question of how the information is presented should not be subject to a group review, but rather a review by communications professionals.

Recommendation #10. Disconnect Notice Period and Timing.

Reference: Section 5.3.2. LIEN endorses the timeline of notices proposed in the OEB Report. (OEB Report, at page 42). LIEN asserts, however, that information presented in the OEB Report raises a broader issue that the Report did *not* address, which should be.

LIEN urges that restrictions be placed on the disconnection of service for bills based on estimated bills. One of the most fundamental aspects of delivering quality service to electricity customers is the obligation to meter the electricity used and ensure that bills accurately reflect the service that has actually been consumed. While LIEN acknowledges that the OEB has Rules addressing the payment period over which under-billings are to be collected, prior to the time that the existence of an under-billing (or over-billing) is found to have existed, customers are subject to the full array of collection steps, including the disconnection of service. Under this process, in other words, a customer can easily have service disconnected for nonpayment of electricity which the customer never used in the first instance. This result is unacceptable in any

form. LIEN urges that in the OEB's consideration of customer service Rules relating to the disconnection of service, the OEB affirmatively bar the disconnection of service for any unpaid bill balance that is comprised, in whole or in part, of an estimated meter reading.

In addition to the issue discussed immediately above, the OEB Report indirectly raises the issue of the "over-noticing" of service disconnections for nonpayment. According to the OEB Report, utilities "explained the challenge of disconnecting customers within the permitted disconnection window due to issues including *resourcing, equipment availability* and weather." (OEB Report, at page 40) [emphasis added]. As the utilities concede, in other words, they send out more disconnect notices than they have available resources and equipment availability to perform.

The problem, as LIEN sees it, is that which was identified in a different section of the OEB Report. According to the OEB Report, "the OEB continues to believe that *it is important for the customer to have a reasonable expectation as to when service might be disconnected. . .*" (OEB Report, at page 41) [emphasis added]. If a utility routinely sends disconnect notices under circumstances where, due to constraints on available resources and equipment availability, it has no realistic expectation of following through to actually disconnect service, that purpose of a disconnect notice (i.e., to provide "a reasonable expectation as to when service might be disconnected") is not being served.

A shutoff notice is to provide a clear and believable warning of the impending disconnection of service due to nonpayment. When an electric utility routinely issues notices of an impending disconnection of service to residential customers when it has no intent to follow-through on its threat, it is "over-noticing" its accounts.

Issuing notices that falsely warn a customer of an impending disconnection of service is contrary to the entire purpose of the notice with which to begin. The purpose of a notice is to provide a clear and believable warning that a service termination is about to occur. In response to such a notice, the customer must either take the steps necessary to prevent the service termination or take those steps needed to protect him or herself against the dangers to life, health and property that might result from the loss of service.

The key phrase above is "clear and believable." From a customer service perspective, in other words, when an Ontario electric utility issues false notices of an impending disconnection of service, it violates its obligation to provide a clear and believable notice of a pending shutoff. Customers react in different ways to the need to pay a sum-certain by a date-certain or face the disconnection of service altogether. LIEN knows from repeated surveys of energy assistance recipients that some customers will forego food while others forego medical care in order to pay their home energy bills. Some customers will engage in high-cost, high-risk borrowing through "check-cashing stores" or "pay-day lending stores" which leave them worse off in even the

intermediate term. Some customers simply move, while others commit fraud by flipping their account into someone else's name. Each of these outcomes, taken in response to a false threat of service disconnection, represents an unacceptable degradation in quality of life.

Moreover, placing customers in the position where they face a perceived immediate drop-dead payment-in-full date also discourages customers from taking longer-term constructive actions in response to their bill nonpayment. It discourages customers from engaging in conservation. As reported in one 1999 study, when a customer faces a nonpayment disconnect notice, "the customer is faced with an immediate need (*i.e.*, bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need." Constructive responses such as usage reduction strategies and partial payments are generally perceived to have been taken off-the-table by shutoff notices requiring full payment by a date-certain to retain service.

There are, however, even deeper customer service problems represented by sending false disconnect notices. We have all heard the childhood story of the "boy who cried wolf." Repeatedly sending false disconnect notices creates a situation where the utility is sending wolf-like notices. The customer receiving such a notice has no basis upon which to make a decision as to which notice requires a response. The result is a tendency to delay. Delay occurs because "tomorrow will be better than today." Delay occurs because a source of payment assistance provides only a one-time grant and it is thus better to ask for help on a three-month arrears than it is to ask for help on a two-month arrears. Delay occurs because, after sending multiple notices warning of an impending disconnection of service if payment-in-full is not made by a date certain, the utility does not send a notice saying "*this* time, we really mean it" or "this time, we really, *really* mean it." The notice, in other words, loses its believability. When a disconnection actually does occur, it often comes as a surprise. Or the customer is placed in the position of responding at the last minute when they realize that "*this* time, it's real."

Finally, there is the health and safety issues presented by the utility "crying wolf" with its disconnect notices. In response to repeated notices of an impending nonpayment disconnection that, in fact, does not occur, customers will reasonably learn to rely on the non-action of the utility. One purpose of the shutoff notice, however, is not simply to prompt customers to pay, but to allow customers time to make alternative living arrangements should they be unable to pay and lose their utility service. If customers do not receive a clear and believable warning of a disconnection of service, when an actual disconnection of service does occur (in that one out of every multiple times), the customer may well be left unprepared and incapable of finding alternative housing arrangements. In today's world, a housing unit without electricity is fundamentally considered unsafe and uninhabitable. Repeatedly "crying wolf" places customers in the position of potentially facing such unacceptable and unreasonable living conditions.

- A) No utility shall:
- 1) Threaten to disconnect service or take other actions that cannot legally be taken.
 - 2) Threaten to disconnect service when it has no present intent to disconnect service on the date noticed or when actual disconnection is prohibited. Notice of the intent to disconnect service shall be used only as a warning that service will in fact be disconnected on the date published in the notice in accordance with the procedures under this chapter, unless the customer remedies the situation which gave rise to the enforcement efforts.
- B) No utility shall make a practice of delivering more than two consecutive notices of disconnection for past due bills without engaging in the collection identified in the notice.

The key concept at play here is “clear and believable warning.” When an Ontario electric utility issues a number of disconnect notices that far exceeds the number of disconnections that it actually performs (due to “resourcing and equipment availability”), it fails to fulfill its customer service obligation to provide a “clear and believable warning” that a pending disconnection is imminent. Just as the village residents quickly learned to ignore the young boy’s “cry of wolf” in the childhood story, customers learn to ignore the utility’s “cry of wolf” as to the disconnection of service for nonpayment. In the meantime, just as the villagers were tricked into false (and often adverse) activities in response to the “cry of wolf,” Ontario customers are tricked into false (and often adverse and counterproductive) activities in response as well.

LIEN agrees with the OEB when the OEB Report states that “it is important for the customer to have a reasonable expectation of when service might be disconnected.” LIEN asserts that the over-noticing of disconnections not only does not fulfill that objective, but affirmatively impedes achieving that objective.

Accordingly, LIEN recommends the OEB adopt a restriction in substantially the form presented below (which mirrors regulatory responses to over-noticing in U.S. states):

Recommendation #11: Winter Disconnection and Reconnection.

Reference: Section 5.3.3. LIEN has long advocated for the adoption of a date-based winter disconnection moratorium in Ontario. To the extent that the OEB continues a date-based moratorium (November 15th to May 1st, OEB Report, at page 47), LIEN endorses that continuation. Moreover, LIEN acknowledges and applauds both the proposal to require a

reconnection of service prior to cold weather and the extension of cold weather protections to natural gas utilities. However, and it is a big however, LIEN urges that the cold weather moratorium operate during the period November 1 through the immediately following May 1.

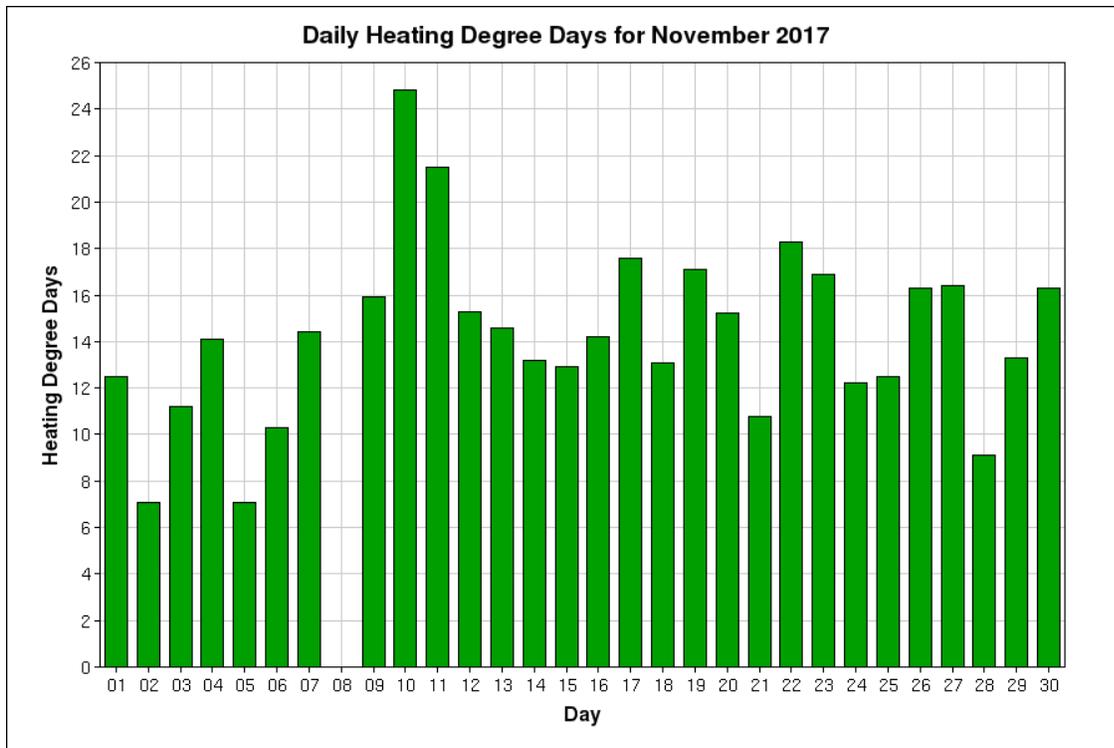
For example, LIEN notes the extent to which Toronto experiences heating degree days (18°C) in the 12-month period October 2017 through September 2018.¹¹ This data clearly demonstrates that November heating needs are more associated with winter temperatures than with non-winter temperatures. Consider, for example, that the November HDDs are nearly identical to the April HDDs. Under the OEB recommendation, however, the April usage would be covered by cold weather protections while the November usage would not be.

Month starting on	Total HDDs
Sep 2018	46
Aug 2018	1
Jul 2018	0
Jun 2018	15
May 2018	76
Apr 2018	438
Mar 2018	554
Feb 2018	555
Jan 2018	732
Dec 2017	718
Nov 2017	429
Oct 2017	154

Moreover, government data demonstrates that these HDDs are not back-loaded in the later weeks of November. Instead, the November HDDs for Toronto were spread reasonably equally throughout the month.¹²

¹¹ <https://toronto.weatherstats.ca/charts/hdd-monthly.html>

¹² http://climate.weather.gc.ca/climate_data/generate_chart_e.html?StationID=51459&timeframe=2&type=bar&MeasTypeID=heatingdegreedays&Day=1&Year=2017&Month=11#



In urging this broader date-based moratorium, as early as 2008, LIEN was willing to agree to moratorium Rules that would prevent a customer from carrying over arrears from one cold weather season to another. In 2008, LIEN recommended (and continues to endorse) an approach that would provide “during the period November 1 through the immediately following May 1, no utility shall discontinue or disconnect service to a residential customer for nonpayment of the residential customer’s utility bill so long as, as of November 1, the residential customer has no past-due charges from the immediately preceding heating season not subject to an arrears payment agreement.” [emphasis added].

Finally, consistent with LIEN’s concerns about the increasing frequency of extreme weather attributable to climate change, LIEN again notes the increase in extreme hot weather posing imminent health dangers to Ontario residents. Accordingly, in addition to cold-weather protections, LIEN endorses a date-based hot-weather protection Rule that mirrors the cold-weather protections. The hot-weather protection Rule should impose similar shutoff restrictions during the period June 15 to the immediately subsequent September 15 of each year. The adverse health consequences of the extreme hot weather facing Ontario in recent years has been well-documented and is not repeated here.

Recommendation #12. Late Payment Charges.

Reference: Section 6.1 LIEN believes that Ontario’s permitted late payment charge (1.5%/month; 19.56% per annum) cannot be justified on factual or policy grounds. A late payment charge of 1.5% per month is not necessary to compensate utilities either for the carrying costs associated with unpaid balances or for any collection costs the utility might employ in response to nonpayment. Moreover, to the extent that late payment charges are viewed as an “incentive” for customers to pay their bills, an utter and complete lack of documentation exists to support that objective. Unless demonstrated to be cost-based, and in the absence of affirmative documentation of the incentive function to be performed by late payment charges, late payment charges should be set at the utility’s short-term cost of borrowing.

Any comparison of late payment charges to credit card interest rates is entirely inapposite. Credit card interest rates are non-comparable to utility late charges in many, if not most, of their attributes. Credit card interest rates, for example, include recovery of the capital costs of the credit card issuer. Those capital costs for a utility are fully recovered in other parts of the utility’s rates. Moreover, credit card interest rates are intended to provide a profit margin for the credit card issuer. In contrast, it would be the height of objectionable for utilities to be able to view their late payment charges as a profit center. Allowing that to occur creates many types of bad incentives. It dis-incentivizes effective collection efforts. It dis-incentivizes any effort to reduce bills likely to be unpaid through targeted usage reduction programs. It dis-incentivizes efforts on the part of a utility to enter into reasonable APAs.

LIEN notes its fundamental objection to utility late payment charges above. Notwithstanding that objection, the remainder of this comment assumes a continuation of late payment charges for residential customers in general. LIEN offers two recommendations regarding late payment charges:¹³

First, LIEN recommends that the OEB extend the recommendation in the OEB Report to require that late payment charges, if any, be applied on a daily basis (at a rate not to exceed 1.5% per month) as observed by the OEB. (See, OEB Report, at page 49, “Also, the daily rate should be calculated based on the 1.5% monthly rate, *not* the 19.56% annual compounded rate.”) [emphasis added]. The daily rate identified by the OEB Report is 0.04895%. A person who is one day late in making a payment should not be charged the same late payment charge as a person who is 25 days late. A person who is one day late needs less “incentive” to pay their bill; moreover, a utility who is one day late imposes fewer carrying costs. Utilities should be required to impose their late payment charge (irrespective of what level that charge might be) on a daily basis.

Second, low-income customers should be exempt from paying late payment charges. When a customer fails to pay a bill in full because they cannot afford that bill, to respond to that

¹³ These recommendations are in addition to the previously advanced recommendation that late payment charges not be imposed on account balances that have been made subject to an APA.

nonpayment by *increasing* the bill through a late payment charge provide no incentive function. To do so is simply punitive.

One distinguishing attribute of a low-income household is the fact of the limited amount of income available to pay month-to-month utility bills. Directing collection efforts at the low-income household, and assessing a late payment charge to get paid for such efforts, does not serve the best interests of all customers. The result is simply to divert limited funds away from the low-income customer's ability to pay his or her current bill and to the payment of late payment charges instead.

The conclusion that imposing a late payment charge is likely to be a losing proposition does not depend for its efficacy on an assumption of nonpayment or partial payment. Even in those instances where the customer makes full payment of the outstanding arrears, the utility cannot be found *ipso facto* to have benefited from the late payment charge. So long as the late paying household has a limited (and insufficient) amount of income to devote to household expenses, if some part of the household's ability-to-pay is diverted to paying late payment charges, there is that much less left to pay current bills. A utility should not be permitted to engage in a collection process that is counterproductive. A process is counterproductive if it leaves the utility farther from collecting the outstanding arrears after the collection process than before it.

LIEN urges the OEB to exempt low-income customers from the imposition of late payment charges. Imposing such charges not only serves no function, but is counter-productive to the objective of obtaining full and timely payment of future bills.

Recommendation #13: Collection of Account Charge.

Reference: Section 6.2. LIEN endorses the OEB Report's recommendation that utilities should not be allowed to impose a "collection of account charge." LIEN agrees with the OEB Report when it states that "activities associated with collection of accounts are part of normal business activities and customers should not be charged for them." (OEB Report, at page 50). LIEN believes that inherent within that OEB observation is the further observation that any costs associated with collection of accounts are not "caused" by the collection of account activity as measured by a "but for" test. But for the collection activity, the costs of staff and associated expenses would still be incurred. As a result, the expenses are incorporated into rates outside a separate charge. No separate charge is merited.

Recommendation #14. Disconnect/Reconnect Charge.

Reference: Section 6.4. LIEN endorses the OEB Report's recommendations regarding disconnect/reconnect charges. First, LIEN absolutely agrees that such a charge, if any, should be limited to a "reconnect charge." Customers should not be separately charged for having their

service disconnected. Second, LIEN agrees that Distributors should waive this charge for low-income customers. LIEN finds as persuasive the OEB Report's reasoning that "some measure of relief is necessary to facility a more affordable payment." In addition, LIEN finds persuasive the OEB Report's observation that "eligible low-income customers who are making an effort to arrange for payments of their outstanding arrears should not have to face further hardship to pay a reconnection charge as well." (OEB Report, at page 53). The OEB Report's recommendations regarding such charges should be adopted.

Recommendation #15: Install/Remove Load Control Device.

Reference: Section 6.3. LIEN acknowledges the limits of the OEB Report's recommendation in this proceeding, wherein it is recommended that utilities remove "install/remove Load Control Device" charges from approved utility's Tariff of Rates and Charges. LIEN endorses and recommends approval of that recommendation.

However, LIEN objects to the use of Load Control Devices, in general, particularly as part of a credit and collection scheme. In particular, LIEN disputes any assertion by Ontario utilities that the use of Service Limiters will appreciably: (1) decrease the incursion of unpaid balances, especially during the winter heating season; (2) reduce the rate at which service will be disconnected for nonpayment; or (3) limit the number of customers who leave their homes with unpaid bills that contribute to a utility's uncollectibles.

Consider, for example, that the State of Minnesota has statutorily restricted the use of "load limiters" by Minnesota's electric utilities. Ontario's utilities cannot show that Minnesota utilities experience noticeably more severe cold weather collection problems, bad debt, or disconnection rates than do utilities not operating under these service limiter restrictions. In addition, the Utah state utility commission has, by Rule, placed substantial restrictions on the use of load limiters (also known as "Service Limiters") for residential accounts. Ontario's utilities also cannot show that Utah electric utilities experience noticeably more severe cold weather collection problems, bad debt, or disconnection rates than do utilities not operating under these Service Limiter restrictions.

Utilities often "justify" their use of load limiters (or "load control devices") on the grounds that such use is "voluntary." However, the "voluntary" offer of Load Control Devices carries with it an inherent problem of determining whether "agreement" to such a Limiter is truly voluntary. LIEN opposes the use of "voluntary" such devices.

For example, Service Limiters offered as an alternative to the disconnection of service, used as a collection device, or offered to low-income payment-troubled customers cannot be found to be based on an informed and true "consent" and thus should not be used in conjunction with, or as

an alternative to, arrearage payment agreements. In the law, there is a doctrine referred to as “economic duress.” When economic duress is present, “consent” will be found not to have been freely given, but rather to have been coerced. Duress is considered to exist under any circumstances that would impede, if not overcome, the party’s exercise of his or her free will. The potential loss of essential utility service as an alternative to a “consent” to a Service Limiter represents such economic duress. Moreover, the loss of utility service not only denies essential household services such as heating and light, but is generally considered to render a housing unit uninhabitable as well. If the loss of utility service does not represent duress, the uninhabitability of the housing unit (alone or in combination with the loss of utility service) would.

Voluntary or not, a “consent” to be subject to a load control device cannot be used to repeal the plain, explicit, mandatory language of the Ontario winter shutoff moratorium.

LIEN recommends that the OEB adopt a Rule barring the use of Load Control Devices unless a customer, in writing, requests the installation of such a device under circumstances in which the customer owes no outstanding bill balance to the utility.

Appendix A: Summary of LIEN Recommendations

1. The gas customer service Rules should be aligned with the electricity Rules where practical and appropriate. LIEN comments, page 1.
2. LIEN recommends that all proposals made in the OEB Report should apply equally to USMPs. LIEN comments, page 2.
3. LIEN endorses the decision of the OEB Report to make no changes to the instances where a utility may not request a deposit. LIEN comments, page 2.
4. LIEN endorses continuation of an exemption from cash security deposits for low-income customers when requested. LIEN comments, page 2.
5. LIEN endorses the decision of the OEB Report that security deposits be waived for new residential customers enrolling in the utility's equal billing and/or pre-authorized payment plan as determined by the utility. LIEN comments, page 2.
6. LIEN recommends that a letter from another utility in Canada should confirm "good payment history" using a definition of "good payment history" that is no more stringent than the OEB's definition. LIEN comments, page 2.
7. LIEN recommends that a "credit check" may only be used to establish a satisfactory credit history. A credit check may not be used to establish the need for a cash security deposit for an electric utility. LIEN comments, page 2.
8. LIEN recommends that the OEB cash security deposit Rule be clarified to ensure that temperatures underlying "the customer's average monthly load with the electricity utility during the most recent 12 consecutive months within the past two years" be weather normalized such that unusually extreme weather, either hot or cold, not form the basis for a cash security deposit. LIEN comments, page 3.
9. LIEN recommends that the deposit exception stating that "the customer has received more than one disconnection notice" should be deleted. In its stead, LIEN recommends that OEB should broaden the use of a disconnect/collect trip to include circumstances where "a disconnect/collect trip has occurred or has been scheduled." [emphasis denoting proposed addition]. LIEN comments, page 5.

LIEN supports the recommendation that the minimum payment period before late payment charges can be applied by a utility should be at least 20 days from the date the bill was issued to the customer.” LIEN comments, page 5.

10. LIEN offers two recommendations to address a problem facing low-income customers regarding payment due dates. First, LIEN recommends that customers should be clearly informed by the LDC that they must provide their payment in time for their account to be credited by the due date *by their bank*. In addition, LIEN recommends that all LDCs be required to allow a “grace period” of five days for eligible low-income customers who pay their billings by the due date. LIEN comments, page 6.
11. LIEN endorses and recommends the OEB Report’s finding that the existing Rules for determining the date on which payment has been received from a customer “continue to be relevant and appropriate.” LIEN comments, page 6.
12. LIEN endorses and recommends adoption of the OEB Report’s recommendation that customers have the choice of either an equal billing or an equal payment plan. LIEN agrees with the OEB Report that entry into an equal billing plan should not be contingent upon also entering into an automatic payment plan. LIEN comments, page 6.
13. LIEN endorses the OEB recommendation that equal billing plans should be offered to all customers. LIEN comments, page 6.
14. LIEN recommends that utilities, in offering two payment date choices to customers, should not limit those two payment dates to the same dates for all customers. Instead, utilities should become aware of the dates a customer reports receiving income and should tailor the resultant payment date choices to those customer-specific circumstances. LIEN comments, page .
15. LIEN recommends that the OEB require that at least one of the mandatory “twice a year” communications regarding equal billing plans occur immediately before expected high cost months. LIEN comments, page 7.
16. LIEN recommends that customers should be allowed to enter into an equal billing plan in any month of the year. LIEN comments, page 7.
17. LIEN recommends that the OEB should make clear that residential customers in arrears are allowed to enter into an equal billing plan. While being allowed to enter into an equal billing plan, customers entering an arrearage payment agreement (“APA”) should never be required to enter into an equal billing plan. LIEN comments, page 8.

18. LIEN endorses the recommendation that equal billing plans should be adjustable during the months during which the plan is in operation. LIEN encourages the OEB to engage in a brief consultation or collaboration with stakeholders to further quantify what “difference” might merit an adjustment (and how frequently such adjustments should be allowed. LIEN comments, page 8.
19. LIEN supports the recommendations made in the OEB Report regarding the use of credit cards. Each of the OEB Report’s three recommendations regarding payment by credit card should be adopted. LIEN comments, page 9.
20. LIEN largely supports the recommendations of the OEB Report regarding the allocation of payments. LIEN believes that it is appropriate to allocate payments first to electricity charges and then, only if funds remain, to other charges in the order identified by the OEB. LIEN comments, page 9.
21. LIEN, in particular, endorses continuation of the current electricity Rules which bar the imposition of late payment charges, or the use of the disconnection of electricity service, for charges other than electricity-related charges. Moreover, LIEN urges the OEB to extend this principle to natural gas utilities, such that a natural gas utility, too, would be barred from disconnecting service (or imposing late charges) for non-gas charges. LIEN comments, page 9.
22. LIEN agrees that customers should be allowed to specifically request that their payments be allocated in an order different from that specified above. LIEN comments, page 10.
23. LIEN recommends one clarification in the OEB Rule. The OEB Report notes only for natural gas providers that “for any charges in arrears, payment will be applied to the oldest charges first and any late payment fees will be applied to the outstanding balance.” LIEN recommends that this same principle be explicitly incorporated into electricity Rules as well. LIEN comments, page 10.
24. LIEN supports and endorses the OEB Report’s recommendation that no additional late payment charges be imposed on amount covered by an APA. LIEN comments, page 10.
25. While LIEN does not generally oppose the 10% downpayment requirement for an APA for eligible low-income customers, LIEN urges that further limits be placed on downpayments. LIEN recommends that utilities should impose a downpayment of up to

10% *or* 2.5x the customer's average monthly bill, whichever is less. LIEN comments, page 11.

26. LIEN recommends that utilities be required to routinely report the distribution of downpayments they have required for low-income APAs to allow the Board, and other stakeholders, to review the extent to which, if at all, utilities are using the 10% (or the 10% 2.5x multiplier) as a ceiling and not as a presumptively appropriate downpayment amount. LIEN comments, page 11.
27. LIEN agrees with the existing Rules that customers should be given notice prior to an APA being "cancelled" and that the APA "must be reinstated if the customer pays in full before the cancellation date." LIEN recommends, however, that the current 10 day notice for cancellation of an APA be replaced with the same 14 day notice required in other aspects of a utility's collection process. LIEN comments, page 12.
28. LIEN recommends that the OEB adopt an arrearage management component to low-income APAs. The following critical elements of the proposed arrearage management component of a low-income affordability program are proposed above: (a) Arrears are to be retired over a two-year period; (b) No pre-condition is established for the grant of arrearage management credits; and (c) The appropriate response to nonpayment is to place the program participant in the same collection process as any other residential customer. LIEN comments, page 14.
29. LIEN urges that utilities be given sufficient flexibility to allow a customer to request a renegotiation of their APA based on changed circumstances. If a low-income customer declines (or fails) to request a renegotiation, then the utility may proceed to cancel the APA and disconnect service and is not required to renegotiate the APA after disconnection. LIEN comments, page 12.
30. LIEN urges that no purpose is served by requiring a customer to abide by a stay-out provision once an APA is successfully completed. LIEN recommends that once an APA has been successfully completed, the customer is treated as though no nonpayment had occurred in the first instance. LIEN comments, page 12.
31. LIEN endorses the recommendation of the OEB Report regarding the content of disconnection notices for nonpayment. LIEN further endorses the principle that the OEB Rules explicitly state that a disconnection notice that does not include that information prescribed by the Rules shall be considered invalid. LIEN comments, page 15.

32. LIEN recommends, however, that the OEB prescribe a “best practices” disconnect notice as a template for utilities. This “best practices” notice should not only contain the content prescribed in OEB Rules, but should be subject to review by sufficient adult education communication specialists to ensure the readability of the notice for customers of varying ages and educational proficiency. While not mandating this “best practices” notice be used, the OEB should agree that the “best practices” notice could be used knowing that it would not subsequently be found to have used an invalid notice. LIEN comments, page 15.
33. LIEN endorses the timeline of notices proposed in the OEB Report. LIEN comments, page 15.
34. LIEN urges the OEB to affirmatively bar the disconnection of service for any unpaid bill balance that is comprised, in whole or in part, of an estimated meter reading. LIEN comments, page 16.
35. LIEN recommends that the OEB adopt a restriction on the “over-noticing” of service disconnections for nonpayment, in substantially the form presented below (which mirrors regulatory responses to over-noticing in U.S. states): “A. No utility shall: (1) Threaten to disconnect service or take other actions that cannot legally be taken; or (2) Threaten to disconnect service when it has no present intent to disconnect service on the date noticed or when actual disconnection is prohibited. Notice of the intent to disconnect service shall be used only as a warning that service will in fact be disconnected on the date published in the notice in accordance with the procedures under this chapter, unless the customer remedies the situation which gave rise to the enforcement efforts. B. No utility shall make a practice of delivering more than two consecutive notices of disconnection for past due bills without engaging in the collection identified in the notice.” LIEN comments, page 18.
36. LIEN endorses the continuation of date-based cold weather shutoff protections. However, LIEN further endorses that the appropriate dates incorporate the time period November 1 through the immediately following May 1. LIEN finally endorses a limitation on the date-based restrictions, which restrictions would provide that “so long as, as of November 1, the residential customer has no past-due charges from the immediately preceding heating season not subject to an arrears payment agreement.” LIEN comments, page 18.
37. LIEN endorses, in addition to cold weather protections, a date-based hot weather protection Rule that mirrors the cold-weather protection. The hot-weather protection

Rule should impose similar shutoff restrictions during the period June 15 to the immediately subsequent September 15 of each year. LIEN comments, page 20.

38. LIEN recommends that unless demonstrated to be cost-based, and in the absence of affirmative documentation of the incentive function to be performed by late payment charges, late payment charges should be set at the utility's short-term cost of borrowing. LIEN comments, page 21.
39. LIEN recommends that the OEB extend the recommendation in the OEB Report to require that late payment charges, if any, should be applied on a daily basis (at a rate not to exceed 1.5% per month) . The daily rate should be calculated on the 1.5% monthly rate, not the 19.56% annual compounded rates. The daily rate identified by the OEB Report is 0.04895%. , LIEN comments, page 21.
40. LIEN recommends that low-income customers should be exempt from paying late payment charges. LIEN comments, page 21.
41. LIEN endorses the EOB Report's recommendation that utilities should not be allowed to impose a "collection of account charge." LIEN comments, page 22.
42. LIEN endorses the OEB Report's recommendations regarding disconnect/reconnect charge. First, LIEN agrees that such a charge, if any, should be limited to a "reconnect charge." Second, LIEN agrees that Distributors should waive this charge for low-income customers. LIEN comments, page 22.
43. LIEN endorses the recommendation of the OEB Report that utilities remove "install/remove Load Control Device" charges from approved utility Tariff of Rates and Charges. LIEN comments, page 23.
44. LIEN recommends that the OEB adopt a Rule barring the use of Load Control Devices unless a customer, in writing, requests the installation of such a device under circumstances in which the customers owes no outstanding bill balance to the utility. LIEN comments, page 24.

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December 7, 2015

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Enbridge Gas Distribution Inc.
500 Consumers Road
North York, ON M1K 5E3

Attention: Lynn Parrington and Eileen Campbell

Attention: David Stevens

Dear Mr. Stevens and Mses. Parrington and Campbell:

Re: Response to Enbridge's Correspondence dated September 24, 2015

Thank you for your letter dated September 24, 2015.

LIEN appreciates Enbridge's continued dialogue with LIEN about the issues that LIEN's member organizations are reporting (i.e., increasing number of Enbridge's low-income customers facing disconnection for non-payment of non-gas charges).

LIEN also appreciates Enbridge's confirmation that Enbridge will amend s. 6.8 of Enbridge's Conditions of Service to require that in the event that payment is insufficient to cover all charges invoiced in a month, payments will be allocated to gas charges first.

LIEN hopes that this new proposed language means, when put into practice, that Enbridge's customers will not be disconnected where they make partial payments of any kind, which are then to be applied to gas charges first and from there the customer and Enbridge can arrange a payment plan that works for both.

However, LIEN sees a potential contradiction in your letter in your paragraph above the new proposed language for s. 6.8 of Enbridge's Conditions of Service. You state:

Under the updated approach, **partial payments** will continue to be applied **first to the oldest charges, whether those are gas or non-gas charges**. However, Enbridge will stipulate that where a partial payment is made that does not cover all charges from a month, then such partial payment will be applied first to gas charges and then to non-gas charges.

Is it Enbridge's intention that any partial payment will be applied to the oldest charges first (whether gas or non-gas), and any leftover amount (if any) will then be applied first to gas charges in that month? LIEN's concern is that such a process would result in disconnection where a customer fails to pay the full amount owed in a month and ends up in gas arrears by the third month.

Further, LIEN's members have identified a potentially common scenario where Enbridge's amendment to s. 6.8 of Enbridge's Conditions of Service may not prevent low-income customers from being disconnected, even if the customer pays the monthly budget billing plan (BBP) amount. The purposes of the BBP are to (a) provide customers with the convenience of paying equal amounts throughout the year, and (b) allow customers to avoid higher bills in winter months. LIEN's understanding is that the customers on a BBP believe that at the end of the BBP period, they have covered all billed charges. However, this may not be true because the BBP amount does not include third party (non-gas) charges. A low-income customer may pay all of his/her gas charges through the BBP, leaving only arrears in non-gas charges. Yet applying Enbridge's amended s. 6.8, LIEN's concern is that the customers will be subject to disconnection unless the payments made through the BBP aren't considered by Enbridge to be partial payments.

LIEN recognizes that having non-gas charges from third parties on Enbridge's bill is convenient and can result in cost savings for customers, as explained in Enbridge's Conditions of Service, s. 6.4.2. However, LIEN is now seeing significant disadvantages to this system. The open bill system, in LIEN's view, is forcing Enbridge to act as a *de facto* collection agency for third party companies. Low-income customers are the ones bearing the brunt of the disadvantages that result from this system, including in some cases disconnection.

LIEN requests that Enbridge work with LIEN to determine how Enbridge can most effectively caution customers about Enbridge's disconnection policy and the perils in signing up for third party services that those customers can't actually afford. This is an important step that LIEN requests Enbridge take to not only prevent Enbridge's low-income customers from facing bills they can't afford, and worse, disconnection, but also reduce Enbridge's administration costs. Warning and educating customers up front may prevent Enbridge from having to expend resources to negotiate payment plans, issue disconnection warnings and disconnect its low-income customers.

LIEN requests that we have another teleconference to discuss the above.



Please let us know dates when you are available for a call in the next two weeks or early in the new year.

Yours truly,

A handwritten signature in blue ink that reads "Matt F. Gardner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matt Gardner

cc: Mary Todorow (todorum@lao.on.ca)
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