Ontario Energy Board

Commission de l'énergie de l'Ontario

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NOTICE OF PROPOSAL TO AMEND CODES

PROPOSED AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE, THE RETAIL SETTLEMENT CODE AND THE STANDARD SUPPLY SERVICE CODE

BOARD FILE NO: EB-2007-0722

To: All Licensed Electricity Distributors
All Participants in Consultation Processes EB-2007-0722, EB-2007-0635 and EB-2008-0150
All Other Interested Parties

The Ontario Energy Board (the "Board") is giving notice under section 70.2 of the *Ontario Energy Board Act, 1998* of proposed amendments to the Distribution System Code (the "DSC"), the Retail Settlement Code (the "RSC") and the Standard Supply Service Code (the "SSS Code") (collectively, the "Codes").

I. Background

A. Introduction

Each electricity distributor is required by the DSC to have a Conditions of Service document that describes the distributor's operating practices and connection policies. The Conditions of Service document outlines the rights and obligations of the distributor and its customers on various issues. Within the current legal and regulatory framework, distributors have discretion over many polices that are significant in terms of the basic service that they provide to customers, including bill payment, disconnection and the opening and closing of accounts. This has allowed distributors a measure of operational flexibility, but has resulted in the absence of a standard level of service for customers across the Province on many of these elements.

While the Board has provided guidance in relation to the initial classification of customers into rate classes and to the on-going evaluation and reclassification of existing customers, there are no mandatory rules in effect to provide consistency in relation to the rate classification exercise.

Distributor policies in relation to certain customer service issues and to rate classification and reclassification have been the source of complaints filed with the Board by customers. As such, the Board considered it appropriate to initiate a consultation process to examine these issues. To that end, on September 6, 2007 the Board initiated a consultation process regarding issues associated with the provision of service, rate classification and the application of charges by electricity distributors. The stated objective of the consultation process is to assist the Board in developing and, where appropriate, codifying policies relating to these issues as may be required to address concerns that have been identified from various sources. On October 18, 2007, Board staff led a stakeholder meeting to provide an opportunity for staff to outline in more detail the issues under review and to receive initial comments from stakeholders.

On March 6, 2008, the Board released for comment a Board staff discussion paper (the "Discussion Paper") discussing issues associated with customer service, rate classification and the management of commodity non-payment risk and proposing options for further consideration. Issues relating to the management of commodity non-payment risk, previously the subject of a separate consultation ("Electricity Distributors and Management of Customer Commodity Payment Default Risk", EB-2007-0635) were included in the Discussion Paper following a determination by the Board that those issues are more effectively addressed within the context of the broader and more recent consultation process on customer service and rate classification issues.

B. The Discussion Paper

The Discussion Paper identified a number of issues relating to customer service (bill payment, disconnection for non-payment, management of customer accounts); the evaluation, classification and reclassification of customers; and the management of customer commodity non-payment risk. For each issue, any existing Board rules or guidance was noted, as was the experience in other jurisdictions where applicable. Questions designed to elicit stakeholder comment on options identified by staff for dealing with the issues were also included.

The Board received 14 written comments on the Discussion Paper from a variety of stakeholders, including distributors, an electricity retailer, and ratepayer groups. Those comments are available on the Board's web site at www.oeb.gov.on.ca on the "Electricity Distributors: Customer Service, Rate Classification and Non-Payment Risk" web page on the "OEB Key Initiatives" portion of the "Industry Relations" section of the web site. A summary of some of the stakeholder comments received in relation to various of the issues addressed in this Notice has been included in the discussion below, and reference should be had to the comments themselves for further detail.

The Discussion Paper and the comments of stakeholders on that document have been of assistance to the Board in considering whether and what amendments to the Codes may be warranted at this time with respect to customer service, rate classification and the management of commodity non-payment risk issues.

C. Scope of Proposed Amendments to the Codes: Specific Service Charges and Issues Relating to Low Income Energy Customers

As noted in the Board's letter of March 6, 2008, the Board concluded that additional review is needed in relation to specific service charges, and a staff discussion paper will be issued for comment on that element of this consultation process in due course. Further Code amendments may thereafter be proposed by the Board in relation to standard specific services charges as warranted.

In their comments on the Discussion Paper, some stakeholders suggested that certain customer service issues should be considered in light of the particular needs of specific residential consumer groups, such as seniors, customers on fixed incomes and customers that suffer from a physical or mental disability.

During the course of this consultation, the Board initiated a separate consultation process regarding issues associated with low income energy consumers (EB-2008-0150). In the context of that consultation, the Board is releasing today its "Report of the Board: Low-Income Energy Assistance Program" (the "LEAP Report") that includes, as an appendix, a Staff Report to the Board (the "LEAP Appendix"). The LEAP Report sets out a number of policies that the Board intends to implement in order to address issues associated with low income energy consumers. The LEAP Report also identifies proposed policies that relate to customer service issues that are also the subject of this consultation. The Board therefore considers it expedient to also include, as part of this notice and comment process, proposed amendments to the Codes that would give effect to the proposed customer service policies identified in the LEAP Report. In addition to any other comments they may wish to make, the Board will be particularly assisted by stakeholder input regarding implementation issues associated with the Board's approach as set out in this Notice, including with respect to the proposal that certain customer service requirements apply uniquely to low income electricity consumers.

Reference should be had to the LEAP Appendix for details regarding stakeholder input obtained through the consultation on low income energy consumer issues to date.

This Notice does not address any reporting requirements that might be associated with implementation of the proposed customer service (or other) policies set out in the LEAP Report. Implementation of any necessary amendments to the Electricity Reporting and Record Keeping Requirements will be addressed through a separate process.

II. Proposed Amendments to the Codes: Customer Service

A. Introduction

The Board is proposing to amend the Codes to codify rules relating to a number of matters associated with customer service provided by electricity distributors, including: bill payment; the allocation of payments between electricity and non-electricity charges;

the correction of billing errors; equal billing; disconnection for non-payment; reconnection; security deposits; arrears management and the opening and closing of accounts. A summary of the more significant proposed amendments to the Codes in relation to these matters is set out below. The text of the associated proposed amendments to the DSC is set out Part I of Attachment A, the text of the associated proposed amendments to the RSC is set out in Part II of Attachment A and the text of the associated proposed amendments to the SSS Code is set out in Part III of Attachment A.

Except where otherwise noted, references in this Notice to industry practice refer to the practice of Ontario distributors.

B. Definition of "Eligible Low Income Electricity Customer"

As noted above, this Notice incorporates proposed amendments that are intended to give effect to certain proposed policies that are set out in the LEAP Report and that apply specifically to low income electricity customers. It is therefore necessary to identify which customers will qualify for purposes of the application of these policies.

Consistent with the approach to defining "low income energy consumers" set out in the LEAP Report, the Board is proposing to define eligibility for purposes of the Codes by reference to the customer's need for financial, payment management, debt payment or similar assistance as determined by a recognized social service agency. The Board is therefore proposing to amend the DSC (section 1.2) to define the term "eligible low income electricity customer" accordingly.

C. Bill Issuance and Payment

1. Payment Period

While electricity bills are payable when rendered by the electricity distributor, distributors provide customers with a period of time within which to pay a bill without the application of a late payment charge. It is the end of this payment period that is typically referred to as the "due date" for payment.

At the present time, there are no mandatory rules regarding the minimum amount of time that must elapse before a customer is subject to late payment charges. Industry practice is generally for the period to be 16 days, which is the period recommended in section 9.3.2 of the Board's 2000 Electricity Distribution Rate Handbook (the "2000 EDR Handbook"), although some distributors provide 21 days.

The Discussion Paper proposed that there be a minimum standard as to the number of days that a distributor must allow a customer to pay without the application of a late payment charge, and suggested that 16 calendar days from the date on which the bill is sent might be appropriate. The Discussion Paper also suggested that it would be reasonable for distributors to have the discretion to provide a longer period of time.

Most stakeholders commented that a 16 calendar day payment period remains appropriate. One stakeholder qualified its support by requesting that new rules also be adopted for the purpose of determining when bills are considered to be issued and when they are considered to be due. One distributor explained that customer complaints and the nature of its service area had led it to move from a 16-day to a 21-day payment period. A ratepayer representative noted that 21 days was the payment period allowed by a number of utilities across Canada, which the Board also understands to be the case with a number of utilities in the United States. A number of stakeholders commented that a period in excess of 16 calendar days would tend to increase utility working capital needs, a comment that was challenged by a ratepayer group that cited the results of updated Ontario lead-lag studies which the group suggests indicate that the long-standing standard working capital allowance is generous.

The Board is of the view that mandatory rules for determining when a bill is overdue for payment will benefit customers and distributors alike by providing both clarity and uniformity of practice.

The Board believes that a minimum of 16 calendar days, calculated from the date on which the bill is issued, provides a reasonable time for most customers to pay their electricity bills, but that distributors should retain the discretion to provide a longer period if they consider that appropriate, provided that the payment period is documented in the distributor's Conditions of Service. The Board is proposing to amend the DSC accordingly (sections 2.5.2 and 2.5.3). This approach is largely reflective of current industry practice. Under this approach, the Board does not consider it necessary to include a requirement that distributors provide customers with a mandatory grace period as suggested by a number of stakeholders.

The Board also believes that a longer minimum period is required for eligible low income electricity customers, who may require additional time to make arrangements for payment. The Board is therefore proposing to amend the DSC (section 2.5.3(a)) to require that eligible low income electricity customers be provided with a minimum of 21 calendar days, calculated from the date on which the bill is issued, in which to pay the bill.

The Board has considered mandating a single 21-day minimum period for all customers, but is concerned that this may have an adverse effect on a distributor's working capital. The Board will be interested in the comments of participants on this particular issue.

The Board notes that the payment periods referred to above are the minimum, and that distributors retain the discretion to extend those periods in appropriate cases, such as where it is evident that a customer's ability to pay is being adversely affected by a mismatch between receipt of government fixed income payments and utility bill due dates. The Board does not believe that a compelling case exists to mandate that all distributors be required to provide eligible low income electricity customers with a further

extension in their bill payment due dates beyond the extended 21-day minimum period that the Board is proposing to adopt.

2. Determining When Bills Are Issued and Payment is Received

The Board also believes that there is merit in codifying rules that must be followed by a distributor in determining when a bill is considered to have been issued to a customer and when a customer is considered to have paid a bill. Currently, there are no mandatory rules in place that govern these determinations, and although section 9.3.2 of the 2000 EDR Handbook contains some guidance on the matter there are significant variations in current utility practice.

The proposed rules (DSC section 2.5.4) for determining the date of issuance of a bill are based on suggestions contained in the Discussion Paper and adjusted to reflect stakeholder comments. Specifically, bills will be deemed to have been issued by a distributor as follows:

i. if sent by mail, on the third day after the bill print date and, in support of this provision, distributors will be required to include a bill print date on their bills (DSC section 2.5.1);

ii. if made available over the internet, on the date on which an e-mail is sent to the customer advising of availability of the bill; and

iii. if sent by e-mail, on the date on which the e-mail is sent.

Where a bill is issued by more than one of the above means, the bill issuance date will be based on the later applicable deemed date of issuance based on the above rules. The proposed rules (DSC section 2.5.5) for determining the date of payment of a bill focus on the actions taken by the customer (or its financial institution) rather than on those taken by the distributor (or its financial institution). In the Board's view, this is appropriate given that a customer should not be exposed to late payment charges or disconnection by reason of delays in the processing of payment by the distributor (or the distributor's financial institution). The Board is therefore proposing that bills be deemed to have been paid by a customer as follows:

i. if paid by mail, on the date that the envelope is post marked unless the cheque is post-dated for a later date; and

ii. if paid at a financial institution or electronically, on the date payment is acknowledged or recorded by the customer's financial institution.

3. Computation of Time

To support the above provisions as well as others described below, the Board is also proposing to amend the DSC (section 2.5.8) to include rules relating to the computation

of time. These rules are patterned on similar rules contained in the Board's *Rules of Practice and Procedure.* Among other things, these rules clarify that events that occur after regular business hours are deemed to have occurred on the next business day.

The Board believes that there may be merit to extending the application of these rules to the whole of the DSC, and may attend to that as a housekeeping matter in due course.

4. Method of Payment

The Board currently does not prescribe the payment methods that customers may use to pay their electricity bills. Although not an issue identified in the Discussion Paper, the Board believes that there is merit in considering the specific question of the use of credit cards to make payments when a customer has been threatened with disconnection for non-payment.

The Board notes that payment by credit card is gaining prominence in other jurisdictions, particularly in respect of payments made by residential customers. Payment by credit card provides customers with additional flexibility, and can also serve to protect distributors who may otherwise be faced with a bad debt. The Board is concerned that distributors may be hesitant to accept payment by credit card if the matter is left entirely to their discretion, and therefore believes that it is desirable to require that credit card payments be accepted where a disconnection notice has been issued to a customer for non-payment. The Board is proposing to amend the DSC accordingly (section 2.5.6). The Board may consider the need for a new specific service charge to allow distributors to recover the costs associated with the processing of credit card payments as part of the upcoming review of specific service charges referred to in section I.C above.

The Board does not believe that it is necessary to extend this requirement to non-residential customers. For those distributors that already accept credit card payment from non-residential customers, there are carefully designed charges that reflect, among other things, the charges levied on the distributors by the credit card companies. The Board believes that acceptance of credit card payment from non-residential customers can appropriately be left to the discretion of individual distributors.

D. Allocation of Payments between Electricity and Non-electricity Charges

Some distributors include, on a customer's electricity bill, charges for services such as water or sewage services or goods and services related to conservation and demand management. An issue may arise when a customer has submitted only a partial payment. At present, there are no rules prescribed by the Board directing distributors as to how to allocate payments as between electricity and non-electricity charges in the event that a bill is not paid in full by a customer.

The Discussion Paper outlined three options: (i) allocation of payments first to electricity charges; (ii) allocation of payments at the discretion of the distributor; and (iii) allocation of payments at the discretion of the distributor unless the customer specifically requests otherwise. Ratepayer groups generally favoured the first approach, noting that the Board's authority is focused on energy matters. Some utilities cautioned that this approach would have adverse implications for the collection of arrears in relation to payments for water services. Utilities also noted that this approach would lead to increased costs associated with the customization of billing systems or the use of manual billing procedures. Some ratepayer groups as well as some utilities supported the third approach, in certain cases on the condition that the utility be required to explain to the customer the potential consequences if any portion of the electricity charges remains unpaid.

The Board notes that, under section 31 of the *Electricity Act, 1998,* disconnection for non-payment is limited to the failure to pay for the distribution or retail of electricity to a property. While distributors are permitted by law to bill for certain other goods and services, the Board does not believe that it is appropriate for residential customers to be exposed to the risk of disconnection by reason of partial payments being allocated in whole or in part to non-electricity charges. The Board is therefore proposing to amend the DSC (section 2.5.7) to require distributors to allocate partial payments first to electricity charges. For that purpose, electricity charges comprise the charges that are included on the "Electricity", "Delivery", "Regulatory charges", "Debt retirement charge" and, where applicable, "Provincial Benefit" line items of a customer's electricity bill, and all associated taxes. The Board expects that this approach will minimize the risk of disconnection of electricity service.

The Board notes the comments made by a retailer to the effect that customers should not be denied enrollment with a retailer due to arrears in payment for non-electricity charges. Under section 10.5 of the RSC, a distributor may refuse to process a request to transfer a customer to a retailer where the customer is in arrears on payment to the distributor. The Board confirms that this section authorizes a distributor to refuse to enroll a customer with a retailer only where the arrears are in relation to the payment of electricity charges.

E. Correction of Billing Errors

1. Over-billing

Section 7.7 of the RSC requires that a distributor credit a consumer for any amount by which the consumer has been over-billed as a result of a billing error, but does not specify how or over what period of time the credit must be provided.

The Discussion Paper outlined three options: (i) refunding over-billed amounts as a credit to the consumer's account regardless of the amount; (ii) refunding over-billed amounts by cheque regardless of the amount; and (iii) refunding amounts as a credit to

the consumer's account only where the amount owing is under a certain threshold, and otherwise by cheque.

Most stakeholders favoured using a threshold to determine whether an over-billed amount should be refunded by means of a credit or by cheque. Some utilities expressed a preference for retaining the ability to deal with the issue on a case-by-case basis. The Board believes that consistency in approach is desirable in relation to over-billing and therefore that the matter should not be left to the discretion of each distributor.

Where a consumer has been over-billed, the consumer is in essence deprived of funds that properly belong to him or her as a result of an error committed by the distributor. In that light, the Board considers it appropriate that the consumer be repaid on a timely basis. The Board also recognizes, however, that there is a cost to the distributor in issuing cheques. The Board believes that the third approach referred to above, which makes provision for a credit in some cases and the issuance of a cheque in others, strikes an appropriate balance between the needs of most consumers and those of distributors. By way of exception, eligible low income electricity consumers (proposed to be defined in section 7.7.6 of the RSC in the same manner as in the DSC, as described in section II.B above) should be entitled to request repayment by cheque regardless of the amount, as these consumers may have particularly urgent need for the funds for other purposes.

Implementation of this approach requires that a threshold be set for purposes of determining when the obligation to repay an over-billed amount by cheque is triggered. The Discussion Paper proposed that a credit to the consumer's account be allowed where the credit could offset charges that would reasonably be expected to be incurred by the consumer within the next two billing periods. Some stakeholders expressed support for this approach, while others argued that the threshold should be based on a consumer's average consumption over two months. Some stakeholders commented that the threshold should vary by rate class. Given that different distributors have different billing periods, the Board believes that greater consistency would be achieved if the threshold were to be based on consumption over a set period of time (one month) rather than on consumption over a set number of billing periods.

The Board is therefore proposing to amend the RSC (section 7.7) as follows:

i. a distributor must issue a cheque to cover the full amount that has been over-billed where the amount is equal to or exceeds the consumer's average monthly billing amount; or

ii. where the amount that has been over-billed is less than the consumer's average monthly billing amount:

    a. in the case of an eligible low income electricity consumer (whether a customer of the distributor or of a retailer), the distributor must

issue a cheque to cover the full amount that has been over-billed if the consumer so requests; and

b. in any other case, the distributor may refund the over-billed amount by way of cheque or credit to the consumer's account, as the distributor may choose.

The Board does not believe that it is either necessary or desirable to establish different rules for different rate classes in relation to the payment of over-billed amounts.

To support the above provisions and the provisions proposed in relation to under-billed amounts (discussed in the next section below), the Board is proposing to include in the RSC (section 7.7.5) rules relating to the determination of a consumer's average monthly billing amount, which are the same as those proposed to be added to the DSC to support provisions regarding equal billing (see section II.F below) and the management of arrears (see section II.I below).

A retailer suggested that, where a billing error has been corrected, an auditable trail should exist for use by the distributor, the consumer and a retailer with whom the consumer may contract, to ensure that this information is available to retailers for purposes of verifying consumption, billing and settlement. The Board is concerned that the costs associated this proposal may significantly outweigh the associated benefits, and would be interested in the views of stakeholders on this and any other implementation issues related to this suggestion.

2. Under-billing

Section 7.7 of the RSC requires that a distributor charge a consumer for an amount by which the consumer has been under-billed as a result of a billing error, but does not specify over what period of time an under-billed amount must be paid by a consumer.

The Discussion Paper outlined three options: (i) repayment of an under-billed amount in equal instalments over a period equal to the duration of the billing error; (ii) repayment of an under-billed amount in full on the next regular bill; and (iii) repayment of an under-billed amount in full on the next regular bill only where the amount owing is under a certain threshold, and otherwise in equal instalments over a period equal to the duration of the billing error. Most stakeholders commented that the third approach would be the fairest, although it was noted that setting a threshold that is fair in all circumstances can be difficult. Some utilities favoured case-by-case negotiations between the parties. As is the case with over-billing, the Board believes that consistency in approach is desirable in relation to under-billing and therefore that the matter should not be left to the discretion of each distributor.

Where a consumer has been under-billed, the consumer is in essence holding funds that properly belong to the distributor. However, where this results from an error by the distributor, the Board believes that it would be inappropriate for the consumer to be

faced with making a potentially large and unanticipated payment to the distributor. In the Board's view, the third approach referred to above, which makes provision for payment in full on the next bill in some cases and for payment in instalments in others, strikes an appropriate balance between the needs of most consumers and those of distributors. By way of exception, eligible low income electricity consumers should be entitled to repay under-billed amounts in instalments regardless of the amount, as these consumers may have particular difficulty making even more modest unexpected payments.

With respect to the appropriate threshold, one stakeholder suggested using 50% of the consumer's average monthly bill, while another suggested using 50% of the consumer's average billing on either a monthly, bi-monthly or quarterly basis. Given that different distributors have different billing periods, the Board believes that greater consistency would be achieved if the threshold were to be based on consumption over a set period of time (one month) rather than on consumption over a set number of billing periods.

The Board is therefore proposing to amend the RSC (section 7.7) as follows:

i. where an under-billed amount that results from a distributor's error is equal to or exceeds 50% of the consumer's average monthly billing amount, the consumer must be allowed to repay the under-billed amount in equal instalments over a period at least equal to the duration of the billing error; or

ii. where the amount that has been under-billed as a result of a distributor's error is less than 50% of the consumer's average monthly billing amount:

    a. in the case of an eligible low income electricity consumer (whether a customer of the distributor or of a retailer), the consumer must be allowed to repay the under-billed amount in equal instalments over a period at least equal to the duration of the billing error if the consumer so requests; or

    b. in any other case, the consumer may be required to repay the under-billed amount in full on the next regular bill.

As is the case for over-billing, the Board does not believe that it is either necessary or desirable to establish different rules for different rate classes in relation to the payment of under-billed amounts.

Where under-billing is the result of tampering, willful damage or unauthorized energy use by a consumer (including an eligible low income electricity consumer), the Board believes that it is appropriate for a distributor to require immediate payment by the consumer. The Board is proposing to amend the RSC accordingly (section 7.7.7). The Board expects a distributor to have reasonable evidence of tampering, willful damage or

unauthorized energy use before availing itself of the authorization to demand immediate payment.

3. Duration of Over- or Under-billing Subject to Refund or Recovery

Under section 7.7 of the RSC, where a distributor makes a billing error the distributor can go back two years in relation to amounts under-billed to a residential consumer and can go back for the duration of the error in relation to amounts under-billed to any other consumers. Where under-billing is the result of willful damage by a consumer, the distributor can go back for the duration of the defect. With respect to over-billing, section 7.7 of the RSC requires that a distributor go back for up to six years for all consumers regardless of rate classification.

The Discussion Paper noted the practices in other jurisdictions, and raised for comment the issue of whether there is merit in reconsidering the above time periods. Distributors generally agreed that the current rules, which reflect policy compromises previously made by the Board, remain appropriate. Ratepayers raised two areas of concern in relation to under-billing. One representative of ratepayers commented that it is unfair that a non-residential consumer should be required to pay for under-billed amounts for the duration of the billing error while being entitled to recover amounts over-billed only for a period of six years. The Board agrees that greater symmetry is desirable and is proposing to amend the RSC (section 7.7) to limit a non-residential consumer's liability for under-billed amounts to a maximum of six years.

Several groups representing ratepayers also suggested that distributors be permitted to go back only for 6 months in relation to under-billed amounts. Underlying this suggestion is the desire to avoid undue impacts on consumers that are under-billed through no fault of their own. The Board is of the view that that a time period shorter than 2 years is appropriate, and is proposing to amend the RSC (section 7.7) to limit a residential consumer's liability for under-billed amounts to 12 months in cases where under-billing is the result of an error by the distributor.

The Board is satisfied that, in cases of tampering, willful damage or unauthorized energy use by a consumer (including an eligible low income electricity consumer), under-billed amounts should continue to be recoverable by a distributor for the duration of the defect or unauthorized energy use.

The Board does not believe that there are compelling reasons for changing the current rules as they pertain to the period of over-billing which must be rectified by a distributor, and is therefore not proposing any amendments to the RSC in that regard.

4. Interest

Under section 7.7 of the RSC, a distributor must pay interest on over-billed amounts at a rate equal to the prime rate charged by the distributor's bank. There is currently no

corresponding provision allowing a distributor to levy interest on under-billed amounts, regardless of the cause of the under-billing.

The Discussion Paper raised for comment the question of whether this asymmetry remains appropriate, as well as the question of whether a distributor should be allowed to levy interest on under-billed amounts where the consumer is responsible for the under-billing, such as in the case of unauthorized energy use.

There was broad consensus among stakeholders that no interest should be charged where the consumer is not at fault for the under-billing. A number of stakeholders also agreed that interest should be levied where responsibility for under-billing lies with the consumer, such as in the case of theft of power. Stakeholders differed in their suggestions as to the rate of interest that should apply in such cases. One representative of ratepayers further proposed that interest should only be levied in theft of power cases where the theft of power has been confirmed by a court. One distributor suggested that interest should also be levied where the consumer was aware of the under-billing and knowingly allowed it to continue.

The Board remains of the view that consumers should not be required to pay interest on under-billed amounts where the under-billing results from an error by a distributor. The Board does not believe that it will be practical for distributors to ascertain whether or not a consumer knew of the under-billing and knowingly allowed it to continue, and is not proposing to allow distributors to levy interest on the basis of the consumer's purported knowledge of under-billing.

The Board is persuaded, however, that a consumer (including an eligible low income electricity consumer) should pay interest on under-billed amounts where the under-billing results from tampering, willful damage or unauthorized energy use by a consumer, and is proposing to amend the RSC (section 7.7) accordingly. The Board is not aware of any compelling reason why the rate of interest prescribed for use in instances of over-billing would not also be appropriate in instances of under-billing and is therefore proposing that the same rate apply in both cases. While the Board does not believe it is necessary to require that tampering, willful damage or unauthorized energy use be confirmed by a court, the Board expects that a distributor will avail itself of the authorization to levy interest in such cases only where reasonable evidence of tampering, willful damage or unauthorized energy use exists.

F. Equal Billing

Distributors are not currently required to offer equal billing to their customers, although section 2.6.2 of the SSS Code permits them to do so in relation to standard supply service customers if they wish. While a number of distributors do offer some form of equal billing, often in conjunction with automatic payment arrangements, some do not. Of those that do offer equal billing, some make that option available only to customers that purchase their electricity from the distributor while others extend the option to consumers that have contracted with an electricity retailer.

The Discussion Paper raised for comment the issue of whether distributors should be required to offer some form of equal billing, as well as the issue of whether equal billing should extend to consumers that have contracted with a retailer.

Several ratepayer representatives commented that equal billing can provide benefits not only to customers in terms of managing their electricity costs (and in particular those with more limited financial means) but also to distributors in the form of reduced account collection costs and bad debt write-offs. A number of distributors and other stakeholders expressed concern, however, that mandating the offering of equal billing may not be cost effective in all cases and that equal billing should therefore remain at the option of the distributor. Among the incremental costs identified as being associated with mandating equal billing were costs related to systems modifications, the issuance of monthly bills and the carrying of additional debt.

The Board notes that equal billing is common amongst utilities in North America, and believes that equal billing can carry significant benefits for both distributors and customers, and in particular for residential customers. The benefit of equal billing to a customer is that it allows the customer to better budget for electricity payments, and "smoothes out" seasonal fluctuations in electricity consumption. This may increase the customer's ability to pay in each billing period, which may in turn reduce the risk to the distributor of customer non-payment. Another benefit to the distributor is that equal billing "smoothes out" the distributor's cash flow. The distributor may, however, still be at risk of customer non-payment at the time of reconciliation, particularly if the customer's annual consumption was under-estimated by a significant amount and the customer is then unable to pay the amounts owing on the bill that includes the reconciled amount.

The Board is proposing to amend the SSS Code to require distributors to offer equal billing to all residential customers that receive standard supply service (section 2.6.2). The Board does not believe that it is necessary to extend this requirement to larger customers, and considers it appropriate to leave equal billing for such customers to the discretion of individual distributors.

The Board also considers it desirable to prescribe certain key elements related to the implementation of equal billing for residential customers, to ensure consistency of practice across the province. Specifically:

i. Eligibility for equal billing cannot be conditional on the customer having a pre-determined good payment history, which is a condition currently imposed by some distributors. Rather, the Board is proposing that equal billing be available to any customer that is not in arrears or, if in arrears, that has entered into an arrears payment agreement with the distributor (see section II.I below). This is similar to a requirement that was recently imposed by the New Brunswick Energy and Utilities Board.

ii. Distributors must bill eligible low income electricity customers that are on equal billing on a monthly basis. The Board is aware that a number of distributors currently bill on a less frequent basis, but is concerned that the benefits to these customers of equal billing will not be fully realized if the customer is billed on less than a monthly basis. The Board does not believe that more frequent billing, such as weekly billing as suggested by one ratepayer representative, is necessary nor is it desirable given the expected costs associated with billing more frequently than monthly in the normal course. As many low income electricity customers receive their income at dates fixed by government agencies, the Board is also proposing that eligible low income electricity customers who elect equal billing be given the option of at least two different monthly payment dates (such as the 1st or 15th of each month), which is an option currently offered by some distributors. The Board is not proposing to mandate equal billing on a monthly basis for other residential customers. Distributors may therefore offer equal billing to such customers based on their respective current billing cycles or monthly, as they prefer.

iii. Distributors must conduct a reconciliation in anticipation of the last (12^{th}) month of a given year's plan. Where the reconciliation demonstrates that a customer is entitled to a refund, the refund must generally be provided to the customer as a credit on the bill issued for the twelfth month. By way of exception, in the case of an eligible low income electricity customer, where the refund is equal to or exceeds the customer's average monthly billing amount (defined in the same manner as proposed to support other proposed amendments described earlier), the distributor must issue a cheque to cover the full amount of the refund if the customer so requests. Where the reconciliation demonstrates that an eligible low income electricity customer owes the distributor for a shortfall, the shortfall must be rolled into the following year's instalments in equal monthly amounts to facilitate payment of the shortfall by spreading it over a longer period of time. For all other customers, distributors must include the true-up on the bill issued for the twelfth month, which is already the practice used by many distributors in North America, although some do roll any variance into the next 12-month period. Thus, for a customer other than an eligible low income electricity customer that is billed monthly, the customer would receive 11 equalized bills, and the 12^{th} bill would reflect the true-up (whether positive or negative). A true-up must also be conducted where a customer (including an eligible low income electricity customer) leaves equal billing for any reason. This true-up would appear on the next regular bill sent to the customer.

The Board is satisfied that other details relating to the administration of equal billing plans can be left to the discretion of each distributor.

As noted above, a number of distributors currently offer an equal billing plan option of one sort or another. The Board acknowledges that, for at least some of these distributors, special provisions may be required to address the transition from their current equal billing plans to plans that meet the above minimum requirements. The Board would be interested in the views of stakeholders as to the need for and terms of such transitional provisions.

As also noted above, some distributors that currently offer equal billing make that option available to customers that have signed retail contracts whereas others do not. Some ratepayer groups have commented that this is discriminatory. Some distributors, however, have expressed concern that extending equal billing to retailer customers will increase costs and suggested that retailers be encouraged to offer equal invoice bill ready monthly plans. In the Board's view, the failure to make equal billing available to retailer customers is not in keeping with the equitable treatment of consumers. Moreover, the Board is not persuaded that compelling reasons exist that might justify such differential treatment. The Board is therefore proposing that distributors make equal billing available to all residential consumers that are retailer customers (RSC**,** section 7.2.3). Where a distributor voluntarily makes equal billing available to a class of non-residential customers, equal billing must also be made available to members of that class that are retailer customers.

The Board has considered whether equal billing should be mandated for retailers that provide retailer-consolidated billing. While that would provide symmetry of treatment, the Board notes that retailer-consolidated billing is not common and is not expected to increase in the near term. The Board will therefore not mandate equal billing by retailers that provide retailer-consolidated billing, but may revisit this issue as and when retailer-consolidated billing gains greater prominence as a practice in Ontario.

G. Disconnection for Non-Payment

As noted in the Discussion Paper, disconnection policies are of great concern for customers. Section 31 of the *Electricity Act, 1998* allows electricity distributors to terminate service for non-payment of charges owing for the distribution or retail of electricity.[1] Disconnection for non-payment is conditional on "reasonable" notice being given by the distributor. The focus of the Discussion Paper was on the processes associated with termination of service for non-payment.

1. Form and Content of Disconnection Notice

The DSC currently does not specify the form or content of a disconnection notice.

With respect to the content of a disconnection notice, the Discussion Paper proposed that the Board mandate the minimum content of a disconnection notice, and suggested

[1] Section 31.1 of the *Electricity Act, 1998* also allows a distributor to disconnect a customer without notice for safety or reliability reasons. The Board is not proposing to address this matter as part of this consultation.

the following as information that could usefully be included: (a) the amount that is overdue, including any late payment charges; (b) the scheduled date of disconnection; (c) any action(s) that the customer can take to avoid disconnection and the deadline for taking such action(s); (d) any reconnection charges that may be payable; and (e) contact information for the distributor.

The Board is of the view that the content of a disconnection notice should be standardized across all electricity distributors, and is proposing to amend the DSC (section 4.2.2) to identify the minimum information that must be included in a disconnection notice.

In their comments on the Discussion Paper, stakeholders provided a number of suggestions as to what should be included in a disconnection notice. The Board agrees that, in addition to some of the elements identified in the Discussion Paper, the following should also be included in a disconnection notice: contact information for local social service agencies and local energy assistance charities; a description of the process for qualifying for assistance that is available to low income electricity customers; a reference to the arrears payment plans offered by the distributor (see section II.I below); and confirmation of whether a local Vital Services By-law is in effect that applies to a customer's rental unit and whether the distributor has provided the required notification to the municipality. These additional items will provide customers with supplementary information that can assist them in avoiding disconnection, and will serve to link customers with local social service agencies and fuel charities. The Board recognizes that these additional items will largely be of interest only to eligible low income electricity customers, but anticipates that distributors will as a matter of practice and for convenience have one standard form of disconnection notice. Accordingly, the Board is proposing to include all of these items as mandatory elements in all disconnection notices. To maximize the effectiveness of including these items, the Board expects distributors to have customer service staff that are familiar with local programs and resources that are available to eligible low income electricity customers.

With respect to the identification of the scheduled disconnection date, the Board acknowledges and is proposing to adopt the suggestion made by distributors to the effect that a range of dates can be provided as opposed to a single date. Where a single date is not identified, it is proposed that the disconnection notice specify the earliest and latest possible dates for disconnection. The Board also acknowledges the comments made by distributors to the effect that the amount of the approved reconnection charge(s) can vary, for example by time of day. The Board is therefore proposing that the disconnection notice identify all approved reconnection charges, and the circumstances in which each is payable (for example, the reconnection charge payable if done within regular business hours, the reconnection charge payable if done outside of regular business hours and any approved reconnection charge that varies per type of meter).

With respect to the form of a disconnection notice, the Discussion Paper suggested that where notice is provided by mail, it is important that customers can clearly identify the

disconnection notice and distinguish it from other mailings from the distributor (such as bills or marketing materials). The Discussion Paper therefore proposed that a disconnection notice be a separate document from the electricity bill, rather than being in the form of statements on the electricity bill itself.

Stakeholders generally agreed with the proposal that a disconnection notice be a separate document, and the Board is proposing to amend the DSC (section 4.2.2A) accordingly. The Board is concerned that inclusion of the disconnection notice as a separate document in the same envelope as the regular bill will more likely than not result in the notice being missed by the customer, and is therefore not proposing to adopt that approach. Rather, the Board is proposing that a disconnection notice be mailed separate and apart from the electricity bill. This is reflective of the current practice of a number of distributors.

2. Timing and Duration of Disconnection Notice

Currently, section 4.2.3 of the DSC recommends that no less than 7 calendar days' notice be provided prior to disconnecting a customer for non-payment. The Discussion Paper recommended that the Board consider codifying the minimum number of days of advance notice that must be provided, and suggested that the minimum notice period could be 7 days. The Discussion Paper also proposed that a disconnection notice should not be valid indefinitely, but rather that a new notice be required if the distributor has not terminated service within a certain period of time.

The Board agrees that it is desirable to codify the minimum period of notice that must be given prior to disconnection of a customer for non-payment, and is proposing to amend the DSC (sections 4.2.3 and 4.2.3A) accordingly.

A number of stakeholders representing ratepayer and distributor groups commented that 7 days is adequate advance notice. Two groups representing residential ratepayers argued for a longer 14- or 15-day period. The Board is proposing to require that 10 calendar days' notice be provided as a minimum for most customers. The Board does not believe that it is, as a general rule, appropriate to include specific rules, as suggested by some stakeholders, that would allow for disconnection with less notice in certain circumstances (such as in the case where the distributor is concerned that the customer may vacate the premises).

While the Board believes that 10 calendar days' notice is reasonable for most customers, the same does not hold true for eligible low income electricity customers, who may require the benefit of additional time to make arrangements to pay the arrears. The Board is therefore proposing that distributors provide 21 calendar days' notice as a minimum prior to disconnecting an eligible low income electricity customer (DSC section 4.2.3A(b)). The Board is also proposing to extend this requirement to any residential customer that has requested the distributor to provide a copy of a disconnection notice to a third party (see section II.G.4 below).

Disconnection can have adverse health consequences for consumers with particular medical conditions, including those whose health is dependent on the ability to run medical or other equipment powered by electricity. Some distributors currently maintain records identifying residential customers with special medical needs, and the Board commends this practice to all distributors. The Board believes that additional safeguards are warranted in order to better protect the interests of residential customers with special medical needs. The Board is therefore also proposing to amend the DSC (section 4.2.3A(a)) to require a distributor to provide 60 calendar days' notice as a minimum prior to disconnecting a residential customer that has provided the distributor with documentation from a physician confirming that disconnection poses a risk of significant adverse impacts on the physical health of the customer or on the physical health of the customer's spouse or dependent family member residing in the same premises.

The Board is proposing that the disconnection notice period (whether 10, 21 or 60 days) commence on the date of receipt of the notice by the customer. To support that requirement, the Board is also proposing to codify the following rules (DSC section 4.2.3B):

i. if a disconnection notice is sent by mail, it will be deemed to have been received on the third day after the notice print date and, in support of this provision, distributors will be required to include a notice print date on the their disconnection notices (DSC, section 4.2.2(j)); and

ii. if a disconnection notice is personally served or posted on a property outside of regular business hours or on a day that is not a business day, it will be deemed to have been received on the next business day.

In the Board's view, distributors should develop disconnection practices and policies in a manner that is designed to maximize the likelihood of payment and therefore minimize the likelihood of disconnection in circumstances where payment might reasonably be expected to be made. As such, among other things the Board encourages distributors not to schedule disconnections at a time (such as weekends and statutory holidays) when no distributor staff is available to accept payment or to negotiate an arrears payment arrangement (see section II.I below). The Board also encourages distributors not to disconnect a customer in circumstances where a third party has committed to pay the customer's arrears but cannot do so until after the minimum disconnection notice period has elapsed. Distributors should explore reasonable alternatives to disconnection, such as those identified in the LEAP Appendix, and consider integrating these alternatives into their policies and procedures.

The Board believes that it is important, for safety and other reasons, that a customer have a reasonable expectation as to when service will be disconnected. Stakeholder suggestions regarding the maximum duration of a disconnection notice ranged from 7 to 10 days (the proposal put forward by a number of stakeholders) to 3 to 6 weeks (the proposal put forward by two large distributors). The Board also notes the U.S. example

cited in the Discussion Paper, where the maximum duration is 20 days. The Board is proposing to amend the DSC (section 4.2.2C) to stipulate that a disconnection notice is valid for a period of 11 days from the end of the applicable minimum notice period. For example, for a customer that is entitled to a 10-day notice period, the disconnection notice would be valid for a period of 21 days. The Board believes that this provides an appropriate balance between the needs of electricity distributors in terms of operational flexibility and the needs of customers in terms of greater certainty regarding the period within which disconnection may occur. If service is not terminated within the 11-day window, a new disconnection notice will be required. Each subsequent disconnection notice would similarly be valid for a period of 11 days from the end of the applicable minimum notice period. The provisions regarding the computation of time for determining when the disconnection notice period commences to run, as proposed above, are also proposed to be applicable in determining when the 11-day period commences.

3. Customer Contact Prior to Disconnection

Section 9.3.5 of the 2000 EDR Handbook suggested that a representative of the utility "make reasonable efforts to establish direct contact with the customer" prior to effecting disconnection.

The Discussion Paper raised as a question whether distributors should attempt one final personal contact with the customer prior to disconnection. Ratepayers were supportive of this approach, and suggested that such a rule may reduce costs by lowering the number of disconnections. Utilities tended to express concern over the additional costs that would be incurred if such an approach were to be adopted. One utility noted that it has had success using an automated telephone calling system that contacts customers after regular business hours. The Board believes that one final effort at personal contact can contribute to the success of the collection process, and is proposing to amend the DSC accordingly (section 4.2.2D). The proposed requirement precludes the supplementary customer contact from occurring on the same day as the disconnection, but otherwise leaves it to the discretion of each distributor as to when and by what means this contact with the customer is best undertaken.

4. Additional Recipients of Disconnection Notice

The Discussion Paper suggested that distributors be required to provide a copy of a notice of disconnection to a third party designated by a customer (such as a social service agency or family member) if specifically requested to do so by the customer (whether as standing instructions or on a case-by-case basis).

A number of stakeholders agreed that it could be useful to implement this approach for residential customers, and in particular for seniors and customers on social assistance. Distributors tended to favour retaining discretion to address the issue on a case-by-case basis. They also noted that the cost of necessary changes to their billing systems could

be significant, as would the costs associated with the manual issuance of third party notices.

The Board believes that it is appropriate to mandate in the DSC (section 4.2.2B) a requirement that the distributor provide a copy of a disconnection notice to a third party designated by the customer for that purpose. This can both increase the likelihood of payment being received and decrease the number of disconnections and associated costs to the distributor. To ensure that the approach can achieve the underlying objective, the Board is also proposing that disconnection cannot take place until such time as the notice has been received by the third party. Again, the provisions regarding the computation of time for determining when the disconnection notice period commences to run, as proposed above, are also proposed to be applicable in determining when a disconnection notice is considered to have been received by the designated third party. The Board is further proposing to require that a distributor confirm with the third party that provision of a copy of the disconnection notice does not render the third party liable for the arrears owing by the customer unless the third party has agreed to assume that liability or has provided a guarantee for purposes of satisfying the customer's security deposit obligations (see section II.H below).

In commenting on issues associated with the management of customer accounts (see section II.J below), one ratepayer group recommended that enhanced rules be implemented to deal with notice of disconnection in circumstances where a distributor intends to disconnect a residential tenancy complex by reason of the failure of the landlord to pay the account. Guidance in this regard was provided in section 9.3.5 of the 2000 EDR Handbook, which suggested that the distributor should also, "where possible, notify the occupants of each separately occupied unit in the premise".

The Board notes that other jurisdictions have implemented special rules to address disconnection in multi-family residences, and believes that a similar approach is warranted in Ontario. This measure, in conjunction with the requirement that a disconnection notice include conformation of whether a local Vital Services By-law is in effect that applies to a customer's rental unit (see section II.G.1 above), will allow occupants of the building an opportunity to consider their options in terms of remedial or preventative measures in such situations. The Board is therefore proposing to amend the DSC (section 4.2.2E) to include a requirement that a copy of any disconnection notice issued to the account holder for a multi-unit, master–metered building be posted in a conspicuous public place on or in the building. This requirement is proposed to apply to any multi-unit, master-metered building, whether a residential apartment building, a condominium or a commercial building.

5. Reconnection

The Board's Gas Distribution Access Rule ("GDAR") contains a service quality requirement relating to the reconnection of a customer following disconnection for non-payment. The Board sees merit in adopting a matching standard for the electricity sector. The Board is therefore proposing to amend the DSC (section 7.10) to require

that, where service has been disconnected for non-payment, it must be re-established within two days of the date on which the customer has paid the arrears in full or has entered into an arrears payment agreement (see section II.J below) with the distributor. The Board is proposing that this service quality requirement be met 85% of the time, as is the case under GDAR.

H. Security Deposits

As noted in the LEAP Appendix, the payment of a security deposit adds to the financial pressures already faced by low income electricity customers. The security deposit provisions of the DSC currently contain provisions that were developed to provide some measure of relief for residential customers, such as the ability to pay a security deposit in instalments and the right to a refund of the deposit upon achievement of a one-year good payment history. While the Board is mindful of the need to ensure that effective security deposit policies remain in place to support prudent utility management, the Board believes that this objective can be achieved while providing additional flexibility for eligible low income electricity customers in particular. The Board also believes that the additional flexibility should, in some cases, avail to the benefit of all residential customers.

The Board is therefore proposing to amend the DSC as follows:

i. A distributor may not request a security deposit from an eligible low income electricity customer that is receiving assistance under an “energy bill payment assistance program”, being a program recognized by the Board that provides funding on an emergency basis to enable consumers to pay their energy bills (DSC section 2.4.11).

ii. An eligible low income electricity customer that is not receiving assistance under an “energy bill payment assistance program” and that is being required to provide a security deposit must be permitted to pay it in equal instalments over period of at least 12 months (DSC section 2.4.20A), including where the security deposit is provided to replace a security deposit that has been applied against arrears (see paragraph iv below). An eligible low income electricity customer must also be permitted to pay an increase in its security deposit in equal instalments over a period of at least 12 months (DSC section 2.4.25A(b)). When a security deposit that has been paid in instalments is required to be returned to an eligible low income electricity customer, it must be returned to the customer in equal instalments over a period of the same duration provided that the customer maintains a one-year good payment history (DSC section 2.4.25A(a)). In other words, an instalment must be returned to the eligible low income electricity customer as and when the eligible low income electricity customer has achieved a one-year good payment history relative to the date on which the instalment was paid.

iii. Section 2.4.17 of the DSC currently allows a distributor to use a customer's highest actual or estimated monthly load, rather than the customer's average monthly load, when calculating the security deposit payable by a customer that has received more than one disconnection notice in a relevant 12-month period. This provision will not apply to eligible low income electricity customers.

iv. For all residential customers, a distributor must apply any existing security deposit against arrears before issuing a disconnection notice to the customer (DSC section 2.4.26A). Repayment of the security deposit by an eligible low income electricity customer may be effected in equal instalments over a period of at least12 months (DSC section 2.4.26B).

v. A distributor must accept, as a form of security deposit from any residential customer, a guarantee provided by a third party whose ability to pay is acceptable to the distributor, acting reasonably (DSC section 2.4.18).

I. Arrears Management

A well-designed arrears management program can assist low income electricity customers in meeting payment obligations while reducing collection and bad debt expenses. While a number of distributors currently offer arrears management programs, the Board believes that such programs should be offered by all distributors.

The Board is therefore proposing to amend the DSC (sections 2.6.1, 2.6.2 and 2.6.3) to require distributors to offer, as a minimum, an arrears management program to eligible low income electricity customers that provides an opportunity for an eligible low income electricity customer to enter into an arrears payment agreement with the distributor. The arrears payment agreement must allow the customer to pay the arrears, including any late payment charges and service charges associated with non-payment that have accrued to the date of the agreement, over the following periods:

i. a period of at least five months, where the amount owing is less than twice the customer's average monthly billing amount (defined in the same manner as proposed to support other proposed amendments described earlier); or

ii. a period of at least ten months, where the amount owing is equal to or exceeds twice the customer's average monthly billing amount.

No late payment charges may be levied on the arrears that are the subject of an arrears payment agreement beyond those that accrued prior to the date of the agreement (DSC section 2.6.4).

The Board takes this opportunity to confirm that, where a distributor enters into an arrears payment agreement with a customer, the arrears are no longer overdue for payment for the purposes of entitling the distributor to disconnect the customer. Failure by the customer to make payment in accordance with the terms of the arrears payment agreement, however, would entitle the distributor to disconnect the customer, provided that the distributor follows the applicable rules pertaining to disconnection for non-payment (see section II.G above).

The Board is not persuaded that it is necessary at this time to mandate the implementation of additional arrears management measures. However, the Board encourages distributors to consider adopting additional measures, such as an "enhanced arrears management plan" (as discussed in the LEAP Appendix) for customers most at risk. Such a plan would, in the Board's view, best be developed by a distributor in conjunction with local social service agencies, and could include the elements identified in the LEAP Appendix.

J. Management of Customer Accounts

As noted in the Discussion Paper, customers have expressed concerns about distributors' policies regarding the management of accounts for electricity service, and more specifically about the practice of accounts being opened in the name of a person without that person's knowledge or express consent and where no request for service has been received from that person.

1. Treatment of Third Party Requests To Open New Account

Currently, the practices of electricity distributors vary in relation to the opening of an account in a person's name upon the request of a third party. Distributors accept such requests under different circumstances and following varying internal procedures.

Ratepayers generally commented that a third party should not be able to have a new account opened in the name of a prospective customer unless the third party has been duly authorized by the prospective customer to do so. One ratepayer representative suggested that utilities be required to send a confirmation to the customer where a third party initiated the new account request.

Comments received from distributors identified the business and customer service rationales for their current practices and raised a number of practical concerns with the codification of new and restrictive rules. Among these concerns were: the expectation that new customers are best served by allowing landlords, builders or solicitors to request that service be established in the name of the customer; the fact that over 20% of customers move in a year in some service areas and that any regulatory requirements should therefore be sufficiently flexible to take this into account; and the fact that cases where distributors have provided service despite having no request from the customer are isolated and do not warrant the development of an entirely new policy.

The Board does not believe that it is appropriate for a person to be responsible for charges in relation to an account that was opened in the person's name without the person's request or consent. The Board is therefore proposing that, where a distributor opens an account in the name of a person at the request of a third party, the distributor must send a letter to the purported new account holder advising of the opening of the account within 15 calendar days of the opening of the new account (DSC, section 2.7.1). The Board is also proposing to amend the DSC (section 2.7.2) to stipulate that charges may not be recovered from a person that has not consented in writing to being the account holder for the property. Consent may not be implied, including by virtue of the use of electricity by the purported account holder (DSC section 6.1.2). These new requirements would apply in all cases, including where there is a change in ownership of premises.

Given this approach, the Board does not believe that it is necessary at this time to codify rules relating to the manner in which distributors should confirm the identity or authority of a third party requesting service in the name of another person. However, the Board takes this opportunity to remind distributors that Social Insurance Numbers are intended to be used only for very limited purposes. As such, it is not in the Board's view appropriate for distributors to request or require that a Social Insurance Number be provided by a customer or a customer's representative as a means of confirming the person's identity.

2. Default Account Holder When Current Customer Departs

There is no single common practice in Ontario in relation to the provision of service in circumstances where a customer requests closure of an account in relation to a property and no new request for service has been received for that property. The issue is particularly prevalent in the landlord and tenant context, but also applies where ownership of a property is transferred from one person to another. Some distributors disconnect service, which then triggers reconnection charges when a new account is opened for the property. Other distributors unilaterally open a new account in the name of the landlord (where a tenant has closed an account) or new property owner, as applicable.

Stakeholder comments focused on the issue of when it might be appropriate to treat the landlord as the default account holder when a tenant closes an account for a rental unit in the landlord's building. Stakeholders generally agreed that there is a risk of damage if a property is disconnected in these circumstances, but disagreed on what regulatory measures should be mandated to deal with the issue. Several ratepayer groups suggested that distributors should be required contact the landlord after each tenant leaves to obtain instructions in relation to the provision of service to the vacated unit. Utilities were generally opposed to such a requirement, noting the volume of customer turnover and that the associated costs of compliance would be substantial in some service areas.

Based on the comments received, it appears that a number of electricity distributors currently enter into specific agreements with landlords regarding the treatment of accounts after tenants depart. The Board commends this practice to all distributors (provided that the agreement does not purport to make a future tenant liable for electricity charges related to the unit), but will not mandate it. However, consistent with the approach proposed above in relation to the opening of accounts at the request of a third party, the Board believes that it is inappropriate for a distributor to unilaterally make a landlord the default account holder when a tenant vacates a unit. The Board is therefore proposing to amend the DSC (section 2.7.3) to provide that a distributor cannot recover from the landlord charges for service provided to vacated rental premises unless the landlord has consented in writing to assume responsibility for those charges. The consent may be given by prior agreement (in other words, standing instructions) or on a case-by-case basis where no prior agreement exists. The Board is also proposing to apply the same approach in circumstances where there is a change in the ownership of a property.

K. Anticipated Costs and Benefits

Distributor polices regarding matters such as bill payment, disconnection and the opening and closing of accounts can have a significant impact on customers, including low income electricity customers. The Board therefore sees merit generally in establishing a standard level of service throughout the Province. The Board also anticipates that implementation of the proposed amendments will serve to instill greater discipline on distributors in terms of their customer processes.

The Board believes that the proposed amendments to the Codes dealing with customer service issues will provide greater protection and certainty for customers while allowing a reasonable measure of discretion for distributors where appropriate to reflect local operational considerations.

The Board anticipates that the introduction of clear, mandatory requirements will limit the number of disputes that might otherwise arise between distributors and their customers. The proposed amendments are also expected to result in fewer customers being disconnected, as many can assist customers in better managing payments associated with their electricity consumption, which is in the interests of both customers and distributors.

In some instances, the proposed amendments reflect the current practices of many electricity distributors and, as such, are not expected to trigger the need for those distributors to implement system upgrades or incur other material costs. In other instances, at least some distributors will need to incur costs in order to bring their current practices into line with the new requirements. The Board acknowledges that some of these costs may be material, but believes that the benefits of the proposed amendments outweigh the costs. The Board also believes that some of the costs associated with implementation of the new requirements are likely to be offset by a decrease in the costs associated with dealing with customer calls and complaints in

relation to the customer service issues dealt with in this Notice, as well as by a reduction in bad debt write-offs, account collection costs and disconnection costs going forward.

The Board will be interested in the comments of distributors regarding the costs associated with implementing the proposed amendments, including whether or not it would be more cost effective for distributors to extend to all residential customers the benefit of the provisions currently targeted at eligible low income electricity customers.

III. Proposed Amendments to the DSC: Customer Classification

A. Introduction

As noted in the Discussion Paper, although there has been guidance from the Board in relation to customer classification and reclassification, there are currently no mandatory rules in place. Ten of the stakeholder written comments on the Discussion Paper addressed the customer classification section (four from distributor representatives and six from representatives of ratepayers).

Distributor reclassification policies in particular have been the subject of complaints from customers who believe that they have been unfairly reclassified when their use does not justify it. These issues arise principally in relation to customers that move from the GS <50 kW class to the GS ≥ 50 kW class, who can face a major bill impact as a result of that move. This is due not only to the different fixed monthly customer charge and different variable rate, but also to the difference in being billed on a kWh versus a kW basis. There is a similar issue for customers at the 3000 kW boundary, if the distributor has an intermediate class, and at the 5000 kW boundary, if the distributor has a large use class. In these cases, the difference is in the fixed monthly customer charge and the demand rate, but does not entail a change in billing determinant.

The Discussion Paper addressed both initial classification and subsequent evaluation and reclassification. The Board has determined that issues and rules associated with the initial classification of customers into rate classes are more appropriately addressed in the tariff sheets of each distributor as part of the process of setting the distributor's rates. The Board has also determined that issues relating to the definition of demand and the periodicity of the calculation of demand are similarly more appropriately addressed in the tariff sheets of each distributor as part of the normal rate-setting process.

The focus of this Notice is therefore on two specific issues relating to the reclassification of customers: (a) whether notification should be given to customers when billing demand is based on a kVA reading rather that on a kW reading; and (b) whether rules should be mandated regarding the process for and frequency of reclassification.

B. Proposed Amendments to the DSC

1. Billing Demand Based on kVA

"Billing demand" is the value used by a distributor for billing purposes, and is defined as the greater of 90% of the kVA reading of the meter or the kW reading of the meter in circumstances where the meter provides both. This means that, if a customer's power factor falls below 0.9, the distributor can use the determination of the billing demand to account for the extra costs associated with serving the customer. Typically, only customers with a demand of over 500 kW or 1000 kW have meters that provide both kVA and kW readings, although in some service areas customers with a demand of more than 200 kW do as well.

Most stakeholders agreed that billing on the basis of the kVA reading is a better reflection of costs. They also commented that it is an appropriate basis for billing where the metering supports it; where the customer is, by reason of size, expected to be capable of understanding it; and where the customer has notice of it. One distributor commented that notice is not required because its policies in this regard are clear.

The practice of using 90% of kVA to determine billing demand was acknowledged in the Board's 2006 Electricity Distribution Rate Handbook. The Board does not believe that it is necessary to eliminate that practice as part of this consultation. However, the Board does believe that it is desirable that customers that are being billed based on 90% of the kVA reading because they have a poor power factor be notified that this is the case. This will provide those customers with an opportunity to rectify the problem, at their own cost, in order to lower their electricity costs. Rectification of the problem will also result in freeing capacity on the relevant local lines. The Board is therefore proposing to amend the DSC accordingly (section 2.8.6). The text of the proposed amendment is set out in Attachment B to this Notice.

2. Process for and Frequency of Reclassification

Some guidance relating to the process for and frequency of reclassification is set out in sections 10.3.8 to 10.3.10 of the 2000 EDR Handbook.

Distributors and ratepayer groups generally agreed that limiting the frequency of customer reclassifications will promote rate stability, and expressed a preference for using the concept of a persistent or on-going change as a trigger for reclassification rather than retaining the concept of "abnormal condition" that is referred to in the 2000 EDR Handbook. There was also support for prior notification of changes in classification, although stakeholder views varied as to the circumstances under which such prior notification might be necessary.

The Board believes that there is merit in codifying rules in relation to these issues, to ensure that customers are reclassified in a fair manner and only when justified on the

basis of their usage. Specifically, the Board is proposing to amend the DSC (sections 2.8.1 to 2.8.5) to provide as follows:

i. Each distributor must review the rate classification of each non-residential customer once annually. Many distributors currently conduct annual reviews as a matter of practice.

ii. Each non-residential customer will be entitled to request one additional review of its rate classification per year.

iii. A distributor may only unilaterally review the rate classification of a non-residential customer more than once annually where there is a persistent, on-going change in the customer's usage. For that purpose, a persistent on-going change will be defined as demand that is over or under the rate classification threshold for a period of at least five (5) consecutive months.

iv. Similarly, a non-residential customer may only request more than one review of its rate classification per year where there is a persistent, on-going change in the customer's usage (defined as above).

v. In all cases where a non-residential customer is reclassified as a result of a distributor-initiated review, the distributor must so notify the customer at least once billing cycle before the billing cycle in which the new classification will take effect. Many distributors currently provide notification of rate classification changes as a matter of practice.

The text of the proposed amendments to the DSC is set out in Attachment B to this Notice.

C. Anticipated Costs and Benefits

The proposed amendment regarding notification of billing based on 90% of KVA will provide customers with a poor power factor with an opportunity to rectify the matter and therefore reduce their electricity costs. The Board anticipates that distributors may incur costs in providing this notice, but expects that such costs will be modest as distributor bills already contain pre-programmed space for customer messages.

The proposed amendments regarding the process for and frequency of customer reclassification will provide greater clarity and certainty for distributors and customers alike. They will also help to ensure that customers are reclassified fairly and only when justified based on usage. Many distributors already conduct annual rate classification reviews and provide notice of reclassification. Distributors that do not will incur some costs to bring their practices into line with the new requirements. Again, however, the Board expects that such costs will be modest. The Board also anticipates that some of these costs may be offset by a decrease in costs associated with dealing with customer calls and complaints regarding reclassification.

IV. Proposed Amendments to the DSC: Customer Commodity Non-payment Risk

A. Introduction

On June 4, 2007, the Board released for comment a Board staff discussion paper that examined issues associated with the management of large customer commodity payment default risk by electricity distributors. As noted in section I.A, the Board determined that those issues were more effectively addressed in the context of the larger consultation on the provision of service by distributors. As such, a discussion of the issues was also included in the Discussion Paper issued on March 6, 2008. As noted in the Discussion Paper, the assumption was that the obligation to manage commodity payment default risk should remain with distributors. The Discussion Paper therefore considered only the issue of risk mitigation, rather than the issue of who should bear the risk of commodity non-payment in the first instance.

Ten of the stakeholder written comments on the Discussion Paper addressed the commodity non-payment risk section (five from representatives of distributors and five from representatives of ratepayers).

B. Proposed Amendments to the DSC

The Board is of the view that distributors are in the best position to manage commodity non-payment risk, because they are the ones with a direct relationship with the relevant customers through the billing process. The Board is also satisfied that the risk mitigation measures currently available to distributors, as outlined in the Discussion Paper, are generally adequate.

The Board believes, however, that additional rules would be beneficial in order to clarify that a distributor can increase the frequency of billing for a customer whose annual purchases of electricity exceed a certain percentage of the distributor's revenue from the provision of distribution services. The Board is also proposing amendments to the DSC to address alternative arrangements in relation to such customers. The proposed amendments to the DSC are described in greater detail below, and the text of the proposed amendments is set out in Attachment C to this Notice.

1. Billing Frequency

Billing frequency is currently at the discretion of the distributor, and is not mandated by the Board. The Board believes that billing frequency should generally remain at the discretion of the distributor, and expects that a distributor will bill all customers, or at least all similarly-situated customers, with the same degree of frequency.

Section 2.4.6.2 of the DSC states: "In managing customer non-payment risk, a distributor shall not discriminate among customers with similar risk profiles or risk related factors except where expressly permitted under this Code." The Board

acknowledges that this section of the DSC is commonly understood as limiting the ability of a distributor to increase the frequency of billing beyond what is normally the case based on the distributor's normal billing cycle, except with the consent of the customer or prior Board approval.

The Discussion Paper suggested that the Board consider amending the DSC to clarify that a distributor may, without offending section 2.4.6.2 of the DSC, unilaterally increase the frequency of billing for a customer whose annual purchases of electricity exceed a certain percentage of the distributor's revenue from the provision of distribution services. The Discussion Paper also suggested that unilateral accelerated billing should only be available where the distributor has reasonable grounds for believing that the customer's creditworthiness is in question.

Support for the codification of accelerated billing was expressed by both distributors and ratepayers. However, one distributor representative noted that the accelerated billing approach could be viewed as discriminatory.

The Board believes that it is appropriate to make the clarification suggested in the Discussion Paper, and does not believe this to be discriminatory provided that a distributor treats all similarly situated customers in the same manner. The Board also believes that the benefit of accelerated billing may be lost if conditioned on the deterioration or foreseen deterioration in the customer's creditworthiness. The Board is of the view that allowing for accelerated billing without such a condition will better protect ratepayers in circumstances where a distributor's exposure to customer commodity non-payment risk can have a particularly high impact.

The Board therefore proposes to amend the DSC (sections 2.4.32 to 2.4.35):

i. to allow a distributor to bill, on a bi-weekly basis, a customer whose annual electricity commodity purchases have a value that falls between 51% and 100% of the distributor's approved distribution revenue requirement; and

ii. to allow a distributor to bill, on a weekly basis, a customer whose annual electricity commodity purchases have a value that exceeds 100% of the distributor's approved distribution revenue requirement.

These proposed amendments were developed by evaluating exposure to customer commodity non-payment risk under different scenarios, and will allow distributors to manage that risk more effectively to avoid the potential for large financial losses.

2. Alternative Arrangements

Both distributors and ratepayers expressed support for allowing customers and distributors to negotiate alternative payment arrangements in lieu of accelerated billing.

The Board anticipates that large customers that may become subject to accelerated billing as described above may prefer to make alternative arrangements to address the distributor's exposure to commodity payment default risk, and that such alternative arrangements may be acceptable to the distributor in question based on the distributor's particular circumstances. The Board believes that electricity distributors should have the flexibility to negotiate such alternative arrangements, including in relation to the giving or retention of security deposits, in lieu of accelerated billing. The Board therefore proposes to amend the DSC accordingly (section 2.4.36).

C. Anticipated Costs and Benefits

The Board anticipates that the proposed amendments to the DSC described above will more clearly and better enable distributors to manage large customer commodity payment default risk, particularly where the distributor has a narrow customer base (e.g., where consumption by one large customer represents a high percentage of total consumption in the distributor's service area).

The proposed amendments also reduce the financial and service-related consequences of a large customer payment default, and therefore serve to better protect the interests of the distributor's remaining ratepayers.

It is not anticipated that electricity distributors will incur substantial costs as a result of the proposed amendments. The Board acknowledges that customers placed on accelerated billing may need to adjust how they manage their cash flow on a going forward basis. Where this is a significant issue, the customer can avail itself of the opportunity to negotiate alternative arrangements with the distributor.

V. Coming Into Force

The Board recognizes that distributors will require some time to bring their practices into line with the proposed amendments relating to customer service issues discussed in section II and set out in Attachment A. Moreover, as indicated in the LEAP Report, the Board anticipates that the elements of the program will be in place for November 2009. The Board is therefore proposing that those proposed amendments come into force on the date that is six months after they are published on the Board's web site after having been made by the Board (DSC, section 1.7; RSC section 1.7; and SSS Code section 1.6.2). The six-month period will also allow an opportunity for distributors to explore and consider different options for implementing the new requirements, where flexibility to do so has been retained. The Board encourages distributors to use this period to learn from the experience of other distributors within Ontario and to consider approaches that have been used with success in other jurisdictions.

The Board does not believe that distributors will require any advance time to bring their practices into line with the proposed amendments relating to customer classification practices as discussed in section III and set out in Attachment B. However, the Board anticipates that distributors will require some time to implement the proposed requirement regarding notification of billing on the basis of the kVA reading. For simplicity and consistency with the coming into force of the proposed amendments regarding customer service issues, the Board is proposing that this proposed amendment also come into force on the date that is six months after it is published on the Board's web site after having been made by the Board (DSC section 1.7).

The Board does not believe that distributors will require any advance time to bring their practices into line with the proposed amendments relating to the customer commodity non-payment risk issues discussed in section IV and set out in Attachment C. The Board is therefore proposing that those proposed amendments come into force on the date they are published on the Board's website after having been made by the Board.

VI. Cost Awards

Cost awards will be available under section 30 of the *Ontario Energy Board Act, 1998* to eligible persons in relation to the provision of comments on the proposed amendments set out in Attachments A, B and C. Costs awarded will be recovered from all licensed electricity distributors based on their respective distribution revenues.

Attachment D contains important information regarding cost awards for this notice and comment process, including in relation to eligibility requests and objections. In order to facilitate a timely decision on cost eligibility, the deadlines for filing cost eligibility requests and objections will be strictly enforced.

In decisions on cost eligibility issued during earlier phases of this consultation, the Board determined the following to be eligible for an award of costs: the Building Owners and Managers Association of the Greater Toronto Area; the Federation of Rental-Housing Providers of Ontario; the Vulnerable Energy Consumers Coalition; the Association of Major Power Consumers in Ontario; the School Energy Coalition; and the Canadian Manufacturers & Exporters.

At the time of issuance of the Discussion Paper, the Board also extended eligibility for cost awards in this consultation to all additional participants that were found to be eligible for an award of costs in the "Electricity Distributors and Management of Customer Commodity Payment Default" consultation (EB-2007-0635), namely: the Energy Probe Research Foundation; and the London Property Management Association.

The Board will also extend eligibility for cost awards in this consultation to all additional participants that were found to be eligible for an award of costs in the "Consultation on Energy Issues Relating to Low Income Consumers" (EB-2008-0150), namely: the Advocacy Centre for Tenants Ontario; the Canadian Environmental Law Association;

the Consumers Council of Canada; EnviroCentre; the Green Energy Coalition; Green Light on A Better Environment; the Industrial Gas Users Association; the Income Security Advocacy Centre; the Kingston Community Legal Clinic; the Low Income Energy Network; the National Chief's Office on behalf of the Assembly of First Nations; Nipissing First Nation; the Ontario Municipal Social Services Association; the Pollution Probe Foundation; and the Toronto Environmental Alliance.

The participants named above will be considered eligible for costs in relation to this notice and comment process, and need not submit a further request for cost eligibility.

Any other interested party that wishes to request eligibility for an award of costs in relation to this notice and comment process must submit that request in accordance with the instructions set out in Attachment D.

VII. Invitation to Comment

All interested parties are invited to comment on the proposed amendments to the Codes set out in Attachments A, B and C by April 17, 2009.

Three (3) paper copies of each filing must be provided, and should be sent to:

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

The Board requests that interested parties make every effort to provide electronic copies of their filings in searchable/unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at www.errr.oeb.gov.on.ca. A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at www.oeb.gov.on.ca, and fill out a user ID password request. Additionally, interested parties are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at boardsec@oeb.gov.on.ca.

Those that do not have internet access should provide a CD or diskette containing their filing in PDF format.

Filings to the Board must be received by the Board Secretary by **4:45 p.m.** on the required date. They must quote file number **EB-2007-0722** and include your name, address, telephone number and, where available, your e-mail, address and fax number.

This Notice, including the proposed amendments to the Codes set out in Attachments A, B and C, and all written comments received by the Board will be available for public inspection at the office of the Board during normal business hours and on the Board's website at www.oeb.gov.on.ca.

Any questions relating to this Notice and the proposed amendments to the Codes should be directed as follows:

- in relation to the proposed amendments set out in Attachment A, to John Vrantsidis at 416-440-8122 or by e-mail at john.vrantsidis@oeb.gov.on.ca
- in relation to the proposed amendments set out in Attachment B, to Laurie Reid at 416-440-7623 or by e-mail at laurie.reid@oeb.gov.on.ca
- in relation to the proposed amendments set out in Attachment C, to Roy Hrab at 426-440-7745 or by e-mail at roy.hrab@oeb.gov.on.ca

The Board's toll free number is 1-888-632-6273.

DATED at Toronto, March 10, 2009.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Attachments:

Attachment A: Proposed Amendments to the Distribution System Code, the Retail Settlement Code and the Standard Supply Service Code: Customer Service

Attachment B: Proposed Amendments to the Distribution System Code: Customer Reclassification

Attachment C: Proposed Amendments to the Distribution System Code: Management of Customer Commodity Non-Payment Risk

Attachment A

Proposed Amendments to the Distribution System Code, the Retail Settlement Code and the Standard Supply Service Code: Customer Service

[Available as a separate document]

Attachment B

Proposed Amendments to the Distribution System Code:
Customer Reclassification

[Available as a separate document]

Attachment C

Proposed Amendments to the Distribution System Code:
Management of Customer Commodity Non-Payment Risk

[Available as a separate document]

Attachment D

Cost Awards

Cost Award Eligibility

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person intending to request an award of costs must file with the Board a written submission to that effect by **March 20, 2009**, identifying the nature of the person's interest in this process and the grounds on which the person believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website.

Licensed electricity distributors will be provided with an opportunity to object to any of the requests for cost award eligibility. If an electricity distributor has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **March 27, 2009**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting participants.

Eligible Activities

Cost awards will be available in relation to the provision of comments on the proposed amendments set out in Attachments A, B and C, **to a maximum of 25 hours**.

Cost Awards

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied. The Board expects that groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the Board's *Practice Direction on Cost Awards* and the October 27, 2005 letter regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's website at www.oeb.gov.on.ca on the "Rules, Guidelines and Forms" webpage.