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BY EMAIL and RESS

April 17, 2009
Our File No. 2060604

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2007-0722 – Notice to Amend Codes

On March 10, 2009 the Board gave notice (the "Notice") of its intention to amend the Distribution System Code, the Retail Settlement Code, and the Standard Supply Service Code, and sought submissions from interested parties. These are the submissions of the School Energy Coalition.

The School Energy Coalition has commented extensively on these issues in April of 2008, and in the Low Income Consultation, and will not repeat those comments here. We have reviewed the Board's Notice, and the specific amendments proposed, in detail, but there are only a few areas in which we believe that additional input from SEC may be of assistance to the Board.

Timing Rules

At page 6 of the Notice, the Board discusses its proposed changes that will codify the bill presentment and payment timing rules. This is a welcome change.

We have one comment, however. The bill issuance date is correctly different depending on how the bill is delivered, much like deemed times of notice in contracts are different depending on how the notice is given. Our concern arises because, if more than one method of bill presentment is used, the Board proposes that the deemed date is the latest of those applicable.

This is, in our view, inappropriate, for three reasons:

1. The purpose of deeming certain dates is to ensure that time does not start to count until the customer can fairly be assumed to have notice of the amount to be paid. If the distributor

uses more than one method of giving that notice, the time that the customer can fairly be assumed to have that notice is in fact the earliest of those times, not the latest. Otherwise, the distributor is in the perverse situation in which, if an email notice is sent, time starts to count immediately (the customer is assumed to know the amount of the bill), but if the distributor then also sends a hard copy, a three day delay is imposed. If it is fair for the time to start on the date of the email if notice is by email alone, it is fair for the time to start on that same date even if additional notice is also sent.

2. We believe that internet and email bill presentment by distributors should be strongly encouraged. One reason a distributor might be motivated to use this more is that the time period for bill payment is shortened, because the customer knows immediately the amount to be paid. However, during a transition to electronic bill presentment, it is common to offer a physical bill as well, in parallel. Eventually people don't see the need for it any more, and it is dropped. If the Board's timing approach is used, the distributor gets no benefit (in terms of shorter payment cycle) from electronic bill presentment unless and until it drops the paper bill as well.

3. Our interest in bill payment time frames is largely about working capital needs. The Board's proposed rules on bill payment would adopt 16 days, but then add 3 days at the beginning for mailing a bill, and 2 days at the end for the time it takes to get a cheque from the customer. These time frames do not appear to us to be unreasonable, as long as the distributor has the freedom to shorten the cycle, and thus reduce working capital requirements, through electronic bill presentment. If the timing rule is based on the earlier of the bill presentment rules used, that goal would be accomplished.

Correction of Billing Errors

This area is a serious concern to school boards, many of whom have experienced substantial billing errors by electricity and gas distributors in the past. Where an underbilling has taken place, and the distributor seeks to catch up, school boards are faced with an added expense that they have not created, and for which, because it does not relate to the current year, they do not have budgeted funds.

The Notice proposes that, for residential customers, underbilled amounts for the last twelve months can be collected, but proposes that, for non-residential customers, the limit be six years. In our submission, this is unfair, and does not reflect the economic realities applicable to this situation.

Any policy relating to billing errors is essentially a balancing of interests between the distributor and the customer. The customer has an obligation to pay for their distribution service. The amount to be paid is totally the responsibility of the distributor, who has a positive obligation to deliver periodic invoices to the customer that correctly calculate and present the amount owing.

In the event that the distributor has incorrectly determined the amounts owing for an extended period of time, the economic realities are the following:

1. The distributor has been unaware of the error, and so has operated its distribution business successfully without the revenue that would have arisen without the error. If it gets full payment, its current year ROE will be in excess of the Board-approved level, all other things being equal. It is, in effect, a current year windfall, based solely on a mistake by the distributor.

2. The customer has also been unaware of the error, and has relied on the incorrect amounts not just in making payments, but also in managing their budget and spending in each year, and projecting their budgets for subsequent years. If it has to make full payment, it has, through no fault of its own, a significant current year problem. In the case of customers with fixed and inflexible annual budget limits, like schools, the customer has to lay off employees, or cut programs, to make up the difference. (This is one of the reasons why deferral and variance accounts, for example, have to be cleared in a timely manner: to avoid this kind of problem.)

It is tempting to think that, in the period during which the error occurred, the utility somehow "underearned" due to the lost revenue, and the customer somehow "enjoyed a benefit" due to the lower utility bills. This is not, in fact, what happens in practice. The utility manages month to month to its actual revenues, and the customer manages month to month to its actual costs. The theoretical cost and benefit during the period is not real.

In the private sector, companies do not go back six years to collect billing errors. The reason? It is not altruism. In a competitive market, a company that seeks a big catchup payment from a customer will almost certainly lose the customer. If your supplier's error has caused you a serious operational problem due to a catchup payment, you will look for a supplier who either doesn't make those errors, or won't "whack" you when it happens. The only reason a customer can't do the same with an electricity distributor is that it has a monopoly franchise. The Board's regulatory power replaces the discipline of the competitive market.

In our submission the Board should be requiring distributors to act as they would have to in a competitive market, and should not be applying a rule to non-residential customers in this situation that is different from the rule for residential customers.

At page 11 of the Notice, the Board says:

> *"…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 underbilled amounts."*

While the Board in that situation was talking about the period over which repayment is made, the same principle should apply to the period of error recoverable. There is no reason why a distributor, making an error in billing a homeowner, and making the same error in billing a school, should be able to collect 12 months from the homeowner, and 72 months from the school. There is no basis for that distinction. The result is patently unfair, and should not be implemented.

Implementation Costs

We have had the opportunity to review the submissions of Hydro One on these matters, filed earlier today. While we do not support all of the proposals they make in their submissions, we share their concern that the costs to implement some of the Code amendments proposed may be more than the Board expects.

We therefore suggest that distributors be allowed to propose to the Board alternative implementation approaches specific to their situation as long as:

1. The goals the Board seeks to achieve by the Code amendments are still being met.

2. The specific Code rules and the policies behind them are being adhered to as closely as possible in the circumstances, and

3. There is a material cost saving arising out of the alternative approach.

While we support the idea of standardized rules for many of the items contained in the Code amendments, we believe that some flexibility to allow LDCs to keep their costs down would be appropriate.

Conclusion

We hope our input is of assistance, and we thank the Board for the opportunity to provide it.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

cc: Bob Williams, SEC (email)
Wayne McNally, SEC (email)
Interested parties (email)