

April 17, 2009

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

Via RESS and by courier

Dear Ms. Walli:

**Re: EB-2007-0722 Proposed Amendments to the Distribution System Code, the
Retail Settlement Code and the Standard Supply Service Code**

The Electricity Distributors Association (EDA) is the voice of Ontario's electricity distributors.

The EDA is pleased to provide the attached comments regarding the proposed amendments to the DSC, RSC and SSS Code. The EDA has consulted with its members on the proposals and has summarized their feedback in the attached comments.

Yours truly,

"original signed"

Richard Zebrowski
Vice President, Policy & Corporate Affairs

Attach.

EDA Comments on Proposed Amendments to the Distribution System Code, the Retail Settlement Code and the Standard Supply Service Code (EB-2007-0722)

The EDA notes that the OEB is proposing to amend the Distribution System Code (DSC), the Retail Settlement Code (RSC), and the Standard Supply Service Code (SSS) with the goals of creating greater consistency among distributors in practices across the province and implementing proposed customer service policies identified in the Low Income Energy Assistance Program (LEAP). The OEB has noted that it is seeking input on implementation issues with respect to the proposed customer service requirements that uniquely apply to low income consumers.

Definition of “Eligible Low Income Electricity Customer”

The definition of “eligible low income electricity customer” is proposed to be a “residential customer who qualifies for financial assistance, payment management, debt payment or other similar assistance and whose qualification for such assistance by reason of need based on his or her income has been confirmed to the customer’s distributor by a social agency recognized by the Board for this purpose.”

As noted in the EDA’s submission on LEAP, the LEAP customer service measures appear to assume that there are low-income customers that are in an emergency situation for an extended time or that customers get special customer services if they received LEAP at some time in the past. Social service agencies whom are expected to maintain the list of eligible low income customers should be provided guidance on this issue. The EDA believes the purpose of LEAP is to provide emergency funding assistance. If customers stayed on the low income list after the emergency has passed it would require the agency to monitor and report to the distributor when customers should no longer receive special treatment. Determining and notifying the distributor when customers are no longer eligible may create an extra burden on social agencies.

Of greater concern regarding the proposed LEAP customer service measures is the impact on distributors. These measures in effect cause the distributor to create a new sub-class of low income customers with different customer service measures. Unless the number of customers on the list is very small and the administration is manually implemented by staff, it is generally not possible to implement most of the special services without significant and costly changes to distributors’ customer information systems (CIS) systems. In some cases the proposed changes are impossible without replacing the CIS or providing special services to all customers. The EDA believes these special customer services should be discussed with distributors to better understand the implications on operations. The expected costs to implement these measures by each distributor are significant and likely higher than the proposed financial assistance through LEAP. The EDA understands that some other jurisdictions have implemented similar measures in the past, however, that does not negate the fact that distributors in Ontario will still incur significant implementation costs. Distributors are presently challenged by the implementation changes to their CIS to address the smart meter installation program, as well as upcoming IFRS requirements which place heavy demands on limited IT and

other departmental resources. As a result, EDA members maintain that the proposed changes could not be practically implemented in the proposed six-month period following a decision. Specific implementation issues are identified below.

Payment Period

The OEB is proposing a minimum 16 calendar days for the payment period, calculated from the date on which the bill is determined to have been issued. Distributors will have discretion to provide a longer period if appropriate and the payment period is to be documented in their Conditions of Service. EDA members did not disagree with this proposed minimum.

However the OEB is also proposing a minimum 21 calendar days for eligible low income customers, apparently to address cases where the low income customer's ability to pay is adversely affected by a disparity between receipt of government fixed income payments and utility bill due dates. EDA members noted that most customer information systems (CIS) presently do not allow two different payment periods. If required to offer 21 days to certain low income customers, the distributor would be forced to move to a manually intensive process; incur additional costs to expand the functionality of the existing CIS system (if possible); or as a last resort, offer 21 days to all of their customers which would be detrimental to working capital. In addition, for distributors that offer monthly billing, the additional payment days may cause the payment period to overlap with new bills that are issued.

Some distributors noted that they typically provide a grace period to customers that are late and in practice, most distributors use their discretion to work with customers especially where they are aware of unique situations which may include low-income consumers. The EDA believes that extending the payment period to 21 days or offering 21 days to certain customers is too costly or practically impossible to implement.

Determining When Bills are Issued

The OEB is proposing that bills will be deemed to have been issued:

- if sent by mail, on the third day after the bill print date (Distributors are to include a bill print date on their bills)
- if made available over the internet, the date on which an e-mail is sent advising availability of the bill
- if sent by e-mail, the date on which the e-mail is sent
- if more than one of the above means, the later applicable deemed date of issuance

Bills will be deemed to have been paid:

- if paid by mail, on the date that the envelope is post marked unless the cheque is post-dated for a later date; and
- if paid at a bank or electronically, on the date payment is acknowledged or recorded by the customer's financial institution

EDA members have indicated that it would be impossible to review post marks on envelopes for most distributors. Distributors would be required to either manually review each envelope or install/ upgrade current systems to recognize and record post mark dates. Distributors are not aware whether automated scanning for post mark dates could be automated, but if so, it would likely be costly to implement. Manually reviewing envelope post marks, unless automated in some way, would be essentially impossible for most distributors.

It should be noted that distributors typically do not retain envelopes in the event that a customer claims the payment was mailed before the due date. Retaining all the envelopes would add a significant administrative cost with little associated benefit

To avoid customer issues when a payment is received a few days late due to the mail, most distributors typically offer grace periods. Distributors believe this approach avoids the need to implement the proposed practices that are essentially impossible to implement. Distributors do not want to widely advertise their offer of a grace period as that would defeat the purpose and lead to more situations of late payment. As a result, the grace period should not be codified and should be up to the discretion of the distributor.

The preferred practice is to indicate to customers that the payment must be received by the distributor on or before the due date. Most customers understand that the mail can take longer than expected at times, and act accordingly, and the grace period addresses the few customers that may be impacted by occasional mail delays

Method of Payment

The OEB is proposing that credit card payments should be accepted where a disconnection notice has been issued to a residential customer for non-payment. The OEB notes that there is no need to extend this to non-residential customers and will leave the decision to the discretion of distributors. The OEB also notes that a new specific service charge for processing credit card payments will be part of an upcoming review of specific service charges.

EDA members have some concerns about the recovery of processing fees/ transaction charges charged by the credit card companies. They note acceptance of credit card payments would be more acceptable if the transaction fee was charged to the customer rather than the distributor. If the transaction fees cannot be charged to the customer, the distributors would require the recovery of costs through a new specific service charge which would need to be approved and available to distributors in a timeframe consistent with this code change.

Allocation of Payments between Electricity and Non-electricity Charges

The OEB is proposing that distributors allocate partial payments to electricity charges first and that distributors can refuse to transfer a customer to a retailer only when there

are arrears for electricity charges. Electricity charges include “Electricity”, “Delivery” “Regulatory Charges”, “Debt Retirement Charge” and where applicable “Provincial Benefit” line items on the bill and all associated taxes. EDA members feel these requirements are acceptable, provided the payment of electricity charges includes all distributor charges including deposits, late payment fees and specific service charges. The EDA notes that some distributors will be required to implement CIS changes in order to allocate payments to electricity charges first.

(It should also be noted that distributors who currently have 3rd party billing contracts (i.e. water/ waste water billing) will need to review the contracts and determine the legal ramifications associated with this proposed change.)

Correction of Billing Errors - Overbilling

The OEB is proposing the following with respect to the refund of billing errors:

- If amount over-billed is equal to or greater than a customer’s average monthly billing amount
 - ✓ Distributor must issue a cheque for the full over-billed amount
- If amount over-billed is less than a customer’s average monthly billing amount
 - ✓ Distributor may refund the over-billed amount by way of cheque or credit to the consumer’s account
 - ✓ For eligible low income electricity consumers – distributor to issue a cheque for the full over-billed amount if the consumer so requests

EDA members have indicated that their current practice is to issue a cheque upon the request of the customer, however, the option most customers prefer is a credit to their account.

The OEB is also asking for comments on a proposal by a retailer for an auditable trail for billing correction to be made available to retailers for purposes of verifying consumption, billing and settlement. A member noted that a sufficient audit trail for retailers is already being provided via the EBT process.

Correction of Billing Errors – Underbilling

The OEB is proposing the following with respect to the collection of under billing errors:

Under- billing resulting from distributor’s error

- If the amount under-billed is equal to or greater than 50% of the customer’s average monthly billing amount, then:
 - The customer must be allowed to pay the under-billed amount in equal installments over a period at least equal to the duration of the billing error
- If the amount under-billed is less than 50% of the customer’s average monthly billing amount, then:
 - The customer may be required to re-pay the under-billed amount in full on the next regular bill.

- Low income consumers must be allowed to re-pay the under-billed amount in equal installments over a period at least equal to the duration of the billing error if the customer so requests

Under-billing resulting from Customer's fault (tampering, willful damage or unauthorized energy use)

- The distributor may require immediate payment by the consumer including eligible low income electricity consumers

If Under billing is the result of an error by the distributor, the OEB is also proposing the following:

- non-residential consumer's maximum liability be six years (currently it is for the duration of the error)
- residential consumer's maximum liability be 12 months (currently it is 2 years)

With respect the duration of the residential consumer's liability, the current practice of 2 years reflects Measurement Canada requirements regarding metering. To provide consistency, EDA members recommend the continued use of the 2 year liability for residential customers.

EDA members noted that under billing could also result from lack of access to the meter, (i.e. the meter is located inside a building and access is not provided by the owner and/or tenant). Lack of access would not be an error of the distributor and should be included in the "fault of the customer" proposal.

Another error in billing (both over-billing and under-billing) could be the result of a retailer providing incorrect Retailer Charges. Distributors act as agents in the case of customers signed with retailers and the distributor has no way of knowing the duration of the retailer's error.

Interest for Billing Errors

With respect to interest charges for billing errors, the OEB is proposing the following:
For over-billed amounts:

- The distributor must pay interest at a rate equal to the prime rate charged by the distributor's bank

For under-billed amounts and if under billing is a result of tampering, willful damage or unauthorized energy use:

- The customer (including an eligible low income electricity consumer) should pay interest at a rate equal to the prime rate charged by the distributor's bank

EDA members believe the interest rate should not be the prime rate charged by the distributor's bank but rather the actual interest rate charged by the distributor's bank. Alternatively the security deposit interest rate could be used which is the prime business rate as published on the Bank of Canada website less 2 percent, updated quarterly. The

use of the security deposit interest rate would provide consistency to interest rates charged for “held” funds.

Equal Billing

The OEB is proposing the following requirements with respect to equal billing:

- Distributors are required to offer equal billing to all residential customers, both Standard Supply and those signed with a retailer, based on current billing cycles or monthly
- If a distributor voluntarily offers equal billing to non-residential Standard Supply customers, then it should also be offered to the same non-residential customers enrolled with retailers
- Eligibility for equal billing is any customer that is not in arrears, or is in arrears and has entered into an arrears payment agreement.

Low income consumers on equal billing:

- Distributors to equal bill on a monthly basis
- Customer be given the option of at least two different monthly payment dates (such as the 1st or 15th of each month)

EDA members reiterate that offering equal billing to customers enrolled with retailers increases the risk to the distributor since the distributor is unable to forecast retailer charges.

EDA members raised a number of concerns with respect to the proposals under equal billing or equal payment plans for low income customers. Distributors presently billing bi-monthly were very concerned about having to implement a unique monthly billing process for a select group of low income customers. If distributors who bill bi-monthly were required to offer monthly equal billing to low income customers, there would be significant effort/cost to attempt to change the existing functionality of the CIS system to accommodate this., and the distributor would likely be forced to switch to monthly billing for all of its customers, thus increasing, possibly doubling costs for administration, billing, collections etc.

Distributors noted their billing software is presently designed to offer equal billing only for preauthorized payments and indicated that there is a possibility that low income customers do not have bank accounts. Distributors would want to withdraw preset amounts automatically from the social agencies assisting the low income customer.

Equal Billing Reconciliation

With respect to equal billing reconciliation the OEB is proposing the following:

- Distributors to reconcile in anticipation of the last (12th) month - true-up on the bill issued for the twelfth month - refund to the customer as a credit on the bill issued for the twelfth month

- Distributors must true-up accounts of customers (including an eligible low income electricity customer) leaving equal billing. This true-up should appear on the next regular bill sent to the customer.

Low income electricity customers:

- If the refund is equal to or greater than the customer's average monthly billing amount, then:
 - The distributor must issue a cheque for the full amount of the refund if the customer so requests.
- If customer owes the distributor, then
 - The distributor must roll up the shortfall into the following year's installments in equal monthly amounts facilitating payment of the shortfall by spreading it over a longer period of time

EDA members voiced concern with respect to the proposed reconciliation for low income customers. Distributors noted that rolling up any shortfall into the following year, for a select group of customers, would require a significant change to their CIS systems. The distributors believe the costs outweigh the benefits and believe this proposal should be reconsidered.

Form and Content of Disconnection Notice

The OEB is proposing that disconnection notices should be standardized across all LDCs with minimum information that must be included:

- amount overdue, including any late payment charges
- scheduled date of disconnection
- action that the customer can take to avoid disconnection and the deadline for taking such action
- reconnection charges that may be payable
- contact information for the LDC
- contact information for local social service agencies and local energy assistance charities
- description of the process for qualifying for assistance that is available to low income electricity customers
- reference to the arrears payment plans offered by LDC
- confirmation of whether a local Vital Services By-law is in effect that applies to a customer's rental unit and whether the LDC has provided the required notification to the municipality
- Scheduled disconnection date - a range of dates can be provided as opposed to a single date (as suggested by LDCs) - specify the earliest and latest possible dates
- Reconnection charge - all approved reconnection charges, and the circumstances in which each is payable:
 - within regular business hours
 - outside of regular business hours
 - any approved reconnection charge that varies per type of meter
- Disconnection notice should be mailed separate and apart from the electricity bill

EDA members did not have any concerns with respect to the proposed content of the disconnection notice.

Timing and Duration of Disconnection Notice

The OEB is proposing the following with respect to the timing and duration of disconnection notices:

- Disconnection notice will be deemed to have been received by a customer:
 - If sent by mail - on the third day after the notice print date (distributors will be required to include a notice print date on the disconnection notices).
 - If personally served or posted on a property outside of regular business hours or on a day that is not a business day - on the next business day.
- Distributors are encouraged not to schedule disconnections:
 - during weekends and statutory holidays when no LDC staff is available to accept payment or to negotiate an arrears payment arrangement
 - 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
- Validity of disconnection notice - 11 days from the end of minimum notice period – if a customer is entitled to a 10-day notice period, the disconnection notice would be valid for a period of 21 days
- If service is not terminated within the 11-day window, a new disconnection notice will be required

EDA members did not have any major concerns with respect to these proposals.

Customer Contact Prior to Disconnection

The OEB is proposing that distributors attempt to make personal contact with the customer before disconnection. This requirement of a reasonable effort to establish personal contact precludes the supplementary customer contact from occurring on the same day as the disconnection. Distributors have discretion as to when and by what means this contact with the customer is best undertaken.

EDA members did not have any concerns with respect to this proposed new requirement for a reasonable effort of customer contact prior to disconnection. It should be noted that most distributors currently operate under this policy.

Additional Recipients of Disconnection Notice

The OEB is proposing the following concerning additional recipient of the disconnection notice:

- Distributors are to provide a copy of the disconnection notice to a third party designated by the customer and disconnection cannot take place until the notice has been received by the third party

- Distributors are to 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
- For multi-unit, master-metered building - a copy of the disconnection notice issued to the account holder should be posted in a conspicuous public place on or in the building. This is applicable whether it is a residential apartment building, a condominium or a commercial building

EDA members were concerned about situations with multi-unit buildings, where the landlord is in arrears and causing the disconnection notice, if putting the notice in a public place conflicts with privacy requirements.

Reconnection

The OEB is proposing that reconnections must be within 2 business days from the customers payment of arrears in full or from entering into arrears payment agreement with distributor, and that there is to be an ESQR that must be met 85% of the time.

EDA members did not have any issues with the 2 business day reconnection requirement.

Security Deposits

With respect to security deposits, the OEB is proposing the following:

For all residential customers:

- Existing security deposit must be applied against arrears before issuing a disconnection notice
- Distributors must accept a guarantee provided by a third party, as a form of security deposit, whose ability to pay is acceptable, acting reasonably

For Low income electricity customer:

- No security deposit will be required from customers receiving assistance under an “energy bill payment assistance program”
- Other eligible low income customers, not receiving the assistance program, must be permitted to pay a security deposit (including increases in deposit amounts) in equal installments over period of at least 12 months
- Repayment of security deposits, in equal installments over a period of the same duration (12 months) provided that the customer maintains a one-year good payment history
- Calculating security deposit payable by a customer who has received more than one disconnection notice in 12-months (customer’s highest actual or estimated monthly load) will not apply.

Distributors have significant concerns regarding these proposals, and believe further discussion on the treatment of security deposits is required. Distributors understand that security deposits are designed to protect against bad debt. If distributors are required to

apply the security deposit against the arrears of a customer facing disconnection, this implies that either the protection is being removed or the disconnected customer is not reconnecting and the account is closed. Distributors believe security deposits should only be returned if a customer has a good payment history or is closing their account. Returning the deposit to pay for arrears would conflict with standard industry practice and put the distributor at greater financial risk.

With respect to the proposals for “eligible low income customers” not receiving LEAP, distributors asked how they would know who are these “eligible low income customers”. If social agencies are expected to identify these customers, would it be based on whether they received LEAP in the past? Would social agencies continue to monitor each past recipient of LEAP to ensure they are still eligible and keep distributors updated on a regular and timely basis?

With respect to collecting the deposit in twelve equal month installments over a 12 month period and repaying the deposit over the next twelve months in equal installments, distributors again feel this would conflict with good industry practice. Regardless of the length of time required to pay the deposit, the deposit should be refunded only after the deposit has been paid in full and has been held for one year with good payment history. Distributors also believe that customers receiving LEAP should be required to provide a deposit given that it could be made payable under LEAP. Regardless, distributors have concerns with implementing another significant change to their CIS in order to provide a different treatment for a relatively small segment of customers. These issues should be further discussed with distributors who can further explain the implications on their specific CIS.

Arrears Management - Low income electricity customers

The OEB is proposing that distributors offer an arrears payment program to eligible low income customers to pay arrears over the following periods:

- ✓ at least 5 months, if owing is less than twice the customer’s average monthly billing amount
- ✓ at least 10 months, if owing equal to or greater than 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
- When in an arrears payment agreement, the arrears are no longer overdue for payment for the purposes of disconnecting the customer.
- Failure by the customer to make payment in accordance with the arrears payment agreement would entitle the distributor to disconnect the customer

With respect to the proposals for an arrears management program, distributors note that as part of the arrears payment agreement, the customer should be required to keep all bill payments for any new bills due after the agreement has been set, in addition to fulfilling the arrears agreement.

Treatment of Third Party Requests to Open New Account

The OEB is proposing the following new requirements for the treatment of third party requests to open a new account:

- Distributors must send a letter to the new purported account holder within 15 calendar days,
- Written consent of the new account holder is required to charge the customer. Consent may not be implied, including by virtue of the use of electricity by the purported account holder

When Current Customer Departs

- Distributor cannot recover from the landlord charges for service provided to vacated rental premises unless written consent exists to assume responsibility for those charges - same approach where there is a change in the ownership of a property

EDA members expressed concern about not having the option to charge landlords for vacated premises. If distributors are unable to charge landlords when units are vacated, then an increase in disconnections will occur even though the cost of disconnection and reconnection will often be higher than continuing to provide electric service. And who is responsible for these costs? Is a customer closing an account going to be responsible for the disconnection fee only if there is not a signed contract for the unit? Or is the new tenant going to be responsible for both the disconnection fee and the reconnection fee? As well, what if a disconnections causes damage to property (i.e. pipe freezing). Who is responsible for this damage? Distributors believe landlords need to be educated about the implications in order to impose this requirement to obtain written consent from the landlord.

EDA members also have concerns on receiving written consent of a new account holder before it is allowed to charge the account holder when a 3rd party has requested to open an account. Currently distributors receive information on accounts from lawyers and developers on behalf of their clients and on behalf of the new owners once ownership has been established. Having to track down signed contracts for these new developments may also lead to an increase in disconnections for new homes and increased administration costs.

Customer Classification Billing Demand

The OEB is proposing that customer reclassification be based on billing demand measured on kVA. Customers are to be notified when they are being billed based on 90% of the kVA reading because they have a poor power factor.

EDA members supported this proposal.

Process for Reclassification and Frequency

The OEB is proposing that distributors must review the rate classification of each non-residential customer once annually, and:

- Each non-residential customer will be entitled to request one additional review of its rate classification per year
- Distributors may unilaterally review the rate classification of a non-residential customer more than once annually only where there is a persistent, on-going change in the customer's usage
- Persistent on-going change is defined as demand that is over or under the rate classification threshold for a period of at least five (5) consecutive months
- A non-residential customer may request more than one review of its rate classification per year only where there is a persistent, ongoing change in the customer's usage
- When a non-residential customer is reclassified as a result of a distributor-initiated review, distributors must notify the customer at least one billing cycle before the billing cycle in which the new classification will take effect

EDA members support the OEB proposals but would request further guidance with respect to seasonal customers with large demands for a few months such as ski operations and certain agricultural processes.

Customer Commodity Non-payment Risk

Concerning how distributors manage customer commodity non-payment risk, the OEB is proposing the following:

- Billing frequency will continue to be at the discretion of distributors
- Distributors shall not discriminate among customers with similar risk profiles except where expressly permitted
- Distributors will be allowed to bill customers:
 - ✓ on a bi-weekly basis – if customer's annual electricity commodity purchases fall between 51% and 100% of the distributor's approved distribution revenue requirement
 - ✓ on a weekly basis –if customer's annual electricity commodity purchases exceed 100% of distributor's approved distribution revenue requirement.
- LDC will have flexibility to negotiate alternative arrangements, including collection or retention of security deposits, in lieu of accelerated billing

The EDA appreciates the recognition that distributors with comparably very large customers face significant non-payment risks, and the EDA notes that the proposal will protect some distributors from impacts due to unforeseen deterioration in customer creditworthiness. Nevertheless, other distributors also face unforeseen risks and believe that other measures are required during this current economic downturn. EDA members have asked that consideration be given to suspending the requirement to return deposits for larger customers during the economic downturn. In addition members believe the

51% to 100% threshold for allowing distributors to impose weekly billing or bi-weekly billing should be lowered to better protect all distributors from unforeseen impacts.

Closing comments

The EDA believes the proposed customer service requirements to assist LEAP customers and “eligible low income customers” should be re-evaluated as the impact on distributors is significant and in conflict with the LEAP guiding principle that the program should not be overly costly or complicated to administer. The EDA believes these low income customer service proposals should be discussed further by the proposed LEAP Implementation Working Group before amending the Codes. The EDA would like to nominate to the working group distributor representatives that could further elaborate on the potential impact from these proposals and discuss with other stakeholders whether the potential benefits outweigh the significant costs.