Please accept these comments filed with respect to the Ontario Energy Board's ("OEB" or "Board") report on the Low-Income Energy Assistance Program (Board File No. EB-2008-0150, March 10, 2009) (hereafter "Low-Income Report") and Notice of Proposal to Amend Codes (Board File No. EB-2007-0722, March 10, 2009) (hereafter "Customer Service Proposal"). These comments are jointly filed on behalf of the following organizations: the Low-Income Energy Network, the Canadian Environmental Law Association, the Toronto Environmental Alliance, the Income Security Advocacy Centre and the Advocacy Centre for Tenants Ontario (collectively referred to as the Joint Low-Income Representatives).

INTRODUCTION

These comments are submitted in three parts as follows:

- Part 1 addresses the decision of the Board not to promulgate a broad-based rate affordability program for low-income customers;

- Part 2 addresses issues raised by the Low-Income Energy Assistance Program ("LEAP") proposed by the Board; and

- Part 3 addresses the customer service regulations proposed by the Board in its March 10, 2009 "Notice of Proposal to Amend Codes."

Before turning to these issues, the Joint Low-Income Representatives offer the following general observations.

The Joint Low-Income Representatives agree with, and commend, the Board for articulating the following as regulatory policy in Ontario:

- There is a need for a comprehensive province-wide program. (Low-Income Report, at 2). Low-income protections should not depend on the vagaries of where someone happens to live. Nor should the availability of assistance depend on the income or wealth of the other residents of the community in which one lives. Protections and programs should be available on a province-wide basis.

- Assistance to low-income energy consumers is an important element of the service that should be provided by regulated distributors in carrying out their public service obligations. (Low-income Report, at 2). Implementing a low-income assistance program is not a charitable gesture on the part of Ontario utilities; nor does it provide special dispensation to low-income customers. Assistance to low-income customers is an obligation that inheres in a regulated distribution company's status as a public utility.

- A well-designed comprehensive low-income program involves a more efficient handling of arrears and service disconnections for non-payment. (Low-Income Report, at 2 – 3). A well-designed, comprehensive low-income program can increase not only total collected revenues, but can also increase total ***net*** collected revenues. "Net collected revenues" represent total revenues net of the cost of collection.

- A comprehensive, well-designed low-income affordability program is in the best interests not only of low-income customers, but of all ratepayers. (Low-Income Report, at 7). Without agreeing that what the Board proposed was a "comprehensive" program, not only can a comprehensive, well-designed low-income program represent a more *effective* response to an inability-to-pay, but it can represent a more *cost-effective* response as well.

The Joint Low-Income Representatives do not agree that a low-income program is not intended to address energy poverty. Given the Board's mandate to approve or fix "just and reasonable rates", energy poverty is an issue that should be addressed by a comprehensive low-income program.

At some point, the "energy poverty" of a low-income household becomes more than a social problem. It becomes a utility regulatory problem as well. It adversely affects the universality of service. It adversely affects utility revenues. It adversely affects utility costs, including not merely credit and collection costs, but working capital and uncollectibles as well. Experience shows that that point is reached when home energy bills exceed an affordable percentage of income.

One can either continue to respond to these regulatory problems in a reactive, traditional credit-and-collection based mode –paying arrears, managing collection activities, responding to scheduled service disconnections—as the Board has chosen to do in this proceeding--or one can proactively address (and redress) the underlying bill unaffordability.

The Joint Low-Income Representatives fear that LEAP will fail to produce just and reasonable rates if it does not address the underlying unaffordability of bills rather than simply continuing to respond to the symptoms and manifestations of that unaffordability.

Given these general observations, the Joint Low-Income Representatives offer the following specific comments in the three sections identified above.

PART 1: THE BOARD SHOULD RECONSIDER ITS DECISION NOT TO ORDER A BROAD-BASED RATEPAYER-FUNDED RATE AFFORDABILITY PROGRAM.

The OEB rejected the proposal by the Joint Low-Income Representatives to promulgate a broad-based ratepayer-funded rate affordability program. The Board offered two rationales for its decision. According to the Board's Low-Income Report:

- "Rates which are designed primarily for the purpose of accommodating different levels of income are likely to result in distorted or even perverse price signals." (Low-Income Report, at 6);[1] and

- "It is important that the commodity price continue to generally reflect the true cost of energy used by the customer and that distribution rates continue to reflect overall costs." (Low-Income Report, at 6).

While the Joint Low-Income Representatives appreciate the theoretical concerns of the Board with respect to price signals (e.g., "distorted or even perverse price signals"), the OEB's focus on price signals as the basis for rejecting a rate affordability program is misplaced.

The Board's overriding mandate is to approve or fix "just and reasonable rates". While welcoming the Board's LEAP program as a positive step, the Joint Low-Income Representatives remain concerned that LEAP will fall short of producing "just and reasonable rates" for low-income consumers.

The majority Divisional Court decision in *Low-Income Energy Network v. Ontario Energy Board*, concluded [at paragraphs 55 – 57] that:

- cost causality is only one of the methods or techniques available to the Board to achieve just and reasonable rates;

- to further the Board's statutory objective of protecting "the interests of consumers with respect to prices", another such method or technique is for the Board to take into account ability to pay in setting rates, to achieve affordable rates for the delivery of energy to low- income consumers.

The Court acknowledged at paragraph [45] that such a low income rate affordability plan could involve subsidization by other consumers.

[1] The Board stated further: "To create a category of customers whose rates are based on their ability-to-pay could result in a distortion of prices and ratepayer costs." (Low-Income Report, at 6).

The rationales advanced by the Board for rejecting a rate affordability program are a restatement of its traditional ratemaking function that sidesteps the question of whether a broad-based ratepayer-funded rate affordability program is an appropriate "method or technique" to achieve just and reasonable rates for low-income consumers. That test remains the yardstick for assessing the success of the LEAP program.

Utility Bills and "Price Signals" to Low-Income Customers

Energy bills represent an ineffective means to send price signals to low-income customers. The notion of sending a "price signal" assumes that the customer has the ability to *receive* the signal. When a customer has an inability-to-pay, that inability-to-pay distorts the price signal far more than a rate discount would. Data presented to the OEB documents how low-income customers, particularly customers with energy burdens exceeding a prescribed level, pay less than their entire bill. Under such circumstances, it is the unaffordability of the bill that distorts the price signal.

A low-income discount program that reduces bills to an affordable level actually *improves* the price signaling of utility rates rather than distorting that price signaling function. This is particularly true if the low-income program is appropriately designed.

For example, the Joint Low-Income Representatives have recommended a "fixed credit" mechanism for delivering low-income discounts in Ontario. This is the mechanism used in New Jersey. Indeed, the Colorado state utility commission, in October 2008, approved a "fixed credit" rate affordability program proposed by Xcel Energy, doing business as Public Service Company of Colorado.[2] Under a fixed credit program, the program participant receives a fixed monthly credit applied against a levelized monthly bill.[3] To the extent that the customer's bill changes, whether due to changes in price or due to changes in consumption, the customer's payment obligation either increases or decreases accordingly. Reduced bills attributable to energy conservation, just like increased bills due to higher consumption, are immediately reflected in the low-income customer's payment obligation.[4]

[2] Decision No. R08-1127, Docket No. 082-146G (October 24, 2008).
[3] If nothing else, the promotion of levelized monthly billing as a means to take the spike off of high seasonal bills further impedes the price signaling function of low-income utility bills.
[4] Although never previously done, it is, of course, possible to overlay time of day rates on top of a fixed credit program.

This immediate change in the customer's affordable bill presents a far more cogent "price signal" than the customer would receive without the rate affordability program. Without the program, the impact to the customer might well be only whether the customer has an arrears of $150 or an arrears of $210, hardly a compelling price signal mechanism to the extent that neither is likely to be paid in a full and timely fashion.

Despite the theoretical concern expressed by the OEB about a low-income rate affordability program distorting price signals, the reality is that a low-income rate affordability program improves rather than distorts the price signaling function of utility bills.[5]

From an empirical basis, as LIEN noted in its comments on the Concentric Energy report in this docket, despite the operation of low-income discount programs in the United States for more than 20 years, and repeated impact evaluations of those programs by numerous different evaluators, *not one impact evaluation has found that the rate discount resulted in a systematic increase in consumption*. The Pennsylvania utility representatives further confirmed this observation when they appeared at the low-income stakeholder workshop.

Utility Bills and the "Full Cost" of Utility Service

The Joint Low-Income Representatives further disagree with the Board's decision to avoid adopting a low-income discount because rates should reflect the "true cost" of providing service.

The Board's decision that a discount would violate a cost-based ratemaking principle ignores the experience demonstrating that the *effect* of low-income affordability programs is often to *increase* the proportion of the "true cost of energy" actually *paid* by low-income customers. If low-income customers actually paid their entire bill today, much of the impetus for low-income rates would dissipate. It is the lack of such payment, with the corresponding collection activities and the loss (and threatened loss) of service due to nonpayment, that gives rise to much of the concerns over low-income bill affordability.

A properly designed and comprehensive rate affordability program helps to resolve that issue. Note, for example, the findings of the impact evaluation of the rate discount programs of two Indiana utilities. The evaluation of the Indiana low-income programs framed the question as follows:

[5] From an economic theory perspective, it is easy to understand this result. From a price theory perspective, price signals "work" only if there is adequate information about price and quality. The inability-to-pay, and the resulting arrears, impedes this information process. By improving this information process, while maintaining the task of reflecting increases and decreases in a bill, the fixed credit discount program as propounded by the Joint Low-Income Representatives, improves rather than distorts the price signal. See generally, R.Colton (1990). "Customer Consumption Patterns within an Income-Based Energy Assistance Program." 24 *Journal of Economic Issues* 1079.

> The revenue neutrality of low-income programs is the most common mechanism for assessing whether such programs generate positive financial benefits. Revenue neutrality examines the extent to which, if at all, a low-income rate affordability program generates the same dollars of revenues to the utility despite the offer of discounted rates or bills. Revenue neutrality occurs when the discounted rates or bills improve payment patterns sufficiently to offset any loss of revenue through the offer of the rate discount.

The Indiana evaluation then found:

> Customers that participated in the Citizens Gas [low-income program] made substantively greater payments than did that company's nonparticipant population. Over the months of January through March 2007, USP participants paid 79% of their current utility bill. While billed $273,627 during those winter months, the USP participants paid $215,897. In contrast, the Citizens Gas nonparticipants paid only 64% of their January through March billings. While billed $304,072, these customers paid $194,577. As can be seen, the USP was better than revenue neutral to Citizens Gas. *While USP participants were billed 90% of what nonparticipants were billed, they paid 111% of what nonparticipants paid.*
>
> The revenue neutrality can be seen from a different perspective as well. *Had USP nonparticipants paid at the same rate as USP participants did, they would have paid $240,216, nearly $46,000 more than they actually paid*.[6]
>
> The same revenue neutrality can be seen for the Vectren USP participant population.[7]

Other evaluations of other low-income discount programs have reached similar conclusions. The basis of the impact is not difficult to understand. It is better for a utility to collect 90% of a $70 bill ($63) than to collect 60% of a $100 bill ($60).[8]

[6] All dollar figures presented in this analysis, unless other explicitly noted to the contrary, are associated with the sample population and not the total population.
[7] *An Outcome Evaluation of Indiana's Low-Income Rate Affordability Programs*, at 6 – 7 (August 2007).
[8] This advantage is even *before* taking into account the further impacts of reduced working capital, reduced uncollectibles.

For the OEB to assert that it is better economics for a utility to ***bill*** a higher proportion of the "true cost of energy," even though a lower bill as proposed by the Joint Low-Income Representatives would allow the utility to ***collect*** a higher proportion of the "true cost of energy," is to exalt theory over substance. To reach that conclusion substitutes economic ideology over repeated empirically-established results.

In sum, the primary disagreement that the Joint Low-Income Representatives have with the Board's Low-Income Report involves the failure of the Board to direct the implementation of a low-income rate affordability program. The Joint Low-Income Representatives urge that this decision not only fails to deliver necessary benefits to low-income customers, but also fails to address the two specific issues about which the Board expressed concern (i.e., price signals, cost-of-service).

PART 2. THE LOW-INCOME ENERGY ASSISTANCE PROGRAM (LEAP) HAS MUCH TO COMMEND FOR IT, ALTHOUGH SOME CLARIFICATIONS ARE WARRANTED.

While, as explained in detail above, the Joint Low-Income Representatives believe the proposed Low-Income Energy Assistance Program (LEAP) is too limited in that it excludes a rate affordability component, and is inadequate to that extent, those limited low-income affordability assistance steps that the OEB set forth have much to commend for the OEB action.

The General Agreement of Joint Low-Income Representatives

In particular, the Joint Low-Income Representatives agree with the following stated principles: for the proposed LEAP initiative:

- Eligibility determinations should be best left to social service providers and should not be undertaken by utilities. (Low-Income Report, at 4 - 5). Placing the eligibility decision-making with such agencies, however, does not divest utilities of their obligation to engage in program outreach or their responsibility to refer customers who they believe may be eligible to these agencies.

- There is a trade-off between program simplicity and program targeting. (Low-Income Report, at 5). One impact of that trade-off, however, is that there will be ***some*** inefficiency in the program. In consciously making the trade-off, one further consciously accepts the resulting inefficiencies as being an unfortunate, but necessary, cost of promoting program simplicity. Future complaint that someone may have received "too much" while someone else may have received "too little" should not be heard as a program failing, but rather as a result of the specific policy decision proposed by the Board regarding this trade-off.

- Program assistance should be year-round. (Low-Income Report, at 9). No reason exists to believe that the marginal incomes giving rise to payment troubles are exclusively a function of extreme weather (hot or cold). The Joint Low-Income Representatives *do* have a concern, however, as to whether the expansion in budget corresponds to the expanded program eligibility and program scope. The Joint Low-Income Representatives would not be surprised to find that agencies report an even less adequate ability to serve. The Joint Low-Income Representatives request the Board to carefully monitor this impact. The Joint Low-Income Representatives reserve the right to argue for, and request the Board to be open to, a necessary increase in the LEAP program budget over time should this result be found to occur.

Having identified these areas of relative agreement with the Board's Low-Income Report, the Joint Low-Income Representatives express concern with the following aspects of the Low-Income Report's LEAP proposal.

The Concerns of the Joint Low-Income Representatives

The Joint Low-Income Representatives agree that it is reasonable for community-based organizations (and other social service providers) to do intake and income qualification for low-income crisis services as contemplated by the Board's proposed LEAP initiative. The Board speaks of "partnerships" with "capable social service providers." (Low-Income Report, at 8, 9). The Joint Low-Income Representatives, however, have a concern that the Board did not explicitly recognize the need for each utility to compensate the social service providers for undertaking this initiative. Social service providers cannot be expected to fund the administrative costs of providing bill payment assistance out of their own budgets. The need for an administrative budget above and beyond the expanded benefits discussed in the Low-Income Report should be expressly acknowledged.

Accordingly, the Joint Low-Income Representatives ask the Board to recognize the administrative costs to be paid by the LDC or gas distributor to enable the LEAP-administering agencies to provide the requisite assistance – determining the needs of potential applicants for emergency assistance, determining eligibility, processing applications. The Board should ensure that the amount to be contributed to LEAP covers these administrative costs adequately and also generates the $5 million in annual emergency assistance that the Board intends. The costs of both the emergency funding to consumers *and the* administrative costs of the LEAP-administering agencies should be recoverable in rates.

The Joint Low-Income Representatives have a further concern that the extent of partnerships with capable social service providers has not been fully articulated. The Joint Low-Income Representatives agree with the Board's statement that "assistance to low-income energy consumers should not rely solely on direct financial assistance." (Low-Income Report, at 8). The Joint Low-Income Representatives further agree with the Board's statement that:

> A key principle underlying LEAP is the partnership between distributors and social service agencies. Such partnerships leverage the agencies' expertise and experience in assisting low-income energy consumers and can better ensure that those most in need receive the ***appropriate level and type of assistance.***

(Low-Income Report, at 8) (emphasis added). The "appropriate level and type of assistance" is, of course, closely related to the Board's proposed amendments regarding the length of payment plans for arrears. The Board has proposed that eligible low-income customers be provided payment plans of:

- "***at least*** five months, where the amount owing is less than twice the customer's average monthly billing amount. . ." or

- "***at least*** ten months, where the amount is equal to or exceeds the customer's average monthly billing amount."

(OEB Customer Service Report, at 23) (emphasis added). The Board specifically notes that "the tailored customer service measures. . .may reduce low-income energy consumers' need for financial assistance." (Low-Income Report, at 8). The Board stated:

> . . .the Board has concluded that the individual assessment of eligibility should not be the responsibility of the Board or the distributor, who may not have the information or expertise to make such an assessment. Rather, this assessment is more appropriately determined by a social service agency. Such agencies have the information, expertise and experience to determine which consumers should be eligible for assistance and what type of assistance is best provided.

(Low-Income Report, at 7). The Joint Low-Income Representatives agree with these statements.

The "appropriate level of assistance" to which the Board refers, however, depends upon the length of the payment plan. The OEB's use of the language "at least" makes clear that the five- and ten-month payment plan periods are the ***floor*** of payment plan terms and not the ceiling. It would make little sense to create a "partnership" dependent upon the "information, expertise and experience" unique to the social service providers in determining the "appropriate level and type of assistance" (Low-Income Report, at 7), and then to take away the ability of the agencies to

apply that "information, expertise and experience" by not allowing the agency to apply that information, expertise and experience in matching available resource with customer resources to determine what reasonable length of a payment plan those resources support.

Accordingly, the Joint Low-Income Representatives recommend that when an agency is asked to distribute LEAP assistance, that agency be allowed the authority to apply its "information, expertise and experience" to determine the "appropriate level and type of assistance," including the resources that should be applied to a payment plan downpayment and the period of time over which a payment plan should extend, within the minimum payment plan periods now proposed by the Board.

For a utility to tell a LEAP agency that "you must pay a downpayment of $x for this customer, and must provide a benefit to support a payment plan of "y" months" is to involve the utility in using information and expertise that the Board acknowledges that Ontario's utilities lack. It further denies the opportunity for the LEAP agency to apply its own information, expertise and experience, which the Board acknowledges uniquely lies with those agencies, to determine the appropriate level and type of assistance. It is contrary to the Board's observation that "assistance" involves more than direct dollars of benefits and that the locus of deciding the appropriate level and type of assistance lies with the LEAP agencies, not with the utilities.

Finally, the Joint Low-Income Representatives have concerns about LEAP cost recovery. The Joint Low-Income Representatives agree with the OEB observation that "assistance to low-income ratepayers may minimize bad debt and disconnections, and the associated costs." (Low-Income Report, at 8). Despite this initial observation, however, the Board appears to allow the expenditures on LEAP to be fully recovered in distribution rates.

The Joint Low-Income Representatives would urge that LEAP benefits, particularly since they are specifically addressed not merely to low-income payment-troubled customers, but to low-income ***emergency*** customers, will generate off-setting savings to the utility. The Board notes that "the Winter Warmth program provides ***emergency assistance*** to eligible consumers during the winter heating season. The Board's LEAP expands on the Winter Warmth program by extending ***emergency assistance*** year-round." (Low-Income Report, at 9; see also, Staff Report, at 40).

For such accounts in significant arrears and subject to disconnection, the respective utilities would be at risk of substantial bad debt and, by definition, considerable working capital on the unpaid bills, in the absence of LEAP payments. Accordingly, to allow the utilities to collect their LEAP funding on a dollar-for-dollar basis would allow the companies to collect their LEAP payments without disgorging their LEAP savings.

In a recent proceeding before the Pennsylvania state utility commission, one electric and natural gas utility (PECO Energy) considered the appropriate offsets for bad debt and working capital. The relevant group to consider was not simply low-income customers generally, but low-income payment-troubled customers specifically, since the PECO program was directed to low-income payment-troubled customers. PECO proposed a bad debt/working capital offset of 22% of the program costs.

The Joint Low-Income Representatives believe that PECO was correct in concluding that providing assistance to low-income payment troubled customers would generate a higher bad debt/working capital offset than would low-income customers generally. In fact, the Joint Low-Income Representatives believe that providing assistance (such as LEAP will do) to customers in imminent danger of service disconnection for nonpayment would generate an even higher offset. Nonetheless, what the Joint Low-Income Representatives propose is in the alternative:

- The Joint Low-Income Representatives propose that the Board impose a LEAP payment requirement using a 1.20x multiplier of those figures contained in the Low-Income Report, with cost-recovery limited to the recovery proposed in the Low-Income Report; or

- In the alternative, the Joint Low-Income Representatives propose that the Board limit utility rate recovery of their LEAP payments to 80% of that which is provided through LEAP agencies.

To adopt one of these two actions is necessary to require Ontario's natural gas and electric utilities to disgorge the cost reductions generated by their LEAP payments.[9]

The Future Participation of the Joint Low-Income Representatives

The Low-Income Report addressed three separate issues that the Joint Low-Income Representatives have not addressed in these comments:

Implementing Work Group for LEAP

The Joint Low-Income Representatives agree that a work group will be needed to consider the actual implementation of LEAP. (Low-Income Report, at 17). They are eager to participate in that effort.

[9] The Joint Low-Income Representatives do not include a credit and collection offset in this calculation. It is possible that total credit and collection costs will not decrease, but rather simply be redirected to non-low-income customers.

Work Group on LEAP Reporting Requirements

The Joint Low-Income Representatives agree that developing appropriate reporting requirements is an essential component to the implementation of LEAP. (Low-Income Report, at 17). They are eager to participate in that effort. The Joint Low-Income Representatives emphasize that what they will look for in such reporting requirements, however, is a focus on ***outcomes*** and not on ***activities***. Through such reporting requirements, it is not nearly as critical to document what LEAP does as it is to document what LEAP accomplishes.

Low-Income Conservation and Demand Management

The Joint Low-Income Representatives agree that the Board is addressing the issue of low-income energy efficiency programs in separate proceedings. (Low-Income Report, at 14). They will continue to participate in both the electric and natural gas aspects of those proceedings.[10] To the extent that any such discussion is more appropriate for a different forum, the Joint Low-Income Representatives set aside any discussion of the accuracy of the Board's statement that "many" (as opposed to "some") low-income programs "may not be consistent with the general principle that CDM and DSM programs deliver positive total resource cost (TRC) benefits."

Notwithstanding this interest that the Joint Low-Income Representatives have in participating in the proceedings to develop Conservation and Demand Management (CDM) programs for low-income customers, difficulties attend that effort. Because there are 80 electric LDCs in Ontario, it would not be cost-effective for LIEN and other intervenors to intervene in each of the Board proceedings regarding the approval of individual electric CDM programs for low-income consumers. Nor would it seem to be cost-effective for the Board to provide funding for the Joint Low-Income Representatives to be involved with each such proceeding.

Accordingly, at a minimum, the Joint Low-Income Representatives recommend that the Board develop a standard set of criteria for low-income CDM programs through either a continuation of this proceeding or through a new proceeding. Through such a process, the Board could articulate what criteria should govern the roll-out of low-income electric CDM programs. This consolidated process will also streamline the regulatory approval process for the low-income CDM programs by Ontario's LDCs.

[10] The Joint Low-Income Representatives express one concern with the Low-Income Report in this respect. While the Joint Low-Income Representatives agree that electricity conservation and natural gas demand side management programs can be effective tools to assist low-income energy consumers to reduce their overall energy usage (Low-Income Report, at 13), they do ***not*** agree that electric "demand management" programs "can be effective tools to assist low-income energy consumers to reduce their overall energy usage." (Low-Income Report, at 13). While demand management programs clearly have their role in utility planning, their use as a tool to help low-income consumers reduce overall energy usage, reduce bills, and thus improve affordability, is not one such role.

Even with standard criteria, however, the plethora of electric distribution utilities in Ontario leads to not merely the possibility, but the likelihood, of incomplete and inconsistent programs throughout the province, in contravention of the Board's stated principle that low-income programs should both be province-wide and deliver consistent benefits through Ontario. Just as with energy assistance benefits, the availability of adequate energy efficiency benefits should not depend upon where a low-income customer lives.

Accordingly, the Joint Low-Income Representatives recommend that the OEB adopt a province-wide all-utility, all-fuels independent administrator for energy efficiency for low-income customers.[11] The independent administrator would receive a consistent stream of revenue from each utility, which it would translate into delivered efficiency measures. The independent administrator would operate within a budget established on a multi-year basis by the Ontario Energy Board.

Not only is a joint third party administrator consistent with the proposed *Green Energy and Green Economy Act, 2009*, but the advantages of such a mechanism have been demonstrated through some of the best programs adopted by utility regulatory commissions in the United States. Consider that:

- In 1996, the New York Public Service Commission assigned the responsibility for administering that state's system benefits charge programs to the New York State Energy Research and Development Authority (NYSERDA).[12]

- In 2007, the New Jersey Board of Public Utilities fully implemented its 2003 decision to have energy efficiency programs independently administered and managed on a statewide basis.[13]

- While Oregon's statute authorized the state utility commission to establish a non-utility third party administrator for that state's energy efficiency programs, it did not require the Commission to do so. Nonetheless, the Oregon Commission created the Energy Trust of Oregon, which began its program operations in 2003.

The exclusive charge of the efficiency utility would be to deliver all possible cost-effective energy efficiency investments.

[11] While an independent third party administrator would make sense for all customer classes, the focus of the Joint Low-Income Representatives is exclusively on low-income programs at the moment.
[12] Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service, May 20, 1996).
[13] See generally, New Jersey Clean Energy Council, The New Jersey Clean Energy Program: Recommendations for Administration and Fund Management, Report to the Board of Public Utilities (July 21, 2003).

In addition to the efficiency of a third party administrator from the perspective of delivering a consistent program for all Ontario utilities, from the perspective of delivering all possible cost-effective energy efficiency measures, the independent administrator provides for the maximize opportunity to leverage utility-provided funding. An independent administrator could, for example, work aggressively with federal, provincial and local affordable housing programs so that the value of the utility efficiency dollars could be leveraged into many times that value of utility efficiency investments.

In sum, the Joint Low-Income Representatives have concerns about the consistency and efficiency of delivering low-income programs through each independent utility. While the minimum response from the OEB might involve promulgating uniform guidelines for such programs, a much better response would be to deliver low-income programs through an independent third party administrator.

PART 3. THE BOARD'S LIMITED CUSTOMER SERVICE REGULATION AMENDMENTS, WHILE HELPFUL, SHOULD BE SUBSTANTIALLY EXPANDED.

The customer service regulations that the OEB has proposed as one pillar of the low-income programs to address inability-to-pay in Ontario,[14] fall short of what is needed. In some places, the customer service regulations address an inadequate population. In other instances, the proposed customer service regulations fail to provide adequate protections. The comments

[14] The Code amendments relate only to electricity distributors. The Board states that it expects the gas utilities to adopt similar rules, but they are not going to, at this time, to codify the rules for the natural gas sector. (Low-Income Report, at 16). The Joint Low-Income Representatives urge the Board to reconsider this decision. The same policy decisions would apply to the regulations discussed herein as apply to utility deposits. (See generally, Notice of proposed amendment to Gas Distribution Access Rule (GDAR), EB-2008-0313)). In that notice, the OEB stated:

> The lack of consistency in terms of security deposit policies as between gas distributors, and the inconsistent application of those policies to individual consumers by individual gas distributors, has been the subject of concern raised with the Board by consumers and consumer groups.
>
> Security deposit requirements are an important condition of access to gas distribution services. The Board believes that it is appropriate at this time to standardize those requirements among gas distributors to ensure that consumers are treated fairly and are subject to consistent requirements across the Province, regardless of whose franchise area they may be located in.
>
> Electricity distributors have, for some time, been subject to standardized security deposit policies. The Board is not aware of any compelling reason that would support the continuation of individualized security deposit policies among gas distributors.

The same considerations would apply to the customer service regulations in this docket as well. The Joint Low-Income Representatives urge the Board to adopt uniform customer service regulations for the gas utilities incorporating the decisions made in this docket.

provided below address the major instances where the Joint Low-Income Representatives have identified shortcomings that can be easily rectified.[15]

Definition of "Eligible Low-income Electric Consumer"

The Joint Low-Income Representatives propose that the definition of "eligible low-income electric consumer" be changed as follows for purposes of Section 1.2 of the Distribution System Code:

> Eligible low-income electric customer means a residential customer who is eligible for financial, payment management, debt payment or other similar assistance and whose eligibility for such assistance by reason of need based on his or her income has been confirmed to the customer's distributor by a social service agency or non-profit institution recognized by the Board for this purpose. In addition, documentation of participation in a means-tested government income support program by a member of the customer's household is sufficient to establish eligibility.

Similar changes should be made to the definition of "eligible low-income electricity consumer" in Section 7.7.6 of the Distribution System Code.

Three primary changes have been made to the Board's proposed definition of an eligible low-income electricity customer.

- *First*, the definition makes clear that a low-income customer need not apply for and "qualify" for the stated assistance to be deemed a low-income customer. Application periods are often limited. The ability and willingness of agencies to take applications for specific programs is often constrained by budget limitations, including limitations that constrain not only the periods of application (e.g., seasonal applications), but also the time periods during which applications might be taken (e.g., only during normal business hours on a weekday). It would be unreasonable to deny a low-income customer the customer service protections contained in the rule amendments because agency budget shortfalls did not allow sufficient resources for the agency to be "open for business" on Saturdays or after normal business hours.

- *Second*, in lieu of the apply-and-qualify approach, the proposed definition recognizes what is called "categorical eligibility" to establish a customer's status as an "eligible

[15] In situations where the Joint Low-Income Representatives propose new language for the Distribution System Code (or elsewhere), it is the *substance* of the language and not the proposed placement that is critical. The Board may well decide that the language is appropriate, albeit in a different location in the Distribution System Code.

low-income electricity customer." An agency need not take a specific application, or independently verify income, so long as the agency confirms to its satisfaction that the customer is a recipient of assistance from *some* government income support program. The receipt of such assistance, without more, will verify that the customer is an "eligible low-income electricity customer."

The "categorical eligibility" not only prevents the exclusion of eligible low-income customers, but also promotes an efficiency of operation through a one-stop shopping process. If a customer's low-income status has been previously determined for a government income support program, no reason exists to require a customer or an agency to engage in a duplicative process to independently establish that eligibility for purposes of the Board's customer service regulations.

The introduction of "categorical eligibility" finally supports the Board's stated policy that low-income energy assistance should be a consistent program across the province and one where low-income energy consumers have access to similar services irrespective of the distributor. (Low-Income Report, at 8). The Joint Low-Income Representatives are concerned that, in the absence of a standard definition of "low-income" as proposed by LIEN in this proceeding, there will not be consistency in access to similar services. Different social agencies across the province may adopt different eligibility criteria, resulting in the same low-income households with the same need circumstances, who move from one LDC territory to another, not being eligible for the same assistance. Similarly, two identically-situated low-income households may have different access to utility assistance based upon where they live and which social service agency is administering the LEAP program in their particular location. In lieu of adopting a standard definition of "low-income" customer, adoption of a process of categorical eligibility will help prevent this disparate treatment and will support the Board's own stated objective of equal treatment.

- *Third*, the ability to certify a customer as an eligible low-income electricity customer to a distributor should not be limited to government agencies. Private non-profit organizations can be responsible for engaging in intake for a distribution of needs-based benefits. These nonprofit agencies are no less qualified by their "information, expertise and experience" than a government agency to determine that a customer is an eligible low-income customer.

Low-Income Security Deposits

The Board addresses security deposits for low-income customers in several places. The Joint Low-Income Representatives propose the following changes to the Board's proposed regulations.

Section 2.4.11 of the Distribution System Code

The Joint Low-Income Representatives propose the following language for paragraph (a) in Section 2.4.11 of the Distribution System Code:

> (a) The customer is a residential customer who is eligible for financial, payment management, debt payment or other similar assistance and whose eligibility for such assistance by reason of need based on his or her income has been confirmed to the customer's distributor by a social service agency or non-profit institution recognized by the Board for this purpose, provided that the customer has not experienced more than one service termination for nonpayment within the immediately preceding 24 months;

This proposed language conforms the language relating to security deposits to the definition of an "eligible low-income electricity customer" as previously defined by the Board. The waiver of a utility security deposit is an important mechanism for preserving access to utility service. It should be available on a need-basis. As the Board recognized in its definition of "eligible low-income electricity customer," a determination of "need" should be "based on his or her income" (DSC, §1.2), *not* on whether the customer has actually applied for service.

In addition, the amendment proposed above eliminates the potential source for considerable confusion. Confusion will arise because:

- An "eligible low-income electricity customer" could be denied a deposit waiver because he/she received assistance from an energy bill payment assistance program, but not from a "program recognized by the Board for this purpose."

- An "eligible low-income electricity customer" need not distinguish between an "energy bill payment assistance program, being a program recognized by the Board for this purpose" and a "social service agency or non-profit institution recognized by the Board" for the purpose of confirming to an electricity distributor "eligibility for such assistance by reason of need based on his or her income." As the regulations are now written, there are *two* different types of agencies the Board must "recognize": one type of agency for purposes of Section 1.2 and a different type of agency for Section 2.4.11.

- Confusion will be avoided about what constitutes "receiving assistance" from an energy bill payment assistance program. The use of a present-tense in this regulation makes the regulation largely unworkable. Unlike much social assistance, which is provided on a monthly (or other periodic) basis, the energy bill payment assistance contemplated by the Board's proposed LEAP initiative is a ***one-time*** grant. The LEAP initiative does not provide assistance over time. As a result, it is not clear what the regulation means by "receiving assistance." Would a low-income customer who received a LEAP grant in July be considered to be "receiving assistance" the following October? the following January? the following May?

To ensure that security deposit waivers are provided to all customers whose "eligibility for [energy] assistance by reason of need based on his or her income" as determined by an agency recognized by the Board for purposes of making such need determinations, the language of section 2.4.11 has been conformed to the Board's own definition of "eligible low-income electricity customer."

One exception has been provided to this low-income exemption from the payment of a utility security deposit. An electricity distributor may impose a security deposit, even on an eligible low-income electricity customer, in the event that the customer has experienced more than one service termination for nonpayment within the previous 24 months.

A single service termination for nonpayment is not used, since it is such a termination of service that is likely to have brought the customer to a social service agency in the first place, to have his/her need determined and assistance provided. To except low-income customers based on a single service termination for nonpayment, in other words, is to take away with the one hand what is being provided with the other hand.

However, if a customer has experienced more than one termination of service, a utility can legitimately conclude that a risk exists that should be ameliorated by collection of a deposit.

Section 2.4.23A of the Distribution System Code

The Joint Low-Income Representatives propose the following amendment to Section 2.4.23A of the Distribution System Code:

> For the purposes of section 2.4.23, where a residential customer, other than an eligible low-income electricity customer, has paid a security deposit in installments, the customer shall not be entitled to request a review of the security deposit until one calendar year has elapsed from the date of the final installment.

In advancing this recommended change to the Board's proposed regulation, the Joint Low-Income Representatives fully understand that low-income customers from whom a deposit might be required are allowed to pay that deposit in installments over a 12-month period (under the Board's proposed rules). With low-income customers, in particular, however, this added financial responsibility makes it *less* likely that the customer will be able to maintain an adequate payment pattern to merit return of the deposit. If the low-income customer can establish a good payment pattern during this time of expanded payment responsibilities, those good payment patterns should be recognized in a determination of his or her creditworthiness.

In the absence of this change, a distributor can hold the money of a low-income customer for three years, far longer than had the customer not been low-income. The three-year deposit period consists of:

- Months 1 through 12, while the eligible low-income customer makes installment payments on the deposit;

- Months 13 through 24, while the distributor can wait until 12-months after the final installment; and

- Months 25 through 36 while the distributor repays the deposit in the same number of installments in which the deposit was paid in the first instance.

Under the Board's regulations, a customer either meets indicators of creditworthiness or he/she does not. The Board does not explain why full and timely payments, which otherwise would be used to establish creditworthiness, should be discounted because the customer is paying a deposit in installments.

Section 2.4.25A of the Distribution System Code

The Joint Low-Income Representatives propose the following amendment to Section 2.4.25A(a) of the Distribution System Code:

> Where a residential customer, other than an eligible low-income electricity customer, has paid a security deposit in installments and is entitled to the return of all or part of the security deposit, a distributor shall return the amount in equal installments paid over the same number of months as the security deposit was paid by the customer; and

The rationale for this proposed modification to the Board's proposed Section 2.4.25A is the same as the rationale for the proposed modification to Section 2.4.23.

The Management of Arrears and Bill Payments

The management of arrears and bill payments are among the most critical aspects of the customer service relationship between a distributor and a low-income customer. The Joint Low-Income Representatives offer the following modifications to the proposed regulations contained in the Board's March 10, 2009 Notice of Proposal to Amend Codes.

Section 2.5.2 of the Distribution System Code

The Joint Low-Income Representatives propose the following modification to the Board's Section 2.5.2 of the Distribution System Code:

> Except as otherwise permitted by this Code,
>
> (a) a distributor shall not treat a bill issued to a customer as unpaid until the applicable minimum payment period set out in section 2.5.3 has elapsed.
>
> (b) a distributor shall not treat a bill issued to a customer as unpaid for purposes of imposing any late payment or other charge associated with non-payment unless the bill is unpaid at the time the distributor issues the bill for the immediately subsequent billing period.
>
> (c) a distributor shall not treat a bill issued to an eligible low-income electricity customer as unpaid for purposes of imposing any late payment or other charge associated with non-payment until the distributor has received and posted a payment from LEAP against that bill.

The proposed amendment makes the determination of late payment charges easier from both the perspective of a customer and a utility. It eliminates the need, for purposes of determining a late payment charge, to define the date on which a bill is issued, the need to determine the means of issuing a bill, the means (and/or location) of a customer's bill payment, and the like. The proposed amendment creates a bright line. If a bill balance exists as of the date on which the *next* bill is issued, the distributor may impose a late payment charge (assuming no other regulation prohibits such a charge for some reason).

Consider, for example, that many clients such as those on ODSP, OW, and other disability pensions, only receive income once in a 30 day period and may require additional time to make arrangements for payment. However, since so many low-income earners live on marginally adequate incomes, there will still be instances that this additional period of time will not be adequate. If such a low-income earner does declare that they are working with a social service

agency, especially one that is administering the new LEAP program, both the customer/client as well as the advocate will require additional time to:

- Invite client in for an appointment (which can take a number of days sometimes, particularly if that client lacks transportation and lives in a rural setting);
- Assess client for program eligibility (whether that be LEAP or any other emergency Energy program);
- Complete budget review to determine whether client is sustainable and whether the client could afford to accept an ongoing payment arrangement with the distributor;
- Negotiate a payment arrangement with distributor (unless the Board adopts the suggestion to allow the agency to determine the appropriate payment term length, as suggested herein); and
- Determine grant eligibility and be given enough time to process payment.

The proposal advanced above is not only reasonable, it is absolutely necessary to allow the process that the Board has proposed to operate effectively and efficiently. No purpose is served by imposing late payment fees on eligible low-income customers who are simply waiting for the process to work through the needed administrative functions.

In addition, the proposed regulation provides that unpaid bills by eligible low-income electricity customers shall not be treated as "unpaid" for purposes of imposing a late payment charge or other charge associated with nonpayment until the mechanism that the Board has created for helping to pay such low-income bills has been accessed. For eligible low-income electricity customers, a late payment charge serves no function. As the Board Staff noted in its Staff Report in the low-income consultation:

> For the purposes of receiving assistance, Board staff believes that a "low-income energy consumer" should be defined as an electricity or natural gas consumer who, based on an assessment by a recognized social agency, *has the intention to pay, but an inability to do so*.

(Staff Low-Income Report, at 12) (emphasis added). If a customer, because of low-income, "has the intention to pay, but an inability to do so," imposing a late payment charge serves no function but to make the unpaid bill even more unaffordable to the low-income customer, to make the required payment from a LEAP agency higher than it need be, and to make the available resources from a LEAP agency less available to other low-income customers who seek assistance.

As the Board noted in its Low-Income Report, the social service agencies have the experience, expertise and knowledge to determine the appropriate level and type of assistance. Once that determination has been made, and the appropriate level and type of assistance is applied to the customer's account, should the bill continue to remain unpaid, it may well be appropriate to apply a late payment charge. To impose a late payment charge ***before*** the appropriate level and type of assistance is applied to the customer's account is unreasonable.

Given the critical role that the Board has established for the social service agencies (and other nonprofit institutions) in serving low-income customers, the Board should allow that process to be exercised before allowing a utility to impose a late payment charge on an eligible low-income electricity consumer.

Section 2.5.7 of the Distribution System Code

The Joint Low-Income Representatives propose new paragraphs (d) through (f) to section 2.5.7 of the Distribution System Code as proposed by the Board:[16]

> (d) No payment made under the Board's Low-Income Energy Assistance Program (LEAP) shall be allocated to charges other than electricity charges, except that with the consent of the eligible low-income customer, a LEAP payment may be applied as a payment for a security deposit.
>
> (e) Any late payment charge applied to the account of an eligible low-income electricity customer shall be limited to an unpaid balance consisting of electricity charges.
>
> (f) Security deposits are not to be deemed an "electricity charge" for purposes of allocation of customer payments under this section.

As the Board's regulation recognizes, sometimes a bill issued to a residential customer includes charges for goods or services other than electricity charges. The low-income program proposed by the Board in its Low-Income Report (LEAP) certainly is not intended to subsidize payments for these other goods or services. By this regulation, LEAP payments are specifically limited to the payment of electricity charges.

[16] It may be more appropriate to include these proposed amendments as a new Section 2.5.8 and renumber accordingly.

In those instances, but only in those instances, where a low-income customer agrees, a LEAP payment may be applied against a security deposit requirement. This section establishes that customer payments shall be allocated to the payment of electricity charges, as defined by the Board, before being allocated to the payment of cash security deposits. This section establishes the principle that, as a general rule for purposes of allocation of customer payments, security deposits are not to be considered an "electricity charge."

In addition, at least for eligible low-income electricity customers, non-electricity charges should not serve as the basis for a distributor to increase the bill by imposing late payment charges. As the Board Staff noted, "a "low-income energy consumer" should be defined as an electricity or natural gas consumer who, based on an assessment by a recognized social agency, *has the intention to pay, but an inability to do so*." (Staff Low-Income Report, at 12) (emphasis added). In these circumstances, a distributor should not increase the bill for this customer by charging a late payment charge on non-electricity charges.

Section 2.5.8 of the Distribution System Code

The Joint Low-Income Representatives propose the following modification to paragraph (d) of proposed Section 2.5.8 of the Distribution System Code:

> (d) where an act, other than payment by a customer, occurs after 5:00 p.m., it shall be deemed to have occurred on the next business day. Payments shall be deemed to have been made on the actual calendar date on which payment is transferred to a distributor or its agent.

The Board proposes to amend the Distribution System Code to include rules relating to the computation of time. These rules propose that events that occur after regular business hours are deemed to have occurred on the next business day.

While the rule excepts payments, it is not clear from the language of the rule whether the exception allows payment cutoffs to occur earlier, or requires payment cutoffs to be pushed later. This is a critical issue to many low-income earners, such as single mothers, who work and are not able to leave work during regular business hours to make a utility bill payment during the regular business day. For these customers, the only opportunity make a payment may be after business hours.

The Board's proposed amendment exempts "payment by a customer" from the 5:00 deadline. The proposed language further clarifies that the Board's proposed paragraph (d) is intended to *extend* the time for payment rather than to limit the time for payment.

New Section 2.6.2 of the Distribution System Code

The Joint Low-Income Representatives propose a new Section 2.6.2 for the Distribution Code as follows:

> The reasonableness of the period of time over which an eligible low-income electricity customer may pay all amounts that are then overdue for payment shall be determined based on a consideration of the current household income, ability-to-pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household.

The language of Section 2.6.2 clearly indicates that the regulation sets a ***floor*** on the length of payment plans and ***not*** a ceiling. The language of Section 2.6.2 states that the period of time over which an eligible low-income customer may pay an overdue amount is:

- a period of ***at least*** 150 days, where the amount overdue for payment is less than twice the customer's average monthly bill amount; or

- a period of ***at least*** 300 days, where the amount overdue for payment is equal to or exceeds twice the customer's average monthly billing amount.

(emphasis added). The phrase "at least" means that the length of an arrears payment agreement shall be no less than, but may be more than, the prescribed period. Presumably the Board did not intend for the decision on what period to allow to be set arbitrarily or without a consideration of the relevant facts. Moreover, to systematically set a payment plan at the ***minimum*** length allowed by the regulation would be unreasonable, arbitrary and subject to challenge.

Accordingly, the Joint Low-Income Representatives believe that the Board should articulate what relevant factors should be considered in deciding what the actual length of an arrears payment agreement will be within the constraints of the minimum proposed in the regulation. The language proposed above establishes the factors that should serve as the basis for any decision on the length of an arrears payment agreement.

Section 2.6.3 of the Distribution System Code

The Joint Low-Income Representatives propose the following modification to the Board's Section 2.6.3:

> For the purposes of section 2.6.2, the customer's average monthly billing amount shall be calculated by taking the aggregate of the ***normalized*** total electricity charges billed to the customer in the preceding 12 months and dividing that value by 12. . .

By inserting the word "normalized" into this language, the Joint Low-Income Representatives urge the Board to recognize that, whether for natural gas or electricity, a customer's "total. . .charges. . .in the preceding 12 months" can be subject to substantial volatility. This volatility may be attributable to changes in weather or may be attributable to changes in the price of fuel. The overstatement of a customer's bill can have significant adverse impacts on an eligible low-income electricity customer. To the extent that the customer's bill is higher than it would have been (given normal weather and/or normal prices), it is less likely that the amount overdue will be equal to or exceed twice the customer's average monthly billing amount.

Given that high bills attributable to abnormal weather and/or prices may well have been the cause of the overdue payment with which to begin, the Board should not compound the problem by using that abnormal price/weather as the basis to determine the minimum length of a payment plan.

(While the Board did not propose to amend Section 2.4.12 of the Distribution Code, the Joint Low-Income Representatives urge that the Board should make a similar adjustment to the language of that section. That section should read:

> The maximum amount of a security deposit which a distributor may require a customer to pay shall be calculated in the following manner: billing cycle factor x estimated bill based on the customer's average ***normal*** monthly load with the distributor during the most recent 12 consecutive months within the past two years.

[emphasis showing proposed amendment]. Other sections of the Distribution System Code present also present the same issue. [see e.g., Section 7.7.5 of the Distribution System Code].)

New Section 7.7.5 of the Distribution System Code

The Joint Low-Income Representatives propose that the Board delete paragraph (a) of the proposed Section 7.7.4, and, in lieu of that paragraph, adopt the following new Section 7.7.5 of the Distribution System Code (renumbering other sections accordingly):

> Where a distributor has under-billed an eligible low-income electricity consumer who is not responsible for the error, the distributor shall promptly notify the eligible low-income electricity consumer of the under-billed amount and shall, notwithstanding any outstanding payment agreement, allow the eligible low-income electricity consumer to pay the under-billed amount in equal installments through an arrears payment agreement subject to Section 2.6.2 of the Distribution System Code.

The Board's reasoning regarding the length of time that an arrears management plan should extend balances the need for a utility to receive payment for services with the ability of an eligible low-income customer to make additional payments beyond those charges for current service. The fact that the additional payments might be a result of an under-billing does not make these additional payments any more affordable. Indeed, an eligible low-income electric customer should not be penalized due to the ***utility's*** mistake, or at least due to a mistake that is "not the responsibility of the customer."

Given that the Board has defined a reasonable method for determining the affordability of additional payments to an eligible low-income electricity consumer, the Board should consistently use that method. An eligible low-income electricity customer should be allowed to enter into a payment agreement for under-billed amounts at least equivalent to those agreements that are available for the retirement of other arrears.

Section 2.6.4 of the Distribution System Code

The Joint Low-Income Representatives propose the following clarifying language for section 2.6.4 of the Distribution System Code:

> A distributor shall not impose any late payment charge or other charges associated with non-payment in respect of any amount that is, at the relevant time, the subject of an arrears payment agreement that is in effect with an eligible low-income electricity customer, except, to the extent that the customer has failed to make a payment in accordance with the terms of the agreement, the distributor may impose such late payment charge or other charges associated with non-payment on the payment or payments not made if otherwise allowed by these regulations.

The proposed language clarifies two aspects of this regulation governing late payment charges (and other charges associated with non-payment).

- First, the language makes clear that when a customer has failed to make a payment in accordance with the terms of an arrears payment agreement, any late payment charge (or other charge associated with nonpayment) will attach only to those payments that are in non-compliance with the payment agreement. If a customer, for example, has an agreement by which he or she will make ten $40 payments, and misses the fourth and fifth payments, the additional charges apply only to the fourth and fifth payments. In contrast, payments six through ten, which have not yet become due under the agreement, are not made subject to a late fee because of the default.

- Second, the revised language makes clear that there are other constraints on the imposition of late payment charges (and other charges associated with nonpayment) established by the OEB's Distribution System Code. These other constraints are not superseded merely because the nonpayment involves payments on an arrears payment agreement.

New Section 2.6.5 of the Distribution System Code

The Joint Low-Income Representatives propose a new Section 2.6.5 of the Distribution Code as follows:

> A distributor shall not impose any late payment or other charges associated with nonpayment, nor issue any shutoff notice or take any action to terminate service for nonpayment, in respect to any bill that is, at the relevant time, based on an estimated meter reading to an eligible low-income electricity customer.

The OEB has recognized on several occasions within its proposed amended customer service regulations the importance of the time value of money to eligible low-income electricity customers. For example, the OEB has proposed changes to its regulations regarding over- and under-billings; to its regulations regarding the posting of security deposits; and to its regulations regarding the true-up of levelized budget billing plans based on the recognition that money that might be readily available to non-low-income customers is not reasonably available to eligible low-income electricity customers.

Indeed, the very definition of "low-income" as contained in the Staff's Low-Income Report acknowledges that a "low-income" customer is a customer that "*has the intention to pay, but an inability to do so*." (Staff Low-Income Report, at 12) (emphasis added).

Given this "intention to pay, but inability to do so," the Board should make clear that distributors may impose additional financial obligations, or take other adverse credit and collection actions, only in the event that the distributor is basing its billing on an actual meter reading. Given the propensity of estimated meter readings to substantially differ from actual usage, it would be unreasonable and inequitable to impose additional costs, or to take actions toward the termination of service for nonpayment, when billing did not reflect actual usage with which to begin.

The Termination of Service for Nonpayment

The termination of service should be viewed as a failure of the system to protect the interests of both the utility and the customer. With low-income customers, in particular, the termination of service for nonpayment frequently presents an insurmountable barrier to maintaining essential service. The management of the termination process, however, particularly in light of the Board's proposed LEAP initiative, can occur with the interests of both the utility and the customer in mind. The Joint Low-Income Representatives offer the following modifications to the Board's proposed customer service regulations with this balancing in mind.

Section 4.2 of the Distribution Code

The Joint Low-Income Representatives propose the following addition of new Section 4.2.1.1 to the Distribution System Code (with other sections renumbered accordingly):

> 4.2.1.1 For the purposes of this section, during the period November 1st through the immediately following May 1st, "disconnection" includes a service or load limiter or any device that limits or interrupts electric service in any way.

The above language not only provides critical consumer protections, but it furthers the Board's own stated objective with shutoff restrictions. According to the Board's notice, "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." (Customer Service Report, at 19). Introducing automatic shutoffs when a customer's instantaneous load exceeds a pre-set limitations fails to promote this Board objective, in addition to being inherently dangerous to the customer.

Moreover, allowing the automatic interruption of service when a customer's instantaneous load exceeds a pre-set limit is contrary to the Board's statement that it "believes that low-income energy consumers would benefit from specific customer service measures in the following areas: . . .disconnection—i.e., a standard disconnection notice that includes information of particular relevance to low-income energy consumers, and a longer minimum notice period prior to

disconnection." (Low-Income Report, at 12). The use of service limiters not only fails to provide a "longer minimum notice period prior to disconnection," it provides *no* notice period. The use of service limiters provides *no* notice "that includes information of particular relevance to low-income energy consumers."

The proposed amendment set forth above should be adopted.

Section 4.2.3A of the Distribution System Code

The Joint Low-Income Representatives propose the following modification to the proposed Section 4.2.3A of the Distribution Code:

> Where a disconnection notice is sent by mail, the disconnection notice shall be deemed to have been received by the customer on the seventh day after the day on which the notice was printed by the distributor.

The Joint Low-Income Representatives urge an expansion of the time period after which a disconnection notice delivered by mail is deemed to have been received. Particularly in rural areas, which have deep pockets of poverty, customers do not receive mail delivered directly to their homes. These customers instead must travel to pick-up mail at a remote post office. To treat these customers as though they receive a mail delivery, every day, directly to their home does not comport with the reality of their existence. The mail notice period should be extended to seven days.

New Section 4.2.3C of the Distribution System Code

The Joint Low-Income Representatives propose the addition of the following new Section 4.2.3C to the Distribution System Code (with other sections renumbered accordingly):

> A distributor shall not disconnect a customer for non-payment on a weekend day, a statutory holiday, a Friday, or on any other day on which no distributor staff is available to accept payment or to negotiate an arrears payment arrangement. A distributor shall not disconnect a customer for non-payment after 4:00 on a weekday unless distributor staff is available to accept payment or to negotiate an arrears payment arrangement after that time.

The Joint Low-Income Representatives appreciate the Board's stated perspective that "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." (Customer Service Report, at 19). The Joint Low-Income Representatives acknowledge that the Board report notes

that "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." (Customer Service Report, at 19).

The Joint Low-Income Representatives believe that having the Board "encourage" distributors to refrain from disconnections at times when appropriate responses cannot be made provides insufficient customer service protection. The Joint Low-Income Representatives propose to incorporate this Board "encouragement" into the Board's regulations.

The Joint Low-Income Representatives have extended the stated times beyond weekends and statutory holidays. In particular, the Joint Low-Income Representatives provided that disconnections should *not be scheduled on Fridays*. Frequently, it is impossible to halt a disconnection of service within a 24-hour period (even for a social service agency). Under such circumstances, the family is left without utility service for an entire weekend.

Section 4.2.2D of the Distribution Code

The Joint Low-Income Representatives propose the following modification to the Board's proposed Section 4.2.2D:

> A distributor shall make reasonable efforts to contact, in person or by telephone, a customer to whom the distributor has issued a disconnection notice for non-payment prior to the earliest date on which disconnection for non-payment may occur as set out in the disconnection notice. A distributor shall make a reasonable effort to contact, in person or by telephone, an eligible low-income electricity consumer three days prior to the actual scheduled disconnection of service for nonpayment.

It is the experience of the service providers who are members of LIEN that disconnect notices remote in time from the actual date of a scheduled disconnection are an ineffective means of communicating with a low-income consumer. The Joint Low-Income Representatives urge that it is imperative that consumers are called prior to their day of disconnection, and should be given at least 3 days advanced notice, especially for clients who live in rural areas who do not have their mail delivered to their door.

New Section 4.2.2E of the Distribution System Code

The Joint Low-Income Representatives propose a new Section 4.2.2E of the Distribution System Code, as follows, with the remaining sections renumbered accordingly:

> A utility may not threaten to terminate service when it has no present intent to terminate service or when actual termination is prohibited by law. Notice of the intent to terminate shall be used only as a warning that service will in fact be terminated in accordance with the procedures set forth by this chapter, unless the ratepayer remedies the situation which gave rise to the enforcement efforts of the utility. A utility shall not deliver more than two consecutive notices of discontinuance for past due bills without engaging in the collection identified in the notice.

Based on the data submitted by Ontario distribution utilities in the Low-Income Energy Consumers Issues consultation (see Further Comments of LIEN, et al., Board File No. EB-2008-0150, October 31, 2008), it is clear that it is common for Ontario utility companies to send out shutoff notices when they have no present intent to terminate service.[17] Either the utility does not have the staff to effectuate a service discontinuance for each customer receiving a notice of discontinuance, or the company finds that it is not cost-effective to discontinue service for customers with arrears that are either less than some internally established "treatment amount" or younger than some internally-prescribed threshold.

Aside from the unfair and deceptive nature to consumers of shutoff notices that are issued when no present intent exists to actually disconnect service, the provision of a notice of service discontinuance when there is no present intent to engage in the discontinuance is counterproductive to the entire purpose of notice. The purpose of a notice is to provide a clear and believable warning that a service termination is about to occur. In response to such a notice, the customer must either take the steps necessary to prevent the service termination or take those steps needed to protect him or herself against the dangers to life, health and property that might result from the loss of service.

[17] "The information provided by Ontario's utilities to the OEB confirms that the provincial utilities tend to over-notice the possibility of the disconnection of service for nonpayment. Union Gas provides the most glaring example, with Hydro One close behind. . . Only Enbridge Gas targets its' disconnect notices to customers it intends to actually disconnect, with a follow-up rate of between 80% and 85% for 2006 and 2007." (citations omitted).

In other words, it is generally recognized that a utility shutoff notice should be made at a meaningful time and in a meaningful manner. To meet these standards, the notice should contain specific information and meet specific standards. For example:

- The notice should state the reasons for having the utility seek the termination of service.

- To fulfill the standard that the notice be meaningful, it should give a clear and believable warning that termination is about to occur.

- The notice must inform the consumer of the required procedure by which the proposed termination can be avoided. It should, for example, mention the available procedure by which a disputed termination can be challenged.

In sum, through a shutoff notice, the customer should be informed clearly of the pending shutoff along with the means to avoid it. A repeated issuance of shutoff notices with no intent to carry through with the threatened service termination violates each of these principles.

Finally, quite aside from the policy problems of issuing empty collection threats, there is a business cost as well. A study by the New York Public Service Commission staff, for example, reported that:

> The effectiveness of Final Termination Notices as a means to encourage payments or to make payment arrangements prior to field action has deteriorated. The rate of customer non-responses to Final Termination Notices has increased from 33% in 1983 to 46% in 1987. This may result in part from customer perception that utilities threaten to terminate service, but rarely do. In 1983, 16% of the customers who did not make arrangements on their arrears in response to a termination notice had their service terminated; in 1987, only 9% of those customers had their service terminated.[18]

When a utility repeatedly issues shutoff notices warning customers of an imminent pending service disconnection unless bills are paid in full, without following up those notices by performing the threatened collection activity, it conveys the message that customers may ignore the shutoff notice with no adverse result arising.

[18] David Sawyer and Phillip Teumin, *Gas and Power Utility Uncollectibles and Collection Activity*, A Report by the Consumers Services Division of the New York State Public Service Commission.

The proposed regulation proffered by the Joint Low-Income Representatives is not inconsistent with the Board's own reasoning with respect to shutoff notices. The Board's proposed language states that "a distributor that *intends to disconnect the property of a residential customer for nonpayment* shall send or deliver a disconnection notice to the customer. . ." (Proposed Section 4.2.2).

While the Board's proposed language states that a utility *must* send or deliver a disconnection notice should the utility "intend to disconnect the property of a residential customer," the Board's proposed language does not *limit* a utility to sending a disconnection notice *only* to those instances where the utility intends to disconnect the property of a residential customer for nonpayment.

A flood of final notices sent out by a utility is a wolf kind of notice which does not conform to the principles that notice be truly informative and be given at a meaningful time. Ontario utilities should not be allowed to "cry wolf" with respect to shutoffs for nonpayment. The amendment to the notice regulation as proposed by the Joint Low-Income Representatives should be adopted to redress this situation.

New Section 4.2.7 of the Distribution System Code

The Joint Low-Income Representatives propose a new Section 4.2.7 of the Distribution System Code as follows:

> Unless requested by the residential customer, during the period November 1st through the immediately following May 1st, no utility shall discontinue or disconnect service to an eligible low-income residential customer for nonpayment of the residential customer's utility bill so long as, as of November 1st, the residential customer has no past due charges from the immediately preceding heating season not subject to an arrears payment agreement.

This section establishes cold weather shutoff protections for identified low-income customers. The restriction is limited to those customers that have been confirmed as "eligible low-income electricity customers" as defined by the Board. As the Board staff noted, a "low-income" customer in this respect is a customer that "*has the intention to pay, but an inability to do so*." (Staff Low-Income Report, at 12) (emphasis added).

The Board should make clear that customers having an "intention to pay, but inability to do so" will not be placed in life-threatening jeopardy because of their inability-to-pay.[19]

By limiting the winter shutoff protections to "eligible low-income electricity customers" as defined by the Board, Ontario utilities can rest assured that all possible efforts are being made to ensure that bills get paid in a full and timely fashion. This is evident from at least two aspects of the Board's regulations.

On the one hand, by definition, an "eligible low-income electricity customer" is limited to those low-income customers who have "the intention to pay, but an inability to do so" as determined by a social service agency or non-profit organization recognized by the Board for making this determination. Given this approach, Ontario utilities should be protected from fears that the winter protections will be abused by customers having no intention to pay.

In addition, by definition, an "eligible low-income electricity customer" is limited to those customers who have been certified as such by a social service agency or non-profit organization that has the "experience, expertise and information" to determine the "appropriate level and type of assistance" for the low-income customer. Persons receiving cold weather protections, in other words, will have received the appropriate level and type of assistance.

Given this policy background as already proposed by the Board, it makes little sense to subject such customers to the disconnection of service during cold weather months. The Board's process of identifying "eligible low-income electricity customers" has identified those customers, that:

(1) have the intent to pay, but an inability to do so; and

(2) have received the appropriate level and type of assistance, as determined by the agencies with the experience, expertise and information to make such determinations.

In the event that such a customer nonetheless has a wintertime arrears, it would be unreasonable to subject that customer (and his or her family) to a life-threatening loss of utility service during Ontario's winter months.

[19] Further protections are provided to the utility companies by prohibiting a customer from carrying arrears, not subject to a payment agreement, from one winter heating season into the next.

Equal Billing Plans

The Joint Low-Income Representatives agree with the Board's analysis of the benefits of levelized budget billing plans. In particular, the Joint Low-Income Representatives agree with the Board that equal billing "can carry significant benefits for both distributors and customers, and in particular residential customers." (Customer Service Report, at 14). The Joint Low-Income Representatives further agree that

> 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.

Given these advantages both to the customer and to the distributor of equal billing plans, the Joint Low-Income Representatives believe that the Board should eliminate as many barriers to entry into equal billing plans as possible. In addition, given these benefits to both consumers and the distributors, the Board should incentivize the use of Equal Billing Plans. In furtherance of these Board-stated policies, the Joint Low-Income Representatives propose the following amendments to Board regulations regarding Equal Billing Plans.

Equal Billing and Arrears Payment Agreements

The Joint Low-Income Representatives propose a new Section 2.6.2(b) to the Standard Supply Service Code regarding Equal Billing Plans (with the remaining sections renumbered accordingly):

> (b) a distributor may not refuse to provide an equal billing plan option to an eligible low-income customer that is in arrears to the distributor for electricity charges, as defined in Section 2.5.7 of the Distribution System Code, but not on an arrears payment agreement with the distributor as referred to in Section 2.6.1 of the Distribution System Code, but shall treat a request from an eligible low-income customer to be placed on an equal billing option as a request also to be placed on an arrears payment agreement of the minimum term provided in Section 2.6.2 of the Distribution System Code, unless a different term for the arrears payment agreement is subsequently negotiated.

The Joint Low-Income Representatives agree with the Board that the credit history of a customer should not be a barrier to entering into equal billing plans. In addition, however, the Joint Low-Income Representatives urge that the presence of arrears should not be a barrier either. Under the Board's proposed regulations, the presence of arrears is a barrier to equal billing unless a customer enters into an arrears payment agreement. What this regulation institutionalizes, however, is that all the barriers that impede payment agreements also serve as barriers to equal billing plans as well.

The Joint Low-Income Representatives believe that the regulation is somewhat backwards. If a person with arrears requests to enter into equal billing – a request that the Board, itself, acknowledges will benefit both the distributor and the customer, and improve the affordability of bills by smoothing out monthly bills — rather than ***excluding*** the customer failing to have entered into an arrears payment agreement, the distributor should treat the request to be placed on equal billing as an agreement to an arrears payment agreement of the minimum term provided by rule.

If a customer disagrees with the use of that minimum payment plan term, the customer is always free to contact the utility to negotiate a different term pursuant to the Board's payment plan regulations.

The change proposed by the Joint Low-Income Representatives benefits both customers and distributors. Instead of leaving untreated arrears not subject to agreement, this process places arrears on an arrears payment agreement. Instead of continuing to bill these customers, who already have demonstrated a non-payment pattern, in a way that exacerbates nonpayment, the proposed change places these customers on an equal billing plan that smoothes out monthly bills and enhances ability to pay.

The proposed amendment should be adopted.

Equal Billing Entry Date

The Joint Low-Income Representatives propose a new Section 2.6.2(c) to the Standard Supply Service Code regarding Equal Billing Plans (with the remaining sections renumbered accordingly):

> The equal billing plan shall be available to any residential customer at any time during the year, without regard to the residential customer's length of service with the utility. A utility may also, upon application and approval by the Board, offer a heating season equal billing plan for a period less than a prospective twelve (12) month period upon a showing by the applicant that the plan will allow a

residential customer to levelize his or her winter heating bills over a period longer than the heating season but shorter than a full twelve months.

Utilities should not be allowed to restrict the months in which a customer may enter an equal billing plan to the late spring and early summer months. Companies adopting this procedure do not view equal billing as a mechanism to levelize high winter bills. Instead, they view equal billing as a mechanism through which to obtain prepayment of a customer's winter bills.

Low-income customers needing to shave the spike off of home heating bills may well not *know* of the benefits, or even of the existence, of levelized equal billing during a late spring/early summer enrollment period. Indeed, it is likely that it is an unaffordable winter bill that brings the household into contact with the utility, or with a LEAP agency, that can steer the customer onto a levelized equal billing plan beginning in the winter months.

As the Board's discussion of its customer service proposals recognizes, Ontario's utilities should increase the penetration of budget billing as an arrearage prevention technique. Levelized equal billing plans help customers avoid the "peak" in utility bills that often accompanies winter heating (or summer cooling) load. Levelized equal billing provides the opportunity for customers with marginal incomes to pay their annual home energy bills in equal monthly billing amounts over the course of the year irrespective of the actual monthly bills the customer incurs. Levelized equal billing offers three advantages to the economically marginal consumer.

- First, a levelized bill helps take the peak off seasonal weather-sensitive usage. High monthly bills that might present a problem in any particular severe weather month—that month can reflect either cooling needs or heating needs—are instead spread over several months.

- Second, a levelized bill helps provides certainty to the customer regarding what his/her payment responsibility will be. Rather than trying to "fit" an unexpectedly high summer cooling bill into a warm weather budget that is already strained because of the additional cost of children's food while not in school, a customer will know at the beginning of the summer cooling season what level of utility bill to expect each month.

- Finally, a levelized budget-billing plan represents a type of "forced savings" for economically marginal households. Rather than needing to set aside an estimated portion of the cold weather natural gas bills, in anticipation of accessing those savings to pay heating bills in cold weather months, the levelized monthly budget billing creates an obligation to pay the time-shifted winter bill when those bills are rendered a little at a time during the lower-usage months. The "overpayment" is accrued by the utility as a bill credit and applied to the higher-cost months as appropriate.

In particular, the OEB, along with the utilities throughout the province, should remove barriers to participation in budget billing programs. Limiting the entry of customers into equal billing to particular times of the year is one such barrier.

Allowing entry into equal billing during the winter months is not unreasonable. Consider the experience of the Tennessee state utility commission. In the winter of 2005, states were faced with predictions that, due to a fly-up in natural gas prices, home heating bills would be as much as 50% higher than they had been the previous winter. In response to such predictions, the Tennessee Regulatory Authority "approved a budget billing plan under which a natural gas customer who cannot pay his or her monthly bill in total will be enrolled ***automatically*** in an equal payment plan." (emphasis added)[20]

The Tennessee initiative not only did not seek to ***avoid*** enrolling customers in the winter months, but it specifically sought to focus enrollment in the winter months as a response to customer arrears. Based on the customer's historical usage, each Tennessee utility was directed to divide the customer's bill into 12 equal monthly payments; the payments are then trued up annually with the actual bill received by the customer.[21] The Tennessee program succeeded in reducing service disconnections without imposing undue risk on the state's utilities. Indeed, the program has been extended due to its success.

Finally, in addition to removing barriers to participation in budget billing, Ontario utilities should offer an alternative budget billing option. Experience counsels that many customers do not wish to enter into budget billing that significantly increases their warm weather month bills. Even though the whole purpose of budget billing is to time-shift part of a bill, the realization that the elimination of the high winter bill ***also*** means the corresponding elimination of the low summer bill (assuming a natural gas customer, that is) creates a barrier to budget billing enrollment.

Given this recognition, Ontario utilities would be well-served to offer something other than an ***annual*** budget-billing plan. A "winter-only" equal billing plan would help guard against the high winter bills while also preserving the low-cost summer months for the customer. The data clearly shows that many customers in arrears are simply engaging in short-term time-shifting of high winter bills without the structure of a budget-billing plan. Increases in monthly arrears for the residential class as a whole truly begin with the January bill. Moreover, by May, those arrears are being significantly paid down.

[20] Historically, a customer was allowed to enter into a levelized budget billing plan only during the warm weather months, in order to pre-pay some portion of the expected heating bills for the forthcoming winter.
[21] "Winter Heating Bills," 3747 PUR Util. Reg. News 6 (December 9, 2005). TRA Docket 05-00281 (Order issued October 17, 2005).

To allow customers to move some of that time-shifting ***forward*** rather than having it merely be ***backward*** would be consistent with the desire to keep bills paid, and the demonstrated inability to make that happen in the high cost winter months. To move some of those January through March dollars forward to the lower cost months immediately preceding winter should help lower arrears without running afoul of the customers' desires to retain their low-cost summer bills.

While the proposed amendment does not make a seasonal budget billing plan mandatory, it does allow for each utility, or other stakeholders, to petition the Board for a company to establish a budget billing option covering fewer than 12 months.

Equal Billing and the True-Up of Monthly Bills

The Joint Low-Income Representatives propose a new Section 2.6.2(d) to the Standard Supply Service Code regarding Equal Billing Plans (with the remaining sections renumbered accordingly):

> In determining one (1) year's equal billing payment plan, if the residential customer has been served by the utility at the same location for the previous year, the budgeted payment should be based on the residential customer's actual use for the previous year adjusted for normalized prices and weather conditions. Each utility shall make quarterly adjustments to the equal billing amount should the utility find that the existing amount is resulting in an over-collection or under-collection of the customer's actual bill by more than one month of the equal billing payment.

This proposed section incorporates three basic requirements into the equal billing process.

- First, equal billing plans are to be based on a customer's actual consumption from the prior year to the extent that a customer has been at the same address for the year. This provision is based on the proposition that the best predictor of a customer's future annual bill is the customer's last immediately preceding annual bill.

- Second, the equal billing plan should be adjusted for normalized prices and weather conditions. The need to make such adjustments has been discussed previously in these comments (e.g., with respect to the setting of deposits).

- Finally, the equal billing plan shall be adjusted, no more than quarterly, to account for the over-collection or under-collection of actual bills. The adjustment of an equal billing amount must balance two competing policy objectives. On the one hand, one objective is to provide a bill that is the same each month, to achieve the budget results discussed above. On the other hand, one objective is to prevent a substantial over-

> collection or under-collection of the customer's annual bill. A substantial under-collection would present the customer with a potentially large make-up bill at the end of the year, while delaying the collection of revenue by the utility. A substantial over-collection would impose a greater payment responsibility on the customer in each month, thus increasing the likelihood of nonpayment particularly by low-income customers who should most benefit from equal billing. This proposed amendment provides for an occasional adjustment to the equal billing amount without allowing such adjustments to be so frequent as to lose the benefits of the levelized bill. The amendment further creates a bright-line test for when an adjustment may be made.

Optional Payment Dates

The Joint Low-Income Representatives propose the following modifications to Section 2.6.2(b) of the Standard Supply Service Code regarding Equal Billing Plans:

> Despite any other provision of this Code or of any other code issued by the Board, the equal billing plan option offered to an eligible low-income electricity customer shall provide for the customer to be billed on a monthly basis and shall make provision for the customer to select either of at least two dates within the month on which payment under a monthly bill is due, so long as the offer of dates is sensitive to typical dates on or about which low-income electricity consumers receive income.

The Joint Low-Income Representatives appreciate the customer service objective of the Board is allowing customers to make a selection of the date on which payment of their budget bill will become due. In setting the date options, however, each utility should make available dates that correspond to the receipt of income. As the Board noted in advancing its proposed customer service regulation, ". . .many low-income electricity customers receive their income at dates fixed by government agencies. . ." (Customer Service Report, at 15). The alternative payment dates provided by each utility, therefore, should be sensitive to those government-fixed dates on which income is provided.

Concern is raised by the Board's recommendation that "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)." (Customer Service Report, at 15). While the Board does not move its two different date options (the 1st and the 15th) into the regulations, themselves, the Board should note that the 15th should be changed to the 20th. In particular, families who are in receipt of the child tax credits receive their income on or about the 20th.

Moreover, while the Board's narrative description of the proposed rule provides that "eligible low-income electricity customer who elect equal billing be given the option of *at least* two different monthly payment dates," the words "at least" were inadvertently dropped from the actual language of the regulation. The Joint Low-Income Representatives proposed amendment above re-inserts that language to conform the language of the regulation with the narrative description of what the Board has intended to propose.

Billing Cycle Factor for Equal Billing Plan Customers

The Joint Low-Income Representatives propose the following amendment to Section 2.4.16 of the Distribution System Code:

> For the purposes of section 2.4.12, the billing cycle factor is 2.5 if the customer is billed monthly, 1.75 if the customer is billed bi-monthly, 1.5 if the customer is billed quarterly, and 1.0 if the customer is billed on an equal billing plan.

The Board establishes as one basic principle in Ontario that "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." (Section 2.4.6.2, Distribution System Code). When a customer enters into an equal billing plan, however, that customer no longer has the same "risk profile" nor the same "risk related factors" as a customer that is not receiving service under equal billing. The Board, itself, notes that:

> 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.

(Customer Service Report, at 14). Customers who can "better budget for electricity payments," receive bills that "increase [their] ability to pay in each billing period," and receive bills that "may in turn reduce the risk to the distributor of customer non-payment" do not have the same "risk profiles" or the same "risk related factors" as those customers who do not take service under such a billing arrangement. Accordingly, these customers should not be treated the same when the distributor makes decisions regarding the customer's necessary security deposit.

To impose the same "billing cycle factor" on a customer taking service under an equal billing plan as is imposed on a customer who does not engage in this risk-mitigating billing strategy is to treat disparately situated customers the same. Given:

- the risk reduction inherent in the use of equal billing, and
- the potential incentive that a smaller deposit might generate for a customer to enter into budget billing, and
- the additional financial benefit to the distributor of "smoothing out" the distributor's cash flow,

(Customer Service Report, at 14), the reduced billing cycle factor proposed by the Joint Low-Income Representatives should be adopted.