EDA
The Voice Of Ontario's Electricity Distributors

October 23, 2009

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

Via RESS and by courier

Dear Ms. Walli:

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

The Electricity Distributors Association (EDA) is the voice of Ontario's local distribution companies (LDCs). The EDA represents the interests of over 80 publicly and privately owned LDCs in Ontario.

The EDA is pleased to provide the attached comments regarding the revised proposed amendments to the Distribution System Code, the Retail Settlement Code and Standard Supply Service Code with respect to new customer service measures. The EDA has consulted with its members and found they have some significant concerns with the implications of the proposals. The attached comments provide a summary of the EDA members' suggested changes to the wording of the proposed amendments and indicate the concerns with particular proposals. The EDA believes the issues raised warrant some significant changes to some of the proposals and further discussion with distributors and other parties may be needed to understand the implications.

Yours truly,

"original signed"

Maurice Tucci
Policy Director, Distribution and Regulation

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EDA's Comments on OEB Revised Proposed Amendments to the Distribution System Code, the Retail Settlement Code and Standard Supply Service Code regarding Customer Service Measures, Board File No: EB-2007-0722

Proposed Amendments to Retail Settlement Code

Proposed Section 7.2.5 Equal Payment Plans indicates:

> *A distributor that provides distributor-consolidated billing for a residential customer shall bill the customer on the basis of an equal monthly payment plan if so requested by the customer or the retailer. The equal monthly payment plan shall comply with the requirements set out in the Standard Supply Service Code.*
>
> *If a distributor offers an equal payment or billing plan to a class of non-residential customers the distributor shall, when providing distributor-consolidated billing for a non-residential customer within that class, bill the non-residential customer on the basis of that equal payment or billing plan if so requested by the customer or retailer.*

The EDA notes that the OEB has disagreed with the EDA and many distributors regarding the issues some distributors have with offering equal payment plans to retailer enrolled customers. In the EDA's April 18, 2009 submission on the previous proposed code amendments, it was noted that distributors are not aware of the prices retailers charge to their customers, and as a result, it is difficult to establish a monthly average of retailer amounts without significant effort and some risk. The EDA proposed instead that retailers should be encouraged to offer equal Invoice Bill Ready monthly plans. We note that the OEB believes distributors should not discriminate against customers who choose to purchase supply from retailers, because they would be disadvantaged. We note the OEB has indicated that it has not yet found evidence that distributors will be exposed to greater risk of non-payment from retailer enrolled customers on equal payment. The EDA has consulted further on this issue with members and has found that some distributor billing systems would require significant and expensive modifications to accommodate equal payment for retailer customers. Distributors continue to believe that they would be exposed to significantly greater risk from not knowing the retailer charges, which are often significantly higher than the regulated price plan. Also, this creates the potential for more frequent payment plan adjustments, which may undermine the objective of payment smoothing for the consumer.

Proposed Section 7.7.1 indicates:

> *Where a distributor has over billed a customer or retailer by an amount that is equal or exceeds the customer's or retailer's average monthly billing amount, determined in accordance with section 7.7.5, the distributor shall, within 10 days of discovery of the error, notify the customer or retailer of the over billing and advise that the customer or retailer may elect to have the full amount credited to their account or repaid in full by cheque, within 11 days of requesting payment by cheque. Where the customer or retailer has not requested payment by cheque within 10 days of notification of the error by the distributor, the distributor may credit the full amount to the account.*

The EDA notes that often following the discovery of a bill error it takes considerable time to confirm the amount of the error and determine whether the error amount exceeds or doesn't exceed the monthly billing amount. In some cases Measurement Canada needs to be contacted and when it involves a retailer, it may take a few weeks to receive confirmation of the error amount. As a result the EDA proposes to amend Section 7.7.1 by replacing "*within 10 days of discovery of the error*" with "*within 10 days of the quantification of the error".*

Proposed Section 7.7.6 indicates:

> *Where a distributor has under billed a customer or retailer who is responsible for the error, whether by way of tampering, willful damage, unauthorized energy use or other unlawful actions, the distributor may require payment of the full under-billed amount by means of a corresponding charge on the next regularly scheduled bill issued to the customer or retailer.*

The EDA notes that often in situations when a distributor finds a customer has tampered with their meter and carried out unauthorized energy use, distributors disconnect the customer, require the tampering to be repaired, and the distributor will seek to recover the outstanding amount before reconnection. As a result, they would not reconnect a customer and then collect the outstanding amount on the next regularly scheduled bill. We note that this section indicates "the distributor may require payment" but for clarity it should also address the scenario where the distributor seeks payment before reconnection. The EDA proposes adding the following clause to this section: "*or require payment prior to reconnection*".

Proposed Section 7.7.7 indicates:

> *Where the distributor has under billed a customer or retailer, the maximum period of under billing for which the distributor is entitled to be paid is 2 years. Where the distributor has over billed a customer or retailer, the maximum period of over billing for which the customer or retailer is entitled to be repaid is 2 years.*

Proposed Section 7.7.4 indicates:

> *Where a distributor has under billed a customer who is not responsible for the error, the distributor shall allow the customer to pay the under-billed amount in equal instalments over a period at least equal to the duration of the billing error.*

The EDA notes that in situations where the duration of the under billed error was, for example, five years and the amount that can be recovered is the under billed amount over two years, it does not appear appropriate to recover two years worth of error billing over five years. The EDA believes the duration for recovery should be limited to a maximum of two years to match the period for which the billing error is recoverable. As a result the EDA proposes that the following be added to section 7.7.4: *up to a maximum of two years."*

Proposed Amendments to Standard Supply Service Code

Proposed Section 2.6.2 (b) indicates:

> *a distributor may require a residential customer on an equal monthly payment plan to agree to pre-authorized automatic monthly payment withdrawals from the customer's*

account with a financial institution if the billing cycle of the distributor is less than monthly;

The EDA noted that there was some initial confusion with the last phrase "*if the billing cycle is less than monthly"*. Initially it was interpreted to mean a cycle less than a month such as bi-weekly billing, but on further consideration it was understood to mean less frequently than monthly such as bi-monthly. In order to improve comprehension, the EDA suggests that the last phrase should read as follows: "*if the billing cycle of the distributor is less frequently than monthly;"*

Proposed Section 2.6.2.(e) iii) indicates:

while a distributor is only required to reconcile equal monthly payment plans on an annual basis, a distributor shall review its equal monthly payment plans quarterly or semi-annually and adjust the equal monthly payment amounts in the event of material changes in a customer's consumption;

The EDA notes that distributors may need to adjust equal payment amounts for reasons other than material changes in consumption. Distributors note that charges may change substantially warranting an adjustment such as situations where a customer enrolls with a retailer, or the retailer adjusts its charges, or the regulated charges are adjusted substantially. As a result, the EDA proposes adding the following to the end of this section: "*patterns or changes in charges*, *in order to minimize the risk of large year-end variances*."

Proposed Amendments to Distribution System Code

Proposed section 2.4.26A & B indicate the following:

2.4.26A A distributor shall not issue a disconnection notice to a residential customer for non-payment unless the distributor has first applied any security deposit held on account for the customer against any amounts owing at that time and the security deposit was insufficient to cover the total amount owing.

2.4.26B Where a distributor applies all or part of a security deposit to offset amounts owing by a residential customer under section 2.4.26A, the distributor may request that the customer repay the amount of the security deposit that was so applied. The distributor shall allow the residential customer to repay the security deposit in instalments in accordance with section 2.4.20A.

Section 2.4.20A indicates that the repayment of the security deposit shall be made over a period of at least 6 months, and residential customers will now be permitted to pay their initial deposit over at least 6 months.

The EDA notes that extending the instalment period for deposits from 4 months to 6 months exposes distributors to greater bad debt risk. Some distributors note their experience has indicated that bad debt occurs within the first few months of account activation. The extension of the time to adequately collect a deposit to cover these accounts increases financial risk.

The requirement to apply deposits to outstanding payments prior to initiating the disconnection notice in essence eliminates the purpose of a deposit. The current intent of a deposit is to offset arrears where a customer closes their account and may not provide a forwarding address for the final bill, creating a non-collectable after the account has been closed. By applying the deposit before disconnection allows the customer to continue to consume energy and eliminates the security needed to apply to outstanding arrears after disconnection. Distributors that serve high transient customer areas, such as areas with colleges and university residences, would experience considerable increased non-payment risks, if the deposit amounts were unavailable or low when the accounts were closed. This could easily happen if a new customer defaults in the first two months and then leaves.

Distributors also note a potential for interference with the present practices of social agencies. By allowing customers who need assistance to apply their deposits against arrears, these customers may become ineligible for assistance, because agencies only provide assistance if the amount owing is above a certain threshold. These customers may eventually need assistance but the amount owed may be considerably more by this time and what the social agency would normally contribute may fall short. We believe that social agencies should be consulted on this issue to best serve these customers.

Some distributors expressed concerns regarding the added costs of administration of tracking repayment of deposits on an endless basis for customers who will constantly use their deposit to pay arrears. The increased administration burden may cause a utility to revisit the decision to ask for security deposits in the first place after weighing the additional administration costs against the potential for bad debts. One of the guiding principles for LEAP which should also apply to these changes was that programs to assist our customers should not be overly costly or complicated to administer.

The EDA believes distributors should be given greater discretion in applying deposits against arrears and it should not be mandated in every situation. Distributors believe they should have the ability to apply deposits against arrears in situations where they believe the customer will repay the deposit. As a result the EDA is suggesting that 2.4.26A be revised to read as follows: *A distributor shall not issue a disconnection notice to a residential customer for non-payment in cases where the distributor has, on its own discretion, first applied any security deposit held on account for the customer against any amounts owing at that time and the security deposit was insufficient to cover the total amount owing.*

Proposed section 2.4.22A indicates:

2.4.22A For the purposes of section 2.4.22, where a residential customer has paid a security deposit in instalments, a distributor shall conduct a review of the customer's security deposit in the calendar year in which the anniversary of the first instalment occurs and thereafter as otherwise required by this Code.

EDA members asked that this section clarify that a review of the deposit can also be made at the next scheduled review.

The following proposed new sections of the Distribution System Code raise some concerns with distributors:

4.2.3 A distributor shall not disconnect a customer for non-payment until the following minimum notice periods have elapsed.

(a) 60 days from the date on which the disconnection notice is received by the customer, in the case of a residential customer that has provided the distributor with documentation from a physician confirming that disconnection poses a risk of significant adverse effects on the physical health of the customer or on the physical health of the customer's spouse or dependent family member who resides with the customer;

(b) 14 days from the date on which the disconnection notice is received by a residential customer; or

(c) 10 days from the date on which the disconnection notice is received by the customer, in all other cases.

4.2.2.3 A disconnection notice issued for non-payment shall expire on the date that is 11 days from the last day of the applicable minimum notice period referred to in section 4.2.3, determined in accordance with the rules set out in section 2.6.8. A distributor may not thereafter disconnect the property of the customer for non-payment unless the distributor issues a new disconnection notice in accordance with section 4.2.2.

4.2.2.5 A distributor shall suspend any disconnection action for a period of 21 days from the date of notification by a registered charity, government agency or social service agency that it is assessing a residential customer for the purposes of determining whether the customer is eligible to receive bill payment assistance, provided such notification is made within 14 days from the date on which the disconnection notice in received by the customer. Where a residential customer had requested prior to the issuance of the disconnection notice that the distributor also provide a copy of any disconnection notice to a third party, the distributor shall suspend any disconnection action for a period of 21 days from the date of notification by the third party that he, she or it is attempting to arrange assistance with the bill payment, provided such notification is made within 14 days from the date on which the disconnection notice is received by the customer.

4.2.2.7 Despite section 4.2.2.6, upon notification by a registered charity, government agency or social service agency that a customer is not eligible to receive bill payment assistance, or if another third party who was considering the provision of bill assistance decides not to proceed, the distributor may disconnect the customer in accordance with sections 4.2.2.3 and 4.2.3.

The issue EDA members raised is the implication contained in Section 4.2.2.7 which requires the disconnection process to start again after a customer has received notification that they are not eligible for payment assistance. The EDA notes that 4.2.3 allows 14 days (plus 3 days for mailing) before a customer can be disconnected. If within the 14 days a letter notification from a charity or agency is received, then the disconnection must be suspended a further 21 days. If the charity or agency indicates the customer is not eligible, then the distributor will be required to

send another notice of disconnection and wait another 14 days (plus 3 days for mailing) before disconnection can take place. The total time can be up to 55 days before a customer can be disconnected. Distributors believe this amount of time is unreasonable and will create significant impacts on bad debt. The EDA believes that the second notice is not necessary and customers should be forewarned in the disconnection notice that once a customer receives notification that they are not eligible for assistance, then they may be disconnected in the following 11 days. Further section 4.2.2.7 should be amended by deleting the last phrase "*in accordance with sections 4.2.2.3 and 4.2.3."*

Similarly, members also had concerns with respect to the arrears management program, specifically the proposed sections 2.7.4 and 2.7.4.1 which indicate the following:

2.7.4 Where a customer defaults on more than one occasion in making a payment in accordance with an arrears payment agreement or on account of a current electricity charge billing, the distributor may cancel the arrears payment agreement.

2.7.4.1 If the distributor cancels an arrears payment agreement pursuant to section 2.7.4, the distributor will give written notice of cancellation to the customer and to any third party designated by the customer under section 4.2.2.2 at least 10 days before the effective date of the cancellation.

EDA members believed that a notice of cancellation to a third party, if the customer defaults a second time, is an unnecessary administrative cost as the customer should be informed when entering the arrears management program that they have a responsibility to maintain their payments and if they are in need of assistance and have a designated third party, they should be contacting the third party before the cancellation occurs. As a result the EDA believes section 2.7.4.1 should be revised as follows: *If the distributor cancels an arrears payment agreement pursuant to section 2.7.4, the distributor will give written notice of cancellation to the customer.*

In addition section 2.7.4 should be revised as follows: *Where a customer defaults one or more occasions in making a payment in accordance with an arrears payment agreement or on account of a current electricity charge billing, the distributor may cancel the arrears payment agreement.*

EDA members raised implementation issues with respect to the new procedures for opening and closing of accounts as indicated in section 2.8.1 to 2.8.3, and the responsibilities to load customers as indicated in section 6.1.2.1 to 6.1.2.3 as follows:

2.8.1 Where a distributor opens an account for a property in the name of a person at the request of a third party, the distributor shall within 15 days of the opening of the account send a letter to the person advising of the opening of the account and requesting that the person agrees to be the named customer. If the distributor does not receive confirmation from the intended customer, within 15 days of the date of the letter, the distributor shall advise the third party that the account will not be set up as requested.

2.8.1.1 The distributor is not required to send a letter advising of the opening of the account where the request to open the account is made in writing by the person's solicitor or person in possession of a valid Power of Attorney for the person.

2.8.2 Despite any other provision of this Code, with the exception of the parties mentioned in section 2.8.1.1, where a distributor has opened an account for a property in the name of a person at the request of a third party, the distributor shall not seek to recover from that person any charges for service provided to the property unless the person has agreed in writing to being the customer of the distributor in relation to the property.

2.8.3 Despite any other provision of this Code, with the exception of the parties mentioned in section 2.8.1.1, where a distributor receives a request to close or transfer an account in relation to a rental unit in a residential complex as defined in the Residential Tenancies Act, 2006 or another residential property, the distributor shall not seek to recover any charges for service provided to that rental unit or residential property after closure of the account from any person, including the landlord for the residential complex or a new owner of the residential property, unless the person has agreed in writing to assume responsibility for those charges.

6.1.2.1 Nothing in section 6.1.2 shall be construed as permitting a distributor to recover or to seek to recover charges for a service provided to a property from any person other than a person that has agreed in writing to being the customer of the distributor in relation to the property or that has agreed in writing to assume responsibility for those charges.

6.1.2.2 For the purposes of section 6.1.2.1, the requirement for agreement in writing includes agreements in electronic form in accordance with the Electronic Commerce Act, 2000.

6.1.2.3 Section 6.1.2.1 applies to all agreements entered into after the effective date of these amendments and it not intended to void or cancel any binding agreements for service existing as of the effective date of these amendments.

These proposed amendments will require all customers to sign a contract with the utility prior to distributors being allowed to charge for electricity usage. Past practice typically has been to consider a paid invoice as consent of service. In addition, past practice has been to assume landlords wanted service for the empty units to show perspective tenants the units and ensure pipes did not freeze. The requirement to obtain written consent going forward for all new accounts will require procedural changes and extra costs. This is particularly an issue for distributors serving new subdivisions and rental apartments.

The EDA notes that the amount of unrecoverable disconnection costs will likely increase in areas with apartments where the landlord refuses to accept commodity charges for vacant units. When apartment tenants leave a unit, the distributor will need to incur costs to disconnect the unit and then later reconnect for the new tenants. These disconnect and reconnect costs are not recoverable from tenants or the landlord. Distributors will require additional full time or contract staffing resources to handle the increased disconnection and reconnection processes.

If power disconnection is not permitted, or not possible due to lack of access, distributors will incur lost revenue due to increased "unbillable energy" until such time as the new tenant signs an agreement, which they may be in no hurry to do. In essence, landlords are allowed to transfer some of their business risk and poor business practices to the distributor. The cost for bad debt will be borne by all ratepayers, rather than where it belongs at the individual business level.

In areas where new subdivisions are connected, past practice to connect new homes on the call of subdivision developers will cease and new home owners will likely not have service until they contact the distributor. Distributors note that the proposed amendments will likely delay the setting up of a new account until the Closing Date of the new home. In some cases, distributors will not be able contact these customers until they enter their new homes. Distributors believe new home owners will consider this a significant inconvenience during their move. Subdivision developers will also be concerned that they are required to contact each new home owner to inform them that they must contact the distributor for connection.

In the Board's letter dated October 1, 2009, the Board noted that the proposed section 2.8.3 accepts and facilitates distributors entering into agreements with landlords to deal with their respective responsibilities and rights upon vacancy of a rental unit by a tenant. Since proposed sections 2.8.1, 2.8.2 and 2.8.3 will apply on a prospective basis also noted in the Board's letter dated October 1, 2009, the EDA asks the OEB to provide clarification regarding existing arrangements with landlords being grandfathered with respect to the opening of new accounts in section 2.8 as indicated under the proposed section 6.1.2.3.

The EDA believes that these new procedures for signing up new customers and for requiring landlords to agree in writing to accept charges for vacant premises will generally cause more problems than it attempts to resolve. Consequently the EDA believes distributors should be given the discretion to seek written agreements as part of good business practices, but the procedures should not be made mandatory for every situation.

Coming into Force

The EDA notes that the implementation schedule for the proposed amendments are specified under the following amendments:

- Section 1.7 of the Distribution System Code is amended ay adding the following:

    The following sections come into force on January 1, 2010.

- Section 1.7 of the Retail Settlement Code is amended by adding the following:
    The amendment to section 7.7 comes into force on January 1, 2010. Section 7.2.5 comes into force on July 1, 2010.

- Section 1.6 of the Standard Supply Service Code is amended by adding the following:
    The amendment to section 2.6.2 comes into force on July 1, 2010.

In other words, all the proposed amendments are to come into force on January 1, 2010, with the exception of the equal payment plan amendments (addressed in sec 7.2.5 of the RSC and 2.6.2 of the SSSC) which will come into force on July 1, 2010.

EDA members raised significant concerns with the proposed timeline for implementation. The required system changes to accommodate the proposed changes will be costly and time consuming to implement. Distributors believe the programming changes are substantial, and many distributors are already immersed in significant programming changes for the implementation of time-of-use pricing for smart metered customers. There will be setup and procedural changes required which will necessitate adequate implementation and training time. In addition, distributors may need additional time to change the wording on their printed material such as service application forms, notices, letters, bill print etc. to reflect the proposed changes. Distributors believe the January 1, 2010 date is just not feasible.

The March 10th Notice proposed that the DSC, RSC and SSSC code amendments come into force on the date that is six months after they are made and published on the Board's website. Although a July 1 implementation date for all amendments was discussed with members, most indicated that they may need up to one year to implement some of the changes. Given the concerns raised by distributors, the EDA would request that the implementation date be deferred to January 1, 2011.

Anticipated Implementation Costs

The EDA notes that the OEB believes the proposed amendments are a fair balance between assistance to customers and the imposition of additional costs on other customers. But this fair balance appears to be based on what was originally proposed in the March 10th proposed amendments. In comparison to current distributor practices, distributors believe the October 1st amendments will require distributors to incur significant costs which may or may not be recoverable from customers.

Distributors will incur costs to implement the programming changes, amend work practices and train staff. If the timeline for implementation is not extended and remains January 1st 2010, these costs may be very significant, due to the many competing projects related to smart metering and IFRS reporting which are similarly urgent. In addition, there are increased risks of unfavourable business and customer impacts due to the compressed timeline.

Distributors will incur added costs for disconnecting and reconnecting apartment tenants. These costs are not directly recoverable and distributors should be kept whole for this cost increase. Distributors would not want to wait for the next rate filing to recover these additional costs.

Given the proposed disconnect process timeline and new security deposit arrangements, customers that abuse the process will likely have substantially higher account balances by the time they are eventually disconnected. As a result, the distributor's bad debts would be expected to rise. Extending payment dates and disconnection dates will also have a negative impact on cash flow. Distributors believe any increased bad debt due to the new extended disconnection

process and deposit process should be recoverable. The incremental bad debt should be tracked and recoverable until distributors can reset their bad debt amounts at their next rate filing.

Distributors believe the proposed amendments will provide some customers, prone to entering the collection process, with additional tools and means to extend or avoid payment. Although a small percentage of customers fall into this category, the relative amount of work and associated costs involved in managing these customers is significant. In fact, these provisions may have the unintended effect of promoting payment defaults due to the prescribed customer service timelines. Distributors believe that the assessment of non-payment risk is a fundamental responsibility of the local utility, which, in co-operation with local social service agencies, strive to establish viable payment arrangements with consumers in order to maintain their electrical service.

Distributors believe all the incremental costs for implementing the amendments should be recoverable and therefore the EDA is asking the OEB to allow distributors to track these additional costs through variance accounts for incremental OM&A costs and bad debt.