Low-Income Energy Network

April 12, 2010

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

Dear Ms Walli,

Re: **Board File No. EB-2007-0722 – Further revised proposed amendments to the Distribution System, the Retail Settlement Code and the Standard Supply Code**
Written comments on behalf of LIEN, CELA, TEA, ISAC and ACTO

Please accept this letter as the comments of the Joint Low-Income Representatives with respect to the further revised rulemaking amendments noticed for comment by the Board's order of March 12, 2010. While these comments are limited to the further rulemaking amendments proposed in that March 12, 2010 order, the Joint Low-Income Representatives urge: (1) both the need for a comprehensive low-income energy rate assistance program; and (2) the need for the customer service rulemaking amendments advanced in prior comments. Nothing in these comments should be construed as standing in opposition to those previously asserted needs.

With that overview, the Joint Low-Income Representatives offer the following comments on the further proposed revised customer service regulations:

Section 2.4.20A (deposits): When customers have been issued a security deposit due to poor payment history, it does not make sense to increase the customers debt load and energy costs by issuing the security instalments in six (6) payments, especially when some of these deposits are sizable, contributing an up to one hundred dollars a month or more (based on a $600.00 deposit). We request the Board review their findings and continue to suggest that security deposits be broken down over 12 months in an attempt to ease the burden on the consumer and to also improve the chances of the distributor in collecting the deposit they seek.

Our same observations are made with respect to proposed *Section 2.4.25A*. Any additional deposit adjustments should be split into 12 instalments, as again they can be sizeable, as mentioned in the previous section.

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LIEN is a project funded by the Ontario Trillium Foundation and supported by ACTO and Legal Aid Ontario

The Joint Low-Income Representatives would also like to reiterate our recommendation that distributors should not be allowed to use disconnection and load limiters as enforcement methods where a low-income residential consumer has not paid a security deposit.

Section 2.7.2 (deferred payment agreements): The Board has approved allowing utilities to impose interest charges (or late payment fees) on receivable balances made subject to deferred payment agreements (DPAs). In the further proposed amendments, however, the Board proposes to allow utilities to wrap bills for current service (not delinquent at the time a customer seeks a DPA) into the DPA. To invite a customer to wrap a non-delinquent current bill into a deferred payment agreement, and then to charge that customer an interest rate on that current bill, seems misleading at best. To the extent that a customer incorporates a non-delinquent bill for current service into a DPA, the utility should delay the date for beginning to impose late fees on the DPA for one payment period. In this way, the customer will have, if he or she makes the first DPA installment payment on time, at least constructively paid the non-delinquent bill that would have been due without penalty for incorporating it into the DPA.

Moreover, to continue to charge a late fee on the unpaid balances of DPAs (when payments on such DPAs are up-to-date) at the same level as would be charged to arrears not made subject to a DPA ignores the fact that a utility is not engaging in collection activities directed toward those arrears. To the extent that interest is charged, that interest should be set at the same interest as is paid on customer deposits. The interest should compensate the company for any cost of money associated with the DPA, but should not compensate the utility for non-existent collection costs.

Section 2.7.5 (deferred payment arrangements): The Board proposal to deny a payment-troubled customer the right to enter into a new deferred payment arrangement until two years or more have passed since the customer entered into a previous DPA should be rejected. The proposed two-year limitation is neither good social policy nor good business policy.

From a social perspective, if a customer successfully completes his or her arrears payment agreement, but falls into arrears once again, why should he/she be denied an opportunity to participate in another agreement so that they can get their bill caught back up again? A large proportion of customers have incomes that fluctuate; indeed, it is not uncommon for customers to fall into arrears more than once in a two-year period. The purpose of an arrears management agreement is to reduce the number of disconnections; it serves no purpose to add a time limit for when customers may enter an agreement again, especially if they completed their agreement successfully the first time. Customers, who successfully complete their arrears payment agreement the first time, should not be punished if they require another agreement at some later date.

Moreover, from a business perspective, the two year limitation is counterproductive in two ways. On the one hand, the two-year limitation does not appropriately acknowledge

the role that DPAs play in reducing arrears and preventing bad debt. Customers in arrears should be encouraged to enter into payment plans, through which an immediate downpayment is made along with an agreement to make current bill payments along with regular periodic payment to retire arrears. To impede such DPAs is to encourage customers to continue to accrue arrears until they finally reach the two-year threshold at which time they may enter into a new DPA. Remember, the proposed rule applies not to customers who have broken a previous DPA, but rather to customers who have previously been *successful* at retiring their arrears through a DPA.

In addition, the proposed two-year limitation will have an adverse business impact on the first DPA as well. Imposing a two-year limitation from the date on which a customer first enters a DPA encourages customers to postpone entering into a DPA for as long as possible. Postponing entering into a DPA would be especially attractive to economically marginal customers, or to customers who know they have highly unstable incomes. Dodging utility collection efforts in an effort to postpone the day-of-reckoning would allow potential future unpaid bills to be made subject to a DPA, while immediately addressing the payment troubles would simply create reasonably foreseeable problems in the immediate (or intermediate) future.

It is generally accepted that addressing arrears earlier rather than later is beneficial to both the customer and the company. A customer who enters into a DPA, and successfully completes that DPA, should not be penalized for their diligence in addressing their payment troubles.

Sections 4.2.2 (g) & 4.2.4 (b) & 4.2.4 (c) (payment options): A large proportion of consumers do not have access to credit cards, especially low-income consumers. To limit, or to allow utilities to limit, payment exclusively to payment by credit card is therefore unreasonable. Instead, the Board should direct that distributors who attend a customer's property to execute a disconnection, must accept all forms of payment methods as they normally accept during business hours. To do otherwise, would be discriminatory.

4.2.2 (h) & 4.2.4 (c) (nonpayment disconnections): A service disconnection for nonpayment should not take place at an address whether or not the customer is at the premise, unless the distributor can 100% confirm that the customer has received notice of such disconnection action on the specified date and the distributor is able to verify and confirm the customer's knowledge of such proceedings. Confirmation of a client's knowledge could be confirmed by telephone, email, or by certified mail.

Section 4.2.2.4 (notice of nonpayment disconnection): The Board's proposed regulations provide that utilities seeking to implement a disconnection of service for nonpayment must provide certain information immediately preceding the disconnection of service. One piece of information, for example, is that customers may make payments to prevent the disconnection of service, but such payments may only be

made by credit card. (The Joint Low-Income Representatives explain elsewhere their opposition to limiting payment options in this regard.) When customers are facing the disconnection of service for nonpayment, one critical piece of information with which such customers should be provided is the minimum payment needed to prevent the disconnection. Rarely is it the situation where a customer must pay 100% of the outstanding bill to prevent the disconnection. In some circumstances, a delinquent customer would stop the disconnect process by paying the "collection amount." In most instances, a utility has established an internal "treatment amount" below which service will not be disconnected. Utilities should not be permitted to tell a customer that he or she is subject to disconnection unless the full bill is paid by a date certain when that statement is not true. In addition to the other information provided in utility disconnect notices, one important piece of information for the company to provide is the minimum payment needed to prevent the disconnection.

Section 4.2.2.7 (disconnections after payment assistance declined): The Board proposes to provide utilities "up to eleven days to act on the previous disconnection notice" in those instances where a third party agency declines to provide payment assistance. This language does not seem to accomplish what appears to be the intent of the regulation. The "up to eleven days" would appear to allow a utility to disconnect service on the day after a third party agency declines to provide assistance. Section 4.2.2.6, however, states that a utility shall suspend collection activity for 21 days. The interaction between these two time-lines appears to be at odds with one another.

Moreover, it would be inappropriate for a utility to proceed to disconnect service merely because one third party agency has found that a customer is ineligible for assistance (or declines to provide assistance for some other reason). It is not unusual for a need to arise to package several sources of payment assistance to address an outstanding bill. Moreover, it is not unusual for a customer, particularly a customer who has insufficient income to be able to afford to pay her arrears but who has too much income to qualify for all available assistance, to need to seek assistance from multiple third party providers before generating a payment, or a payment package, sufficient to address the arrears.

The Joint Low-Income Representatives believe that the time-line should work as follows:

- Within a designated time period after receiving a shutoff notice (10 days), a customer may seek third party assistance;
- Notifying the utility of the effort to seek third party assistance will cause the utility to suspend its collection activity for a time period to allow the effort to gain assistance to bear fruit (21 days – although we believe 30 days is optimal and preferable and is now the norm for the Winter Warmth Fund);
- Should the effort to gain assistance be unsuccessful, the customer should have a minimum period of time to make alternative arrangements (5 – 10 days);
- Upon expiration of that final time period, the utility shall have a period of time (11 days) within which to disconnect service if appropriate.

If a customer – during the 5- 10 day period to make alternative arrangements - contacts another social service agency that is willing to attempt to resolve the outstanding arrears, the OEB should consider providing another 21 day (or 30 day) suspension period. LDCs often refer clients on social assistance back to their caseworker to determine if Community Start-up Benefits could be accessed – and this determination can take upwards of 10 days.

Section 4.2.2.7 should be rewritten to implement the above-stated time line.

Implementation Time-Line

The Joint Low-Income Representatives urge the Board to implement some of the most important customer service protections immediately. In particular, suspending collection activity for 21 days would not require changes in utility information technology. Placing a "hold" on collection activity is accomplished by means of an intervention in the collection process which manually inserts a hold "flag" into a customer's account record. The Joint Low-Income Representatives reiterate that we continue to believe that 21 days is too short; 21 days does not take into account the fact that low-income customers do not generally have control over the scheduling of public assistance agencies; nor does the 21 day period take into account the fact that, particularly for the marginally low-income (who are not clearly eligible for social assistance), an appointment at more than one agency is required to determine available assistance; nor does 21 days acknowledge that consumers in rural areas have a tough time arranging transportation to gather the documentation they require and that consumers work, making it difficult for them to collect the documentation they require during business hours. The Joint Low-Income Representatives recommend a 30 day, rather than 21 day, suspension period for collection activities.

The requirement of the hold period is often even more critical in the summer months than in the winter months. During the warm weather months, some sources of assistance are simply not available (e.g., the Winter Warmth Fund or WWF), so it takes longer for customers to cobble together sufficient social assistance to pay a bill. In addition, non-winter programs such as the Emergency Energy Fund (EEF) require their own complete, thorough, customer assessment independent of any assessment performed by an agency such as those involved in the delivery of WWF. Accordingly, assistance cannot be generated with a "phone call," but rather requires the customer to go through an in-person application and interview process. Based on these observations, the Joint Low-Income Representatives urge an immediate (defining "immediate" as perhaps June 1, 2010) start to the 21 day (preferable 30 day) suspension period.

Aside from the suspension period, the Joint Low-Income Representatives urge the Board to require each Ontario utility to submit a list of the new customer service protections that could ***not*** be implemented before the start of the 2010/2011 winter

heating season. The Board should direct the implementation of as complete a set of protections as possible, unless infeasible (not merely “difficult” or “impractical,” which often relate to a utility’s choice of resource commitments rather than true impracticability), prior to the start of the winter heating season.

Currently, many of the collection centres for the larger electricity distributors already have the administrative ability and capacity to set up special repayment arrangements, rolling a significant amount of arrears into one lump sum which is repaid over 6 months to a year - while the customer continues to receive a regular bill for their electricity service. Also, many electricity distributors are now collecting security deposits in payments spread over six months.

Thank you for the opportunity to provide these additional comments on the further proposed amendments to the Distribution System Code, the Retail Settlement Code, and the Standard Supply Service Code. We recognize that the Board has postponed any efforts to promulgate regulations that respond to the circumstances of low-income customers. The Joint Low-Income Representatives look forward to working with the Board to implement a reasonable, and necessary, low-income assistance program, along with customer service regulations that recognize the special needs of low-income customers.

Sincerely,
Low-Income Energy Network per:

Original signed by,

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