EB-2007-0722

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.O.15, Sch. B;

AND IN THE MATTER OF the Board's consultation with respect to Customer Service, Rate Classification, and Non-Payment Risk.

SUBMISSIONS

OF THE

SCHOOL ENERGY COALITION

1. These are the submissions of the School Energy Coalition with respect to the Board Staff Discussion Paper entitled "Electricity Distributors: Customer Service, Rate Classification, and Non–Payment Risk" (the "Staff Paper").

2. In structuring these submissions, we have broken the subject down into the six main areas used in the Staff Paper. In each of those areas, we have provided our overall comments, and then provided our answers to the specific questions posed by Board Staff. Our answers to the specific questions should be read in the context of our overall comments in each area.

3. We have started with a general section dealing with one over-arching issue identified by Board Staff, ie. the level of prescription the Board should apply to individual LDC practices. Our submissions in individual areas generally follow the same philosophy as that outlined in that section.

<u>Level of Regulation of Practices</u>

4. School boards often deal with several distributors, and so are among those particularly affected by diversity of practices amongst LDCs. In general, that diversity is not a day to day problem, but there are circumstances in which individual LDCs operate in a manner that is out of the norm, and should be constrained.

5. In our view, the Board's approach to regulating operating rules such as those under consideration in the Staff Paper should follow three rules:

   a. Where an operating rule requires balancing of the interests of groups of ratepayers, or the interests of the utility and the ratepayers, and is not materially influenced by local conditions, the Board should establish a standard rule, and LDCs that wish to depart from that rule should seek a modification in their rebasing application. Those modifications should be granted only in the clearest cases.

b. Where an operating rule is or could be materially influenced by local conditions, the Board should establish guidelines or limits for rules that LDCs can fashion for Board approval, and should also provide a default rule that the LDC can adopt without further discussion.

c. In every other case, the Board should provide guidance as to appropriate practices, but should allow individual LDCs freedom to adopt any reasonable practice. At the same time, ratepayers should be able to raise the issue before the Board at a rebasing application, if they are adversely affected.

6. On the first of those three rules, a good example might be the number of days allowed before a customer is charged a late payment fee or is disconnected for non-payment. One side of that issue is fairness to the customer that is having difficulty paying. The other side is the affect on working capital requirements and bad debt experience, and therefore on the rates for all customers, of leaving non-payment too long before an LDC is able to take action.

7. With respect to the other two rules, we believe that there will be fewer instances when they will arise, but when they do the ability of the local utility to adapt general principles to their local conditions, and to their individual resources, should not be unduly restricted.

Bill Payment

8. ***Due Date.*** In general, it would be more convenient for school boards if the due dates for bill payment were consistent between LDCs. However, in our view prominently setting out the due date on the customer bill solves that problem from an administrative point of view, as long as the minimum time to pay is a reasonable one.

9. We believe that the Board should mandate a payment period for all LDCs, so that the interests of slow payers and prompt payers are balanced. School boards normally adapt their payment methods to the rules of the game, and will therefore pay when required. We suggest that a payment period of sixteen business days is long enough to respond administratively to a bill, and short enough to minimize the working capital costs and bad debt risk that flow out of the time allowed for payment.

10. We would answer the Board Staff questions in this area as follows:

a. **Q1**: No submissions.

b. **Q2**: A longer payment period increases required working capital. If distributors are given the freedom to extend their payment period, their working capital should be assessed as if the shorter period were in place.

c. **Q3**: No submissions.

d. **Q4**: No submissions.

e. **Q5**: No submissions.

11. ***Allocation of Payments between Energy and Non-Energy Charges.*** In our submission, utilities should have no discretion in the allocation of payments received from customers. If the customer stipulates that they are paying a particular item on the bill, that should be the application of the funds. In any other case, the payments should be allocated to regulated energy charges first, and only when all regulated energy charges, current and past, have been paid in full, should any funds be applied to any other charges.

12. There are two reasons why utilities should not have a discretion in this area.

13. First, utilities are given the limited ability to operate unregulated businesses, but only to the extent that those businesses do not adversely affect their regulated business and its customers. If utilities are allowed to allocate payments pro rata, for example, the result will inevitably be that bad debt expense for the regulated business will go up, and the bad debt expense for the unregulated business will go down. This is unfair to the customers of the regulated business, particularly those who have good payment records and thus bear a cost (bad debt expense) that they do not cause. By allowing allocation of funds to non-energy charges, the Board would be in effect requiring the customers of the regulated business to bear part of the bad debt costs of the unregulated business.

14. Second, it is contrary to good public policy and harmful to competitive markets if utilities can use the leverage created by the electricity bill to compete unfairly in unregulated markets. For example, if a utility provides unregulated CDM services, it is competing with private companies in the marketplace. It is in the interests of all customers to have robust competitive markets for these services, keeping the costs down and the availability of these services high. If the utility can use its higher leverage on collections to improve its profitability (or reduce its prices), that is unfair competition and should not be allowed by the Board.

15. Utilities argue that they need to have the leverage of the utility bill in order to offer billing services to their own shareholder municipalities and others. We think it is unlikely that municipalities, for example, will cancel their billing contracts with their local LDC, but if that does happen, and a competitive billing company captures the contract, by definition that is because the LDC could not win in the marketplace when forced to compete fairly. It is therefore the right answer.

16. The easiest way to see this is to look at a more extreme example. Why can't an LDC seek permission from the Board (a licence exemption, perhaps) to bill its municipal shareholder's property taxes on the electricity bill, on the basis that the municipality will pay well for the service? The LDC's selling feature would be the ability to turn off the electricity if the property taxes aren't paid. Is this good public policy? What if it is not billing property taxes, but billing car lease payments, or health club monthly membership fees?

17. In our submission, the "we can't compete if we don't get an unfair advantage" argument is not sustainable. As we see from the *reductio ad absurdem* above, it leads to ridiculous results if the

principle is accepted. We also note that accepting this argument would be inconsistent with the Board's many decisions on the relationship between regulated and unregulated businesses in the gas sector.

18. We would answer the questions of Board Staff on this subject as follows:

    a. **Q6**: There may be such limitations. In the event that they exist, they should be remedied at the expense of the unregulated business activities, since a regulated business operating alone would not have to worry about this allocation issue, or the technical requirements to deal with it.

    b. **Q7**: No additional submissions.

    c. **Q8**: Not applicable. In our submission, there are no circumstances in which it is fair to allow distributors to allocate any funds to unregulated bills until the regulated component of the bill is completely up to date.

    d. **Q9**: This may raise the same technical issues as are the subject of Question 6, and for the same reasons they should not be a barrier to a proper policy. In addition, we note that if customers are not allowed to stipulate the allocation, the Board would be allowing the contractual relationships between customers and unregulated service providers (such as water and sewage) to interfere with the contractual relationship between the customer and the LDC. If a customer wishes to make a payment it is contracted to make to the LDC for regulated services, appropriation of those funds to cover amounts owing to a third party would be directly contrary to the contractual relationship between customer and LDC.

19. ***Correction of Billing Errors.*** School boards have a particular concern about billing errors, since the amounts in their case can be substantial, and billing for past periods can create a situation in which there is no current budget provision to deal with the backdated payment request. The current rules in the RSC are, in our view, prejudicial to customers, and should be changed.

20. We propose that the Board change the current rules in four ways:

    a. The rate of interest that should be paid by the distributor on a refund of an overcharge should be their weighted average cost of capital. This is the only way to ensure that the distributor gets no net benefit from the overcharge. The current rule, which uses prime rate, is fair to the customer, but gives the distributor a potential net benefit. This is inappropriate, so the rule should be altered to ensure fairness at the distributor's end, even if it means that the customer in some cases (but not all) gets higher interest than the cost they have incurred.

    b. Backbilling of amounts undercharged should be limited to six months unless the customer deliberately or due to gross negligence caused the error, in which case it should be the maximum allowed by law (presumably six years in most cases). This is consistent with the practice in many other jurisdictions, and is fairer to the customers. For school boards in particular, it means that backbilled amounts can be dealt with in the current year, and do not cross over a budget year, with all the problems that can create under provincial government funding rules.

c. Backbilled amounts should be payable over the same period of time, ie. up to six months. Interest should be payable at the utility's prime rate, commencing on the due date of the bill on which the backbilled amount first appears. There should be no interest for the period of the error, unless the customer caused the error. This rule would be consistent with the standard practice for corrected billing errors in the private sector. (We note that this is not analogous to back-billing for income tax not paid. Our income tax system is a self-assessment system, in which the obligation is on the taxpayer to calculate and pay the correct amount. In the case of utility billing, the obligation is on the utility to calculate and bill the correct amount.)

d. Overcharges should be paid within two billing cycles, with accrued interest as outlined above. In our view, the simplest approach is to provide that on the first billing cycle, the customer should have a credit, which can reduce the bill to as low as zero. If there is still an amount to be repaid, it should be applied as a credit in the second billing cycle, and if there is still an amount to be repaid, it should be remitted by cheque to the customer at the time of delivery of that second bill. The customer should be in funds for the entire refund, plus interest, at the time of the second bill.

21. In this area, we believe the Board should establish a set of prescriptive rules consistent with those above, and compliance with those rules should be mandatory for all LDCs.

22. We would answer Board Staff's questions in this area as follows:

a. **Q10**: We agree in principle with Board Staff's option 3. This balances the administrative simplicity of a billing credit with the need to ensure that the customer receives their money in a timely manner. See our comments above.

b. **Q11**: This question is less important if the customer is required to pay a reasonable rate of interest from the time it is billed for the additional amounts. Customers will then be incented to pay earlier, and it is thus less problematic if a period of time – such as six months as we have proposed – is allowed for repayment.

c. **Q12**: The use of option 3 as outlined above would essentially eliminate this issue, since it effectively establishes a "threshold" based not just on the customer's class of service, but the actual level of their use within the class. The threshold is, basically, two months' bills, and the combination of credit and cheque ensures the simple but effective implementation of that threshold.

d. **Q13**: See our comments on Q11 above.

e. **Q14**: Please see our comments above on proposed interest rules, which if adopted would increase the level of symmetry but still leave the system appropriately assymmetrical.

f. **Q15**: Yes. Interest should be payable, at the distributor's weighted average cost of capital, from the time the payments should have been made originally. In our view, this is no different than failing to pay your taxes on time. If you don't pay, CRA will charge interest from the time you should have paid. The same is true here. The person responsible for getting the calculation right should pay interest on the amount by which they were wrong.

g. **Q16**: We believe that six months of backbilling is the maximum that should be allowed in the absence of customer fault. See our comments above on this issue.

23. ***Equal Billing.*** The issue of equal billing does not directly impact on school boards in most circumstances, but it does impact on the cost of distribution. Equal billing should reduce bad debt experience and minimize working capital requirements. We therefore believe that all utilities should not only offer, but promote, this billing option to all customers unless there are good local reasons not to do so.

24. Consistent with our submissions on Allocation, above, we do not believe it is appropriate for a utility to discriminate in its offerings between standard supply and retailer-supplied customers. Fair competition in the marketplace is in the interests of all customers.

25. We would answer Board Staff's questions as follows:

    a. **Q17**: Yes. In our view, this is a situation in which the Board could usefully establish a default equal billing structure that meets the general policy objectives, but allow each LDC to either adopt that default structure, or establish its own equal billing approach that meets the general objectives in a different way. By way of example, the requirement that the customer sign up for pre-authorized payments in order to qualify for equal billing is a good one, and LDCs should be free to add that requirement on top of a default structure.

    b. **Q18**: No additional submissions.

    c. **Q19**: No additional submissions.

Disconnection for Non-Payment

26. This is an area that rarely impacts school boards, because they usually pay their bills as they come due. We therefore have limited our submissions to some narrow areas, and we have not dealt in detail with all of the issues raised by Board Staff. These are areas that are for the most part of interest to residential and small commercial ratepayer groups (VECC, CCC, BOMA, LPMA and OFA, for example), and of course to the distributors as well. We are concerned about two main areas:

    a. The potential for customers with a good payment history to be caught inadvertently in a disconnection situation.

b. The impact on overall distribution costs, and costs allocated to each class, of a thoughtful approach to disconnection.

27. For school boards, it is highly unlikely that they would ever be in a disconnection situation unless there was an administrative mixup, or there was a dispute with the utility about the amount owing. The same is probably true of most MUSH sector customers, and the principle can be broadened to include many creditworthy customers, on a case by case basis. This leads us to propose the following four rules that we submit should be included in any set of disconnection rules that the Board establishes:

    a. Prior to initiating any disconnection process, the utility should review the payment history of the customer. If the payment history is good, the utility should make personal contact with the customer, preferably by telephone, <u>prior to the initiation of any disconnection process</u>, to identify the reason for non-payment. Most utilities already follow this kind of procedure, and any who do not should be required to do so.

    b. If there is an amount in dispute between the utility and the customer, no disconnection process should commence until the dispute has been properly resolved, whether through negotiation or through arbitration or another third party decision-maker. If a dispute is in the courts, the customer should be allowed to provide security for the disputed amount, so that the distributor is not at risk, and no further collection action should be allowed until the matter is resolved.

    c. Certain categories of customers, on which the consequences of disconnection are particularly severe, should be exempt from disconnection except in circumstances in which there is a deliberate and active <u>refusal</u> to pay without a reasonable basis for the refusal. Schools should be included in this category, as should hospitals and most other MUSH sector customers.

    d. No customer should be disconnected unless, after the disconnection notice has been sent and received, the utility has made a reasonable effort to make personal contact with the customer.

28. On the second issue, we are concerned that different distributors have different philosophical approaches to disconnection. For some distributors, the disconnection power is a lever to force recalcitrant customers to pay. For others, it is a method of stopping a cash drain before it gets serious. For still others, it is a method of getting the attention of a delinquent customer so that the payment pattern can be rehabilitated and the customer is no longer a problem.

29. It is undoubtedly true that all three of these approaches will arise to some extent for every distributor, and it is not possible to exclude any of them. However, in our view it is in the interests of all of the customers for the third focus – rehabilitation – to have the highest importance, then forced payment, then cutting losses. Because distributors operate under an obligation to serve, it is in their interests to have as many good customers, who pay on time, as possible. Allowing disconnection to be a method by which distributors can distinguish between the customers they want, and the ones they don't want, is not only bad policy, but not particularly

productive. Instead, a focus on working with customers to help them be "good" customers should be adopted by every utility.

30. We therefore believe the Board should specifically communicate this focus to the distributors in the DSC, and should require that all disconnection policies of LDCs, whether mandatory or discretionary, be consistent with this primary goal.

31. Although we discuss this as a matter of philosophy, it is a practical reality as well. For example, whether or not a customer ends up being cut off, the utility should make every effort to determine the reason for non-payment, and the collections personnel should be trained in methods of helping customers improve their credit patterns. Equal billing, for example, should be brought to the attention of customers, and options such as weekly payments on account should be explored. LDCs should be encouraged to be active and innnovative in seeking ways of making all customers "good" customers. Many do this already. All should be urged to do so.

32. We would answer the questions of Board Staff in this area as follows:

    a. **Q20**: No additional submissions.

    b. **Q21**: No additional submissions.

    c. **Q22**: No additional submissions.

    d. **Q23**: Yes. See our submissions above on this point.

    e. **Q24**: No additional submissions.

    f. **Q25**: No additional submissions.

    g. **Q26**: No additional submissions.

Management of Customer Accounts

33. School boards are sometimes landlords and, on some occasions, have rental space in which they are tenants. We believe that the Board's rules in this area should follow the court cases, which essentially apply common sense to these situations. This would lead, it is submitted, to three simple rules:

    a. Only a person who is seeking to have service provided on their own behalf, and is agreeing to be contractually bound to pay for it, should be allowed to establish a service. A landlord should not be responsible for service to their premises, unless they agree to accept the service. A tenant should equally not be responsible for service to the premises they rent unless they agree to accept the service. The only exception to this is where a person has duly authorized another person to contract for electricity service on their behalf (for example, a landlord getting an authorization from a new tenant and then submitting a request for service to the LDC in the tenant's name). Provision of service is a matter of contract law, and there is no reason for either the Board or any LDC to rewrite the rules of contract law. They are already well understood and thoroughly tested.

b. Because of the risk of property damage, the utility should give timely notice to a property owner if a service in the name of a tenant is to be disconnected, either for non-payment or for termination of the service. The landlord can therefore elect to take new service in its own name, or cease to have electrical services to the premises. The same should hold true if the service being disconnected is in the name of the landlord; the tenants should be notified, since they may be adversely affected by the disconnection. The tenands could then elect to take over the service in order to protect their interests.

c. The onus should be on the distributor to ensure that the person they are dealing with, whether over the phone, on the internet, or in person, is the person who will be contractually bound to pay them for the electricity service. This is a normal business risk. The Board should not have to provide rules or even guidance on this, since it is a basic aspect of running a business. It follows from this that, if the distributor fails to properly identify a new customer, then the distributor risks being unable to collect payment for the services provided. In the event that distributors wish guidance on what identification methods should be used, it would be more appropriate for their industry association, the EDA, to establish a model practice guideline, rather than the Board.

34. We note that many utilities already follow the three rules noted above, and that many private sector businesses have similar or analogous practices when they supply services to homeowners. They are just good business practice. We believe these rules should apply to all distributors.

35. We would therefore answer the questions of Board Staff in this area as follows:

a. **Q27**: No additional submissions.

b. **Q28**: See our comments in 33(b) above.

c. **Q29**: Except where the person who made the request for service is duly authorized by the person whose name is on the account to contract in their name, the distributor should not seek to make a person liable under a contract to which that person is not a party.

d. **Q30**: The Board should not stipulate rules in this area, only confirm that the distributor who fails to identify their customer properly is at risk for non-payment. If a model practice is required, the distributors should do it themselves, for example through their industry association.

<u>Definition of Demand</u>

36. Schools are in a fairly unique situation relative to the customer classification issues, because schools generally straddle the line between GS<50 and GS>50 classes. Further, since there is such a wide variation in the fixed charges of LDCs for each of those classes, and because demand levels and energy levels do not always have a fixed correlation, a school close to the line might be

better off being in the energy-billed class in one franchise area, and in the demand-billed class in another franchise area. The result is that there is no one set of classification rules that will generally result in schools paying less. While in general moving to the higher rate class involves a bill increase, that is not always the case in individual situations, and we have seen a number in which substantial decreases have arisen through moving to demand billing.

37. What is true, however, is that the classification of a school into GS<50 or GS>50 will in most cases carry with it a substantial difference in annual distribution bill. Depending on the LDC, it is possible for customer classification practices to account for a 50% or more increment or decrement to the distribution bills of the school boards, and across the province the potential impacts could be as high as $5 million plus or minus.

38. We also note that we do not have reliable power factor information for enough schools in enough different franchise areas, and so are not in a position to assess whether the use of the 90% of kVA rule is materially harmful to schools. Our comments below are based on the principles at play, but we will recommend later that the Board order the gathering of more detailed empirical information so that a more reliable decision on these issues can be made.

39. ***Billing Demand.*** Board Staff has suggested that it is desirable to have "greater clarity" around how billing demand is defined. In our view, the principle should be stated more bluntly than that. These are regulated distribution rates. No part of the calculation of those rates should be left to the discretion of the distributor. Both customer and distributor are entitled to know exactly how the rates approved by the regulator are to be calculated, and each should be in a position to replicate the calculation using nothing more than the Board's order (without any additional judgment or discretion).

40. We note that it is not clear to us why Toronto Hydro should be allowed to charge a school with 100 KW of monthly demand on the basis of kVA instead, presumably 110 kVA or higher. This appears to us to be an exception to the Board's principle that all utilities should be using the same rate classes. Classes based on kVA measured demand are simply not the same as classes based on KW measured demand. While some customers will do better and some worse under kVA, it is clear that on average customers pay more per KW if they are billed by kVA than if they were billed by KW in the first place.

41. However, we assume there was originally a reason for different treatment for Toronto Hydro, and further a reason why the thresholds in the rate classes were not adjusted to reflect the different billing determinant. We believe that it would be useful for the Board or Board Staff to set out why the difference exists, and whether in principle other LDCs could seek similar treatment.

42. Subject to our comments on Toronto Hydro's special situation, above, we believe that it is more appropriate for billing demand to be calculated based on the actual measured KW, not a formula translated from kVA to KW (or vice versa, for that matter). The only exception may be higher demand customers (>5MW), where it may be possible to directly measure the customer's kVA demand, and bill on that basis. If that is to be the case, we believe that the utility's tariff sheet should specify whether the demand is measured by kVA or by KW. In no case should demand be

measured one way, and then converted by formula to the other independent of the customer's actual power factor.

43. We would therefore answer the questions of Board Staff as follows:

    a. **Q31**: The importance of kVA is in the inclusion of the power factor in the calculation. If it is simply assumed as an average, there is no value to using that billing determinant, and the more commonly used KW is a better choice. It is only where kVA is measured directly for the individual customer that it has any value, and it is submitted that direct measurement is only useful for large users.

    b. **Q32**: Yes, for at least customers up to 5 MW of demand. Since there may be significant power factor variability (and customer control of the power factor) at the large user level, there is some value in considering measuring kVA rather than KW for those customers.

    c. **Q33**: None, except as noted above.

    d. **Q34**: No. For large users, see our comments above. For GS>50<5000 customers, if the Board is going to add power factor as a billing determinant, two things should occur. First, power factor must be directly measured. Second, the Board must determine as a matter of cost allocation and rate design (and in the existing Board processes to which those issues relate) whether this is a metric for which customers should make a rate payment, and if so how.

44. We note that there is a significant degree of uncertainty for distributors as a result of billing by KW while operating their distribution system on the basis of kVA. In our view, the Board needs additional empirical data on this disjunct, so that decisions on billing determinants and rate classification, and for that matter on utility recovery of revenue requirement and the risks associated with it, can be made based on better information. We have not been able to determine, in our review of publicly-available information, what data the Board already has on power factors and how they impact distributors.

45. ***Periodicity.*** Frankly, we do not understand how LDCs would have the discretion in how to allocate customers to a specific class. The test should be objective, and a customer should know at all times exactly what test must be met. The notion that some distributors use twelve month average peak monthly demand, and others use highest peak demand over the twelve month period, obviously quite different numbers, is an unpleasant surprise.

46. We agree with Board Staff that the rolling 12-month average of monthly peak demands is the best approach to measure whether a customer is in one class or another. There would appear to be no logical reason why the Board would choose an inherently more volatile approach, in which one month above the threshold puts the customer in the higher category. Consider a school that has an electrical problem that creates a substantial power drain for a short period until it is identified and fixed. Under the highest in the 12 months rule, that school could potentially pay significantly higher distribution bills for the next twelve months because of a fifteen minute problem. This does not appear to be a sensible approach.

47. Some may argue that it is the absolute peak demand (the highest ever required by the customer) that governs the size of the equipment used to supply the customer. This is rarely true, as evidenced by the fact that when customers have a short-term bump in peak monthly demand, the utility may in some cases move them into a higher rate class, but you almost never see the utility crew showing up to instal larger capacity gear. Within very large ranges of tolerance, the equipment used to supply the customer is not different depending on whether the customer's peak demand is 10 KW or 100 KW. There are in fact schools all over the province, with widely varying monthly demand levels, served by essentially identical equipment.

48. We would therefore answer Board Staff's question on this point as follows:

    a. **Q35**: We believe that the twelve month rolling average of monthly peak demands is the more appropriate choice, for the reasons set forth above.

<u>**Classification and Reclassification of Customers to Classes**</u>

49. ***New Customers.*** Eighty to 150 new schools are built each year in the province of Ontario, and all have to be assigned to rate classes. Under the current rule in the PBR Handbook, the distributor has an unrestricted right to assign a new customer to a rate class, with general principles to guide it, and with no appeal by the customer. We therefore agree with Board Staff that codifying the new customer classification rules would be a welcome improvement.

50. Staff have provided two approaches. We see pros and cons of each, but we do not feel we can add much to what the Board already knows about this issue at the generic level.

51. Schools are in a special situation, because with a few exceptions electricity demand and usage for a school is predictable based on aggregate floor space and planned enrolment. We believe that there may be other categories of customers for whom similar metrics can be used to predict with considerable accuracy the electricity demand and usage for a new customer.

52. We therefore recommend that the Board direct Board Staff, working with distributors and customer groups, to develop a set of customer classification benchmarks that will apply to pre-determined types of customers (apartment and/or office buildings, schools, etc.). Just as the Board has done in other areas (e.g. the TRC Guide), the Board could provide distributors with a set of guidelines that would reduce the potential for customer classification to be contentious.

53. We would answer the questions posed by Board Staff as follows:

    a. **Q36**: See our comments above.

    b. **Q37**: No additional submissions.

54. ***Customer Reclassification.*** One of the biggest issues in customer reclassification is the rules for assigning classes, discussed earlier in these submissions. Assuming that the rules become clearer,

with less discretion left in the hands of the distributor, that leaves in our view four key questions relating to reclassifications:

a. Who has the responsibility to ensure that each customer is in the correct class?

b. With what frequency should customers be re-assigned to new classes?

c. What rules should apply to customer requests for reclassification?

d. What notice requirements should be stipulated for reclassifications?

55. The first question is one that is often assumed, and in our view assumed wrongly. In our view, each distributor has a set of rules, established by the Board, governing how much it can charge to each customer for distribution service. Those rules, set out in the Board-approved tariff and in various ancillary documents, are not optional. They are mandatory.

56. It follows, therefore, that a distributor is only allowed to bill a customer in compliance with those rules. There is nothing in those rules suggesting that the distributor only has to follow the rules at the request of the customer. The distributor has a positive obligation at all times to ensure that its bill to any customer is in compliance with the Board-approved tariff and related rules.

57. It is therefore submitted that the Board should require LDCs to engage in active quality control procedures designed to ensure that their customers are being billed in the correct class (and, for that matter, at the correct rates and with the correct calculation methods), and any classification errors are corrected promptly. It should not be the responsibility of the customer to monitor bills for utility errors. It should be the responsibility of the utility to ensure its bills are right in the first place.

58. We note that many distributors do this already, but not all. We have seen numerous examples where schools have relatively low demand levels but are being billed in the GS>50 class. This is not intentional. It is inadvertence. Distributors should all do what some do already: proactively identify and solve these classification problems on their own initiative. They have the data, and they have the expertise, to calculate distribution bills. The customer has a more limited ability to do so, and should not be given any part of that responsibility.

59. The second question is tied closely to the issue raised in Board Staff question 35, dealing with periodicity of demand calculations. If, as we have recommended, the twelve month rolling average of monthly peak demands proposed by Board Staff is used, this reduces the volatility of classification, and thus goes a long way towards solving the question of how frequently classifications should change.

60. However, there will still be situations in which a customer’s demand is near the threshold, and the rolling average goes above and below the line fairly often. We have seen a number of schools in which this would be the case, for example.

61. We believe that the solution to this is to provide that a customer in the GS<50 class should remain in that class unless their average peak demand figure exceeds 100 KW. If it does, then they would be re-assigned to the GS>50 class until such time as their average peak demand figure is less than 50 KW. There may still be a few highly volatile demands that are changed often, but it would be relatively rare.

62. We note that there are proposals to limit changes to once a year. This is inappropriate for two reasons. First, there is no reason to believe that a calculation done annually will be any more likely to reflect underlying usage pattern than a calculation done monthly. In effect, the rolling average is replaced by an annual average for re-classification purposes, which does not appear to have any logical basis. Second, a once a year rule would be inconsistent with the ability of customer or distributor to initiate a change because of a basic change in operations.

63. Conversely, the “notch” approach that we have proposed is consistent with the Board’s RP-2000-0069 principle, and is a common technique for dealing with step functions where they produce unwanted results at the threshold. It is used, for example, in some taxes, and is common in business transactions. By creating a zone of stability related to the threshold, this approach would naturally reduce the frequency of re-classifications, and would ensure that the frequency is set, not as an arbitrary period, but based on the actual changes in usage pattern of the individual customer.

64. In addition to the re-classification rule suggested above, we believe that a distributor or a customer should at any time be able to approach the other to discuss the impact of future changes in the customer’s demand on the choice of appropriate rate class. Where a distributor, for example, is aware that a factory is building an expansion, it should have the right to seek information on future demand, and to re-assign the customer as if the customer were a new customer (and following essentially the same rules). The same should be true if a customer is aware that its demand will drop in the near future.

65. Although we have noted above that the primary responsibility for ensuring that classifications are always correct lies with the distributor, customers should of course remain able to initiate a review. In answer to the third question we have posed above, we believe that para. 10.3.9 of the PBR Handbook should be retained unchanged.

66. The fourth question deals with notice. Staff has proposed a threshold for notice. We disagree. We believe that if a distributor plans to change the rate class for a customer, it should be required to provide advance notice to the customer, with the data on which the change is based, so that the customer can review the proposed change and point out any issues it might have with it. We believe that this kind of routine communication is likely to reduce the number of complaints that arise due to reclassifications. As with many areas of customer relations, clear, timely and open communications will usually reduce disputes between utility and customer.

67. We would therefore answer the Board Staff questions as follows:

    a. **Q38**: See our detailed submissions above.

b. **Q39**: The selection of the billing demand definition certainly reduces rate class volatility, but as we have noted above there will still be situations in which frequent reclassification events will arise naturally. The solution we have proposed above is a "notch" provision between GS<50 and GS>50 classes, which will naturally reduce the frequency of re-classifications. It is based on the principle outlined in para. 3.5.7 of the RP-2000-0069 Decision.

c. **Q40**: Yes.

d. **Q41**: No. We believe this can be left to distributors and their customers to deal with on a case by case basis.

<u>Management of Customer Non-Payment Risk</u>

68. The methods by which distributors protect themselves from bad debt in a proactive way include several techniques currently built into the DSC. Generally speaking, those rules are not relevant to school boards, who pay on time and thus are not part of the problem.

69. Recently we have noted two parts to this issue that do concern school boards:

    a. In many cases, school boards are among the largest customers of an LDC. This raises the question of whether the LDC has the discretion to require special security, or accelerated billing, or other risk mitigation steps, from school boards.

    b. While we support the use of accelerated billing to reduce risk, in many cases it could have a material impact on working capital requirements.

70. On the first point, it is submitted that LDCs should not have the discretion to require risk mitigation measures, including accelerated billing, where a customer has a demonstrated payment record and the LDC has no legitimate reason to believe that non-payment is a material risk. In this context, we believe that MUSH sector customers should, with very few exceptions, simply be exempt from the imposition of risk mitigation measures. If a distributor doesn't have a true need for the measure, it should not have a discretion to impose it anyway.

71. The second point is a little more difficult. The Board currently uses a 15% working capital level, which has been shown in a number of cases to be on the high side. If LDCs shift their largest customers to accelerated billing, logically their working capital needs are reduced because their lags will be considerably shorter for material amounts of their receivables. This affects the rates of all customers, since working capital would, without further adjustment, be higher than the actual cost of service requirement.

72. It is submitted that, prior to amending the DSC to allow for accelerated billing, the Board should establish a formula to reduce working capital, and therefore rates, based on any accelerated billing implemented by the utility. While it would be better if this were done in the context of an overall review of working capital for all LDCs, we believe that a simple formula to adjust lags and therefore working capital percentage, based on the size and frequency of accelerated bills, can be

identified as a transitional measure. In our submission, accelerated billing should not be a method by which LDCs indirectly improve their ROE through excess working capital provisions.

73. We would therefore answer Board Staff's question as follows:

    a. **Q42**: Yes. However, this change should not apply to customers who have negligible non-payment risk, including school boards. Further, this change should only be implemented in tandem with a change to the working capital formula to reflect the reduced working capital that results from accelerated billing.

Additional Matters

74. We thank the Board for allowing us to participate in this consultation, particularly as we sought and were granted late status, and we hope that our input is of assistance to the Board.

75. The School Energy Coalition requests that the Board order payment of our reasonably incurred costs of participation in this consultation.

Respectfully submitted on behalf of the School Energy Coalition this 21st day of April, 2008.

SHIBLEY RIGHTON LLP

Per: ____________________
Jay Shepherd