



Advocacy Centre for Tenants Ontario
Centre ontarien de défense des droits des locataires

April 30, 2008

Ms Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St., 27th floor
Toronto, Ontario M4P 1E4

Dear Ms Walli,

Re: **Staff Discussion Paper on Electricity Distributors: Customer Service, Rate Classification and Non-Payment Risk (Board File No.: EB-2007-0722)**

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO) to provide comments for consideration on some specific issues raised in the above-mentioned staff discussion paper, focusing on the interests of low-income consumers.

ACTO is a specialty legal aid clinic with a province-wide mandate, funded by Legal Aid Ontario to engage in test case litigation and law reform advocacy to improve the housing situation of the province's low-income residents. ACTO is also a founding member of the Low-Income Energy Network (LIEN), formed in 2004 to raise awareness of the impact of rising energy prices on low-income consumers and to work with policymakers and the utility sectors on solutions to energy poverty. We use the term energy poverty to describe the disproportionate burden of electricity, natural gas and other utility costs on low-income households which reduce the funds available for rent, food, clothing, transportation, medicine and other basic necessities.

General comments

ACTO, as a founding member of LIEN, has been advocating for a strategy to address energy poverty in Ontario that involves a province-wide, comprehensive approach to low-income energy conservation and assistance. A rate affordability program is one of the key components of our strategy, along with permanent, adequately-funded low-income energy conservation/efficiency programs at no cost to participants and with as extensive measures as practicable to provide deep reductions in energy use and costs.

425 Adelaide St. West, 5th floor, Toronto, Ontario M5V 3C1
Phone: 416-597-5855 1-866-245-4182 Fax: 416-597-5821

The Tenant Duty Counsel Program is a project of ACTO

LIEN's advocacy also includes the promotion of terms and conditions for utility service (e.g. consumer security deposit requirements, payment time-lines and plans, disconnection and reconnection policies, termination moratoria) that are in the best interests of low-income consumers, and:

- will not add to the service costs and penalize low-income consumers who are experiencing payment difficulties,
- will assist low-income consumers in accessing and maintaining essential utility service.

While ACTO has had, and welcomed, opportunities to comment on some aspects of LDCs' customer service terms and conditions with respect to the interests of low-income consumers in various consultations, hearings and proceedings at the Board (including this one), we believe a better approach – consistent with a comprehensive strategy to address energy poverty – is for the OEB to undertake a review of, and stakeholder consultation on, LDCs' customer service terms and conditions with the goal of producing a holistic package of key consumer protections for low-income households that LDCs would be required to adopt and implement.

There is already a precedent for the OEB taking on the type of review ACTO is recommending, namely the Board initiating the formation of an Avoiding Electricity Disconnections Work Group and hosting its first meeting on May 24, 2005 at the OEB offices. The impetus for the formation of the Working Group arose in the course of the OEB's proceeding on Unpaid Electricity Charges (RP-2004-0166) where the Board panel heard about communication barriers between social service agencies and LDCs with respect to successfully resolving electricity service disconnection for arrears situations involving low-income consumers. The Terms of Reference for the Working Group that were drafted by the Board stated:

The Board is hosting a kick-off meeting so that distributors and social agency representatives can map out, and commit to, a process for the joint development of a set of province-wide common practices to deal with issues specific to low-income customers of electricity distributors.

The Working Group was a voluntary project taken on by interested stakeholders and, although it did make some progress on the development of a protocol and related information materials, unfortunately disbanded before completing its work.

It is in the context of ACTO's above recommendation to the OEB to undertake a review and stakeholder consultation that we make the following interim comments on the staff discussion paper.

Bill payment

Late payment charges that disproportionately and adversely affect low-income customers can be a barrier to accessing electricity service as they add to service costs and increase the risk of disconnection if low-income households are not able to make full bill payments.

ACTO recommends that there should be a mandatory exemption or waiver of late payment charges for low-income consumers. A late payment fee waiver is also a component of the basic consumer protections in the LIEN proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households*.ⁱ

Allocation of payments

ACTO agrees with the Vulnerable Energy Consumers Coalition (VECC) observation in its comments to the discussion paper that the Board's jurisdiction is limited to recovery of energy charges and that action against the customer by the distributor should be limited to energy charges (as defined in the paper).

We also agree with VECC's position that staff option #1 on page 13 is the preferred option, i.e. that LDCs should always be required to allocate payments first to energy charges.

Correction of billing errors

Q11. *Staff has suggested three options for how distributors should bill customers for amounts under-billed. What are the advantages and disadvantages of each option?*

On page 15 of the OEB discussion paper, staff notes that for amounts under-billed, it can be a burden on a customer to repay amounts owing, particularly where the billing error has occurred for a prolonged period of time.

Low-income consumers may find it difficult to repay under-billed amounts, even if spread over in equal installments for a time period equal to the duration of the billing error as suggested in the staff's option #1.

ACTO recommends that low-income consumers should have the option of repaying under-billed amounts in a time period that may extend beyond the duration of the billing error and in a repayment amount that is affordable for the consumer.

Q14. *The RSC requires that distributors pay interest on amounts that were overbilled, but does not allow distributors to charge interest on amounts underbilled. Is this asymmetry appropriate?*

Yes.

Q16. *In light of the time periods for over- and under-billing that apply in other jurisdictions, is there merit in reconsidering the time periods set out in the RSC?*

ACTO recommends that the OEB reconsider the current allowable two-year time period for back-billing for under-billing with a view to reducing the two-year time period. As the discussion paper notes, B.C. Hydro, Hydro-Québec and utilities in Texas can back-bill only for periods of six months or less.

Equal billing

Q17. *Should all distributors be required to offer some form of equal billing? If so, what might be appropriate criteria for participation by customers?*

All distributors should offer equal billing plans to low-income consumers.

In addition, equal billing should be available to low-income consumers who have enrolled with an electricity retailer. Community legal clinic clients have fallen into default on their electricity bills when they have switched to retailer supply because their equal billing option disappears.

Credit history should not be a barrier to low-consumers enrolling in an equal billing plan since such plans will assist in reducing payment defaults.

As the discussion paper notes on page 19:

The benefit of equal billing to a customer is that it allows the customer to better budget for electricity payments, and “smoothes out” seasonal fluctuations in electricity consumption. This may increase the customer’s ability to pay in each billing period, which may in turn reduce the risk to the distributor of customer non-payment.

To avoid low-income consumers owing their LDC a large balance at the end of the year, if they have consumed more electricity than was assumed when determining the equal billing amounts, ACTO recommends that the balance owing be rolled into the calculation of the next year’s equal billing monthly payments. Similarly, if the low-income consumer has overpaid, the next year’s monthly equal billing amount can be reduced to reflect the credit and lower annual usage.

Disconnection of service

An over-riding goal of LIEN's comprehensive strategy to address energy poverty is to pro-actively prevent service disconnections for low-income consumers who cannot afford to pay for their utility bills and other basic necessities. The establishment of a low-income rate affordability program will be a major step towards avoiding electricity disconnections for arrears.

LIEN's proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households* includes the following recommendations for basic consumer protections with respect to service disconnectionsⁱⁱ:

- Ontario utilities should be prohibited from issuing disconnect notices when they lack a present intent to actually effectuate a disconnection of service;
- The disconnect notices of Ontario utilities should have a 15-day efficacy period. In the event that service is not disconnected within that time frame, the notice period should be reinitiated;
- Ontario utilities should be prohibited from issuing disconnect notices in more than two consecutive months in which a disconnection of service is not actually effectuated.

LIEN's proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households* also includes an arrearage management program comprised of the following componentsⁱⁱⁱ:

- Arrears are to be retired over a two-year period;
- Customers are to make co-payments toward their arrears;
- Co-payments are to be set equal to an affordable percentage of income (1% per year);
- No pre-condition is established for the grant of arrearage management credits; and
- The appropriate response to non-payment is to place the program participant in the same collection process as any other residential customer.

As mentioned earlier in these comments, ACTO is recommending that the OEB undertake a review of LDCs' terms and conditions of service with a view to producing a holistic package of key consumer protections for low-income households that LDCs would be required to adopt and implement. This review

should consider moratoria for service termination in the heating and cooling seasons and for households where infants and/or persons over 65 years of age reside.

In the absence of a low-income rate affordability program in Ontario, it is crucial that LDCs' disconnection policies and procedures maximize the opportunities for low-income consumers facing service termination due to arrears to access emergency energy funds that they may be eligible to receive to prevent disconnection and/or restore service. This should be done in consultation and co-ordination with the relevant provincial ministries, municipal service managers, social service agencies and/or delivery agents. Attached to this letter is a June 2007 summary, compiled by LIEN, of energy assistance funds for low-income consumers.

Q20. *Is the minimum information that staff has suggested should be contained within a disconnection notice sufficient? What information should be added? Should any information be removed?*

In addition to the minimum information suggested by staff on page 28 of the discussion paper, the disconnection notice should include:

- Information on all the emergency energy fund programs available to eligible low-income households in the LDC's service area to help pay for arrears to avoid disconnection and/or restore service
- Information regarding arrears repayment plans that the consumer may be able to negotiate with the LDC
- Fire and other public safety notices as per sections 4.2.1.1 and 4.2.1.2 in the DSC (and as per the OEB's Compliance Bulletin 200705 issued October 5, 2007)

Q21. *Prior to commencement of the disconnection process, should distributors be required to send an overdue payment notice?*

Yes.

Q22. *Should the disconnection notice be a separate mailing from the bill, or is it sufficient that it be a separate document sent with the bill? What are the implications of requiring a disconnection notice to be a separate document from the bill? Specifically, what are the implications for:*

- Communications with a customer?
- Timing of notices and bills?
- Distributor's costs?

The disconnection notice should be a separate mailing from the bill.

Q23. *In addition to delivering a disconnection notice, should distributors be required to make personal contact with the customer (e.g. through a telephone call) prior to disconnection?*

Yes.

Timing of a Disconnection Notice

OEB staff has suggested in the discussion paper that the minimum period of notice prior to disconnection should be seven calendar days in order for notice of disconnection to be considered “reasonable” within the meaning of section 31(2) of the *Electricity Act*.

ACTO recommends that the minimum period of notice should be 15 calendar days.

Q24. *What would be an appropriate length of time following delivery of a disconnection notice for a second notice to be required if disconnection has not occurred?*

LIEN’s proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households* recommends that a written notice of service termination for non-payment should become void if the local utility has not disconnected service within 15 days of the date indicated on the notice for termination. If termination of service is not accomplished within 15 days following the final notice required before service discontinuance, the utility should issue a new notice using the same procedures as the initial notice.

Management of customer accounts

Q27. *In addition to the potential for property damage (e.g. from frozen pipes), are there any other implications of disconnecting a property when no new request for service has been received?*

If the property’s smoke alarms are operated solely by electricity, or with electricity and a secondary power source like batteries that may be depleted, this could affect early fire detection with serious public safety implications.

Q29. *Are there circumstances in which it would be appropriate for a distributor to open an account in a person’s name, and thereby seek payment from that person, where the person has not made a request for service? If so, please identify.*

No. ACTO agrees with the OEB staff's view that the provision of electricity service is a matter of contract and our position is that LDCs should only open an account in a person's name when that person has expressly requested service.

Third parties should not be able to unilaterally request service on behalf of a consumer. Landlords should not be able to open a customer account with an LDC on behalf of a tenant who has not contacted the LDC directly to request electricity service.

Thank you for your consideration of our comments and recommendations.

Yours sincerely,

Original signed by

Mary Todorow
Research/Policy Analyst
Advocacy Centre for Tenants Ontario
E-mail: todorom@lao.on.ca
416-597-5855 ext. 5173

Attachment

ⁱ The *Ontario Home Energy Rate Affordability* proposal, prepared for LIEN by Roger Colton is available on the LIEN web site (<http://www.lowincomeenergy.ca/A55AB4/lien.nsf/All/rcolton>). See pages 21 to 24 for discussion on late payment charges.

ⁱⁱ Ibid. See pages 24 to 27 for the discussion on disconnection notices.

ⁱⁱⁱ Ibid. See pages 11 to 13 for the discussion on the arrearage management component.