Low-Income Energy Network

January 18, 2019

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

Dear Ms Walli,

Re: LIEN comments on the OEB's December 18, 2018 report and proposed Code amendments - Review of Customer Service Rules for Utilities (EB-2017-0183)

Please accept this letter (and accompanying attachment) as the comments of the Low-Income Energy Network ("LIEN") regarding the above-mentioned report.

Thank you for allowing LIEN an opportunity to comment on the proposed Customer Service Rules in this docket. We always appreciate the opportunity to work with you. We look forward to continuing our productive conversations in the future.

Sincerely,
Per: Low-Income Energy Network (LIEN)

Mary Todorow
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Attachment

In these comments on the December OEB Notice of Proposal to Amend Codes, dated December 18, 2018 (hereinafter, December OEB Notice), the Low-Income Energy Network ("LIEN") requests reconsideration of, or further review, of a limited number of issues. These requests are based primarily on the OEB's failure to engage the purpose of, or data presented in support of, the requested decisions (or failure to decide) included in the December OEB Notice.

Reconsideration Request #1:

LIEN requests the OEB to reconsider the failure to state that cash security deposits should be based on *weather-normalized* average monthly load for the most recent 12 consecutive months in the past two years.

The OEB acknowledged this LIEN proposal (December OEB Notice, at 9), but concluded that there was no "need" for this proposal. The OEB asserts that there is "adequate protection for customers including those with no credit history" and the existing rules "strike an appropriate balance between facilitating more affordable payments by customers and protecting Utilities and other customers from an undue increase in bad debt risks." (December OEB Notice, at 10).

The requested rule clarification does not relate to either of the two grounds for finding a lack of "need" for the proposed rule change. LIEN acknowledges (and does not object to) that OEB has found that basing cash security deposits on average monthly load for the most recent 12 months in the past two years strikes the "balance" indicated by the OEB. The clarification, however, is based on the fact that any risk to "Utilities and other customers from an undue increase in bad debt risks" is based on typical bills associated with typical weather.

To require weather normalization in order to account for temperature-induced fluctuations in usage (and thus bills) is not extraordinary in the electric industry. For example, the OEB, itself, requires electricity providers to weather-normalize usage data in their allocation of costs and load data in setting rates.[1] Moreover, the Ontario Ministry of Energy has recognized that consumption data needs to be weather-normalized to establish what customer consumption really is.[2] As the Ministry explained in weather-normalizing peak demand in its assessment of conservation impacts:

> Forecasters use weather normalization or correction techniques to remove the impacts of variations in Ontario's weather patterns (either extremely warm or extremely cold summers) from observed peak load data. This is required because weather variations can cause the peak demand to swing up or down by up to 10

[1] OEB (November 15, 2006). "Cost Allocation Informational Filing Guidelines for Electricity Distributors, at sections 3.4, 3.5.

[2] See, e.g., Ministry of Energy. Taking Action: 2007 Annual Report of Ontario's Chief Energy Conservation Officer, at 12.

> percent relative to the average weather peak demand for any particular day. Normalization enables analysts to compare a series of actual peak readings over a number of years on an "apples-to-apples" basis and use this data to determine how accurate their underlying forecast of demand was over a five- to 10-year period.[3]

Usage is weather-normalized for purposes of evaluating the effects of the provincial "consumer-oriented energy efficiency initiatives."[4]

Consumer protections against unreasonable deposit demands should contain this same fundamental step. Cash security deposits that are based on non-normal weather do not offer the "balancing" referenced by the OEB in its December Notice.

There are standard processes that have been adopted and/or approved by the OEB to weather normalize data. It should not be difficult for Ontario electricity providers to normalize usage data (and thus billing data) in imposing cash security deposits.

LIEN requests a reconsideration of the OEB's decision not to adopt this fundamental consumer protection.

Reconsideration Request #2 / Reconsideration Request #3 / Reconsideration Request #4:

LIEN requests reconsideration of a related set of three issues regarding the use of disconnection notices to trigger or serve as the basis for prescribed actions.

Reconsideration Request #2: LIEN requests a reconsideration of the OEB decision not to adopt restrictions on the "over-noticing" of possible disconnections of service for nonpayment. The December OEB Notice did not address LIEN's concern about the over-noticing of disconnections.

LIEN proposed adoption of the following regulation:

[3] Id., at 13.

[4] See, e.g., Research into Action (September 2015). Final Report: 2014 Consumer Program Evaluation: Volume 1, prepared for Independent Electricity System Operator (IESO) (formerly known as the Ontario Power Authority).

A) No utility shall:

1) Threaten to disconnect service or take other actions that cannot legally be taken.

2) Threaten to disconnect service when it has no present intent to disconnect service on the date noticed or when actual disconnection is prohibited. Notice of the intent to disconnect service shall be used only as a warning that service will in fact be disconnected on the date published in the notice in accordance with the procedures under this chapter, unless the customer remedies the situation which gave rise to the enforcement efforts.

B) No utility shall make a practice of delivering more than two consecutive notices of disconnection for past due bills without engaging in the collection identified in the notice.

LIEN believes that its proposed language simply makes more explicit what should be evident in the existing OEB regulations. The current DSC section 4.2.2 states that "A distributor that *intends to disconnect, pursuant to section 31 of the Electricity Act, the property of a residential customer for non-payment* shall send or deliver a disconnection notice to the customer. . ." (emphasis added). While this Regulation clearly states that a provider who "intends to disconnect. . .shall send or deliver a disconnection notice," what the regulation does *not* do is to bar the flipside, to ban sending a disconnect notice unless and until the provider intends to disconnect service.

The resulting practices by Ontario's utilities thus cause real problems. As LIEN urged in its Initial Comments:

> The problem, as LIEN sees it, is that which was identified in. . .the OEB Report. According to the OEB Report, "the OEB continues to believe that *it is important for the customer to have a reasonable expectation as to when service might be disconnected*. . ." (OEB Report, at page 41) (emphasis added). If a utility routinely sends disconnect notices under circumstances where, due to constraints on available resources and equipment availability, it has no realistic expectation of following through to actually disconnect service, that purpose of a disconnect notice (i.e., to provide "a reasonable expectation as to when service might be disconnected") is not being served.

A shutoff notice is to provide a clear and believable warning of the impending disconnection of service due to nonpayment. When an electric utility routinely issues notices of an impending disconnection of service to residential customers when it has no intent to follow-through on its threat, it is "over-noticing" its accounts.

Issuing notices that falsely warn a customer of an impending disconnection of service is contrary to the entire purpose of the notice with which to begin. The purpose of a notice is to provide a clear and believable warning that a service termination is about to occur. In response to such a notice, the customer must either take the steps necessary to prevent the service termination or take those steps needed to protect him or herself against the dangers to life, health and property that might result from the loss of service.

The key phrase above is "clear and believable." From a customer service perspective, in other words, when an Ontario electric utility issues false notices of an impending disconnection of service, it violates its obligation to provide a clear and believable notice of a pending shutoff. Customers react in different ways to the need to pay a sum-certain by a date-certain or face the disconnection of service altogether. LIEN knows from repeated surveys of energy assistance recipients that some customers will forego food while others forego medical care in order to pay their home energy bills. Some customers will engage in high-cost, high-risk borrowing through "check-cashing stores" or "pay-day lending stores" which leave them worse off in even the intermediate term. Some customers simply move, while others commit fraud by flipping their account into someone else's name. Each of these outcomes, taken in response to a false threat of service disconnection, represents an unacceptable degradation in quality of life.

Moreover, placing customers in the position where they face a perceived immediate drop-dead payment-in-full date also discourages customers from taking longer-term constructive actions in response to their bill nonpayment. It discourages customers from engaging in conservation. As reported in one 1999 study, when a customer faces a nonpayment disconnect notice, "the customer is faced with an immediate need (*i.e.*, bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need." Constructive responses such as usage reduction strategies and partial payments are generally perceived to have been taken off-the-table by shutoff notices requiring full payment by a date-certain to retain service.

There are, however, even deeper customer service problems represented by sending false disconnect notices. We have all heard the childhood story of the "boy who cried wolf." Repeatedly sending false disconnect notices creates a situation where the utility is sending wolf-like notices. The customer receiving such a notice has no basis upon which to make a decision as to which notice requires a response. The result is a tendency to delay. Delay occurs because "tomorrow will be better than today." Delay occurs because a source of payment assistance provides only a one-time grant and it is thus better to ask for help on a three-month arrears than it is to ask for help on a two-month arrears. Delay occurs because, after sending multiple notices warning of an impending disconnection of service if payment-in-full is not made by a date certain, the utility does not send a notice saying "*this* time, we really mean it" or "this time, we really, *really* mean it." The notice, in other words, loses its believability. When a disconnection actually does occur, it often comes as a surprise. Or the customer is placed in the position of responding at the last minute when they realize that "*this* time, it's real."

Finally, there is the health and safety issues presented by the utility "crying wolf" with its disconnect notices. In response to repeated notices of an impending nonpayment disconnection that, in fact, does not occur, customers will reasonably learn to rely on the non-action of the utility. One purpose of the shutoff notice, however, is not simply to prompt customers to pay, but to allow customers time to make alternative living arrangements should they be unable to pay and lose their utility service. If customers do not receive a clear and believable warning of a disconnection of service, when an actual disconnection of service *does* occur (in that one out of every multiple times), the customer may well be left unprepared and incapable of finding alternative housing arrangements. In today's world, a housing unit without electricity is fundamentally considered unsafe and uninhabitable. Repeatedly "crying wolf" places customers in the position of potentially facing such unacceptable and unreasonable living conditions.

The key concept at play here is "clear and believable warning." When an Ontario electric utility issues a number of disconnect notices that far exceeds the number of disconnections that it actually performs (due to "resourcing and equipment availability"), it fails to fulfill its customer service obligation to provide a "clear and believable warning" that a pending disconnection is imminent. Just as the village residents quickly learned to ignore the young boy's "cry of wolf" in the childhood story, customers learn to ignore the utility's "cry of wolf" as to the disconnection of service for nonpayment. In the meantime, just as the villagers were tricked into false (and often adverse) activities in response to the "cry of wolf," Ontario customers are

tricked into false (and often adverse and counterproductive) activities in response as well.

LIEN agrees with the OEB when the OEB Report states that "it is important for the customer to have a reasonable expectation of when service might be disconnected." LIEN asserts that the over-noticing of disconnections not only does not fulfill that objective, but affirmatively impedes achieving that objective.

The problem in Ontario is real. The OEB published data on the number of disconnections by year for the years 2013 through 2016 (OEB, 2013-2016 Disconnection/Late Payment data by Utility). While the OEB data does *not* include the number of disconnect *notices* that are issued by Ontario utilities, the table below assumes that each account that is in arrears will receive a disconnect notice (as allowed by OEB Regulations).

	2013	2014	2015	2016
Disconnections for nonpayment	49,130	51,464	56,498	58,286
Accounts in arrears[5]	307,822	362,207	351,685	392,963
Ratio (notices to disconnections)	6.27	7.04	6.22	6.74

It is not true that more disconnect notices get issued than the number of disconnections that occur simply because people pay their bills after receipt of such a notice. That, of course, may happen in some cases. But, the initial OEB Report in this docket acknowledged what happens more frequently. According to the OEB Report, utilities "explained the challenge of disconnecting customers within the permitted disconnection window due to issues including *resourcing, equipment availability* and weather." (OEB Report, at page 40) (emphasis added). As the utilities concede, in other words, they send out more disconnect notices than they have available resources and equipment available to perform.

LIEN asserts that the OEB was correct when it stated, "the OEB continues to believe that *it is important for the customer to have a reasonable expectation as to when service might be disconnected*. . ." (OEB Report, at page 41) [emphasis added]. If a utility routinely sends disconnect notices under circumstances where, due to constraints on available resources and equipment availability, it has no realistic expectation of following through to actually disconnect service, that purpose of a disconnect notice (i.e., to provide "a reasonable expectation as to when service might be disconnected") is not being served.

[5] Each account in arrears is assumed to receive a disconnect notice.

Given the computer-generated aspect of utility disconnect notices, and given the fact that Ontario's utilities do not impose, by tariff or regulation, whether (or when) a disconnection notice may be generated, it is evident that Ontario's utilities are issuing far more notices of disconnection than they ever intend to follow-up on to actually perform a disconnection. For all the reasons stated above, LIEN requests that the OEB impose restrictions on the issuance of disconnect notices so as to limit such notices to instances where the utility has a present intent to follow-through an actually perform the disconnection. Threatening to disconnect service to someone for whom there is no intent to actually perform a disconnection is an inherently deceptive collection practice. The use of such deceptive collection practices serves no-one's interests (utility or customer) and should be barred.

Reconsideration Request #3: LIEN also requests a reconsideration of the OEB decision not to remove the relationship established between the issuance of disconnect notices and the imposition of a cash security deposit. LIEN acknowledges the relationship the OEB finds between the disconnection of service and the need to protect the utilities (and their customers) from possible bad debt resulting from such service disconnections. However, given the lack of a relationship between disconnect notices and the actual disconnection of service, there is no rational connection between the computer-generated over-noticing of shutoffs and cash security deposits. If, and to the extent that, the OEB adopts the regulation proposed in Reconsideration Request #2, this issue is rendered moot. Until that occurs, however, the mere issuance of a disconnect notice, generated *en masse* by computers, should not be a sufficient basis for a cash security deposit demand. To further the purposes identified by OEB, itself, and yet to protect consumers against unnecessary cash security deposits, LIEN requests the OEB to limit cash security deposits to instances where "a disconnect/collect trip has occurred *or has been scheduled*."(emphasis denoting proposed addition).

The OEB rejected LIEN's request for the reasons identified above (adequate protections provided for customers without credit history; appropriate balance struck between facilitating more affordable payments and protecting against bad debt). The LIEN proposal to eliminate the connection between deceptive "shutoff notices" threatening a shutoff when no intent to disconnect exists and the collection of cash security deposits implicates neither of these rationales. Eliminating the use of computer-generated notices that falsely threaten a disconnection of service instead furthers the OEB objective of protecting against bad debt. A shutoff notice that falsely threatens a shutoff when no such service disconnection is intended provides no insights into a risk of bad debt. The use of such shutoff notices as a basis for imposing cash security deposits should be eliminated.

Reconsideration Request #4: LIEN requests that, in the absence of the adoption of the regulation proposed in Reconsideration Request #2 immediately above, that the OEB reconsider its proposed regulation allowing "for disconnection notices to be issued in April for

disconnections to happen as soon as May 1st." (OEB December Notice, at 28). This proposed amendment was not originally included in the OEB's proposed regulations and LIEN has not previously commented upon it.

Given the reliance of Ontario utilities upon "disconnect notices" that are computer-generated *en masse* irrespective of whether there is an intent to follow with an actual disconnection of service, the OEB's proposed amendment allowing disconnect notices to be issued in April is a substantial over-reach given the objectives the OEB professes to achieve. The proposed regulation, in other words, does not merely authorize utilities to issue timely warnings of an impending disconnection of service beginning May 1st. Instead, the proposed regulation allows the utilities to largely undo and under-cut the cold weather protections created by the winter shutoff moratorium.

If disconnection notices were limited only to those circumstances where the notice provided a meaningful warning of a notice that would actually occur in the absence of payment, that is one story. That, however, is not how Ontario utilities use their disconnect notices. Ontario's utilities instead use false and misleading notices of an impending disconnection that is not likely to ever occur as a collection device. Engaging in such collection activities during the cold weather months has now been barred in Ontario.

The "easy" response to this problem is for the OEB to adopt the regulation proposed by LIEN (and used in various jurisdictions throughout the United States) to bar the issuance of a disconnect notice unless and until a service disconnection has actually been scheduled. In the absence of such a restriction, and in light of the substantial over-noticing of disconnections by Ontario's utilities, the OEB should reconsider and decline to adopt the proposed amendment that would allow Ontario's utilities to issue disconnection notices in April.

Reconsideration Request #5:
LIEN requests that the OEB reconsider its decision not to require utilities to allow consumers to request a renegotiation of their APA based on changed circumstances.

In its initial comments, LIEN proposed that utilities be required to allow a customer to request a renegotiation of their Arrearage Payment Plan ("APA") based on changed circumstances. If a customer fails to request a renegotiation, or if no changed circumstances exist, then the utility may proceed with the collection processes in which it would otherwise engage. Nor is a utility required to renegotiate an APA after service has been terminated for nonpayment.

As LIEN noted in its initial comments:

> an APA stretching over a minimum of 12 - 16 months (i.e., 12 months or more; 16 months or more) for an eligible low-income customer runs the risk of the customer facing a change in financial circumstances during the term of the APA. It makes little sense for a customer facing such a change in circumstances to be forced into defaulting on their APA. Customers with low-incomes have two income attributes that are relevant to an APA. The first income attribute is the *level* of their income. The second income attribute is the *insecurity* of their income. The "insecurity" of income reflects the extent to which incomes for such customers may fluctuate, sometimes substantially, over time.

The issue presented to the OEB is not one of the affordability of, or adequacy of, *initial* APAs through which to retire arrears. The issue presented is how circumstances might change over time. With lower income customers in particular, this change in circumstances will potentially occur. No purpose is served by insisting that a customer engage in a fruitless effort to pursue an APA that has been rendered unmanageable through changes in circumstances. Instead, the proposed regulation provides protections for the customer, to allow a customer to assert changes in circumstances, but provides, further, protections for the utility by requiring the customer to proactively contact the utility when such change occur. Through this need to be proactive in light of changed circumstances, a customer may not wait until a disconnection occurs before asserting the need for renegotiation.

In sum, the proposal advanced by LIEN provides precisely the type of "balancing" which the OEB references in that December Notice (page 10). LIEN requests a reconsideration of the failure to address this issue and proposes its adoption.

Reconsideration Request #6:
LIEN requests a reconsideration of the proposal to eliminate the stay-out provisions for successfully-completed APAs.

The OEB Distribution System Code currently provides that when a residential customer who successfully completes an APA may enter into a subsequent APA "provided that 2 years or more has passed since a first arrears payment agreement was entered into. . ." (DSC, §2.7.5). The DSM provides further that substantial restrictions apply to a low-income customer seeking to enter into a second APA should that second APA be "requested less than 12 months from the date of completion of the previous arrears payment agreement. . ." LIEN requested that the 12-month "stay-out" period for low-income customers, and the 24-month stay-out period for other residential customers, be eliminated. LIEN recommended that "requiring a customer to abide by a stay-out provision once an APA is successful completed" serves no purpose. LIEN recommended that "once an APA has been successfully completed, the customer [should be] treated as though no nonpayment had occurred in the first instance."

The OEB did not identify the objectives to be served by imposing the stay-out provisions for second payment plans. An APA is only applicable when a customer is in arrears. The purpose of the APA is to facilitate the customer retiring those arrearages in an expeditious manner that avoids a subsequent payment re-default. The LIEN proposals would not prompt non-payment abuse. Indeed, the LIEN proposals relate only to those customers who ***successfully complete*** a prior payment plan.

LIEN has previously discussed, in some detail, how the ***level*** of income is but one attribute of a low-income household's economic situation. A second, and equally disruptive, attribute is the ***fragility*** of income. The "fragility" of income is a term referring to the fact that low-income customers frequently involve hourly wage employees. Not only do such employees lack paid leave (whether vacation or sick leave), but also lack flexibility in the hours they work. A major storm, a sick child, or a personal illness, all could represent circumstances in which the customer would experience lost wages. Involuntary part-time employment (a term referencing reductions in hours even if not accompanied by the complete loss of employment) is also a not uncommon aspect of low-quality jobs providing low wages. In any of these circumstances, it would not be unreasonable for a customer to experience short-term payment difficulties more than once in a given twelve month period.

In such instances, the customer and the utility, both, are best-served by the customer contacting the utility as early as possible and arranging a repayment agreement that retires the arrears while those arrears are as low as possible. What does ***not*** serve the utility's interests, or the customer's interest, is the customer feeling the need to delay entering into an APA because the agreement to the first APA will constrain the customer's ability to enter into future APAs.

LIEN requests the OEB to reconsider its decision not to modify its treatment of the successful completion of an APA. Once an APA has been successfully completed, the customer should henceforth be treated as though payments had been made in a timely fashion ***ab initio***.

Reconsideration Request #7:
LIEN requests a reconsideration of the failure of the OEB to adopt an arrearage management program ("AMP").

LIEN requests the OEB to reconsider its failure to establish an arrearage management program ("AMP"). Available to income-eligible customers, an AMP would provide an opportunity through which a customer could earn credits toward his or her pre-program arrears over a period of time, so long as the customer makes their payments over a prescribed period of time. By the

end of the time period, the household's preprogram arrears will be reduced to $0. An arrearage management program can be tied to participation in OESP.

For example, assume that a low-income customer owes an arrearage of $720. The utility may reasonably conclude that it has no reasonable expectation of adding a $30 monthly increment to that low-income customer's bill and having the bill be paid. Accordingly, an AMP might require that customer to pay the first $240 of that arrearage over a 24-month period ($10/month). For each $10 payment made by the customer, the utility grants a matching credit of $20. At the end of the 24 month period, the utility has received not only the $240 toward the pre-existing arrearage, but has maintained the customer on its system paying his/her current bill as well.

An AMP would not apply to all arrearages, or even to all low-income arrears. Instead, an AMP applies to those circumstances in which an income-eligible customer's bill is unaffordable in the absence of the AMP. If the customer's bill is unaffordable, and as a result of that unaffordability, the customer incurs an arrearage, ***any*** payment agreement would result in responding to those unaffordable bills by ***increasing*** customer payments (i.e., adding an increment to future bills to retire past-due arrearages). Given that the cause of the arrearages, in the first instance, was that the bills exceeded the customer's ability to pay, these increased bills create a situation where the customer is bound to fail. Given the consequences of a failed APA as prescribed in the OEB's regulations, the response thus creates a downward spiral. The inability-to-pay current bills results in an increase in future bills yielding a failed APA which results in future APAs that are even less likely to succeed.

An arrearage management program component is necessary to help get low-income customers "even" so they have a chance at future success in making payments. It makes no difference to have *current* bills be affordable if the total bill is unaffordable due to payment obligations required to retire *past due* bills incurred before the program began (known as pre-program arrears).

Arrearage management programs in the United States have been consistently found to be an effective, and cost-effective, way to address unpaid bills that otherwise result in ever-increasing payment troubles to customers, and collection troubles to utilities.

LIEN endorses the use of AMPs. In the alternative, LIEN would request that the OEB convene a stakeholder consultation that considers the impacts of AMPs, both from the perspective of the customer and from the perspective of the utility, based on the considerable experience that exists for such programs.

Reconsideration Request #8: LIEN requests the OEB to reconsider its decision regarding the refusal to adopt LIEN's proposal regarding the month of entry for levelized equal billing plans.

LIEN had proposed that the OEB allow customers to enter into an equal billing plan in any month of the year. (LIEN Recommendation #16). LIEN recognizes that the current Standard Supply Service Code ("SSSC") currently provides as follows (Section 2.62(e)):

> subject to section 2.6.2(f), the equal monthly payment plan shall provide for annual reconciliation of the plan as follows:
>
> (i) while a customer may join an equal monthly payment plan at any time during the calendar year, the distributor is only required to reconcile all of its equal monthly payment plans once during the calendar year and not on the 12th month anniversary since each individual customer joined the plan;
>
> (ii) in the first year of an equal monthly payment plan and where the customer has been on the plan for less than 12 months, the customer may receive a reconciliation earlier than the 12th month anniversary, as a result of subsection i);

While this section may, at first glance, appear to already allow what LIEN proposes, in reality it does not. To the extent that utilities choose to reconcile their equal billing plans[6] in the months immediately subsequent to the high cost winter heating season, a customer who enters on to an equal billing plan is, in essence, being forced to prepay his or her high cost months during the lower cost months in which the equal monthly bills are rendered. This prepayment occurs despite the fact that equal billing participants do not receive any return on the amount that they prepay. The prepayment occurs, also, despite the fact that the benefits of equal billing, both to the customer and to the utility, flow from the levelizing of bills, not from the fact of prepayment. Utilities should not be allowed to, in effect, require customers to prepay their high cost months in order to take advantage of equal billing plans.[7]

LIEN renews its request that the OEB allow a customer to enter into a 12-month equal billing plan in any month of the year. The OEB regulations should be amended to eliminate the right of utilities to reconcile an equal billing plan in a month earlier than the 12-month anniversary. Customers should not be forced to prepay[8] their high cost months in order to receive the benefits of levelized billing.

[6] The amendments proposed in December 2018 add an equal billing option distinct from the equal payment plan currently referenced in the Regulations.

[7] This comment applies equally to equal payment plans.

[8] LIEN's Initial Comments provided the support for the conclusion that utilities engage in this practice.

Reconsideration Request #9: LIEN requests the OEB to reconsider its decision not to bar the disconnection of service for any bill that is comprised in whole or part of estimated meter readings.

LIEN requests the OEB to reconsider its decision not to bar the disconnection of service for an unpaid bill that is comprised in whole or part of estimated meter readings. The issue presents itself most forcefully with natural gas providers who continue to use estimated bills on a regular basis in Ontario.[9] The OEB's December Notice did not address the use of estimated bills as a basis for a nonpayment disconnection.

LIEN reiterates its belief that it is fundamentally unfair to subject customers to the disconnection of service for electricity (or natural gas) that the customer never used in the first instance. From no perspective can a service disconnection for nonpayment of usage that never occurred be justified.[10]

The DSC makes clear that estimated billings should be rare.[11] DSC Section 2.10.1 provides that "Where a smart meter or interval meter has been installed, a distributor *shall issue* a bill to a residential. . .customer based on an actual meter read." (emphasis added). Even Section 2.10.2, which softens the mandatory nature of Section 2.10.1, provides that estimated bills are not to be issued more than two times in a given 12 month period, and even then, only in "exceptional circumstances." If there are circumstances that are so "exceptional" that a utility is prevented from obtaining its mandated meter reading to serve as the basis for a monthly billing, the customer should not be subject to the disconnection of service as a result of errors in billing attributed to those "exceptional circumstances."

It is wholly within the province of Ontario's utilities to ensure that regular meter readings are obtained and that estimated bills are not relied upon in billing for service except in "exceptional circumstances." A protection against nonpayment disconnections when such circumstances arise, to prevent a disconnection for service that was never consumed, is appropriate.

[9] The reliance on electricity "smart meters" has largely eliminated the use of estimated bills in a way that has not occurred in the natural gas industry serving Ontario consumers.

[10] While LIEN believes that no disconnection should occur in the event that an outstanding balance includes estimated usage, LIEN would not object to a regulation limiting such a ban to balances that include more than a reasonable minimum number of months of estimated billings (e.g., more than one month of estimated billings; more than two" months of estimated bills).

[11] LIEN acknowledges that Section 7.3.3 of the GDAR states that it is cost prohibitive to get actual meter readings each month. LIEN does not seek to bar the use of estimated meter readings. LIEN instead simply seeks to bar the disconnection of service when the bill is comprised in whole or part of estimated usage.

Reconsideration Request #10:
LIEN requests the OEB to reconsider its decision not to exempt low-income customers from the payment of late payment charges.

LIEN requests the OEB to reconsider its decision not to exempt low-income customers from being charged with late payment charges. Failing to exempt low-income customers from late payment charges is inconsistent with other aspects of the regulations which the OEB is currently proposing. The decision to exempt low-income customers from other charges has been explicitly predicated on the grounds that responding to nonpayment by those unable to pay their bills by *increasing* the bill is particularly irrational as an effective collection device. When repeatedly asked over the years for data-based research demonstrating that late payment charges are effective in preventing bad debt, in reducing arrears, or in incentivizing more frequent, or more complete, payments, utilities (both natural gas and electricity) have been unable to provide such evidence.

The conclusion that responding to unpaid bills by low-income customers who are unable to pay by increasing those bills is reasonable simply because "everyone else does it" does not provide a sound basis for continuing this ill-considered practice. As demonstrated in LIEN's Initial Comments, basing a utility late payment charge on the interest rates charged by credit card issuers would include costs that are inappropriate to include in a utility charge. Moreover, responding to a bill that remains unpaid because of an inability-to-pay by ***increasing*** the bill will likely exacerbate rather than help alleviate the payment difficulties.

Imposing a late payment charge on the unpaid bills of low-income customers is without justification. LIEN requests that OEB to reconsider its decision not to adopt such an exemption.

Reconsideration Request #11:
LIEN requests the OEB to reconsider its decision to limit periodic non-scheduled changes in a levelized billing plan to "extraordinary" circumstances.

LIEN requests the OEB to reconsider its decision to limit periodic non-scheduled changes (i.e., not semi-annual, not quarterly) to a levelized billing plan to "extraordinary" circumstances. The OEB's proposed language provides that "a distributor may adjust the equal monthly billing amounts at any time in the event of extraordinary changes in a customer's electricity consumption or a customer's electricity charges. . ." (SSSC, §2.6.2(f)(iv)).

According to the Collins Dictionary, the definition of "extraordinary" is "very unusual or surprising." LIEN urges that it is not the "unusual" or "surprising" that should be the limit on a utility's adjustment of a levelized billing plan. Rather, an adjustment should be allowed (indeed, required) if an adjustment is "significant" or "substantial." As LIEN explained in its Initial Comments, for example, non-normal weather can no longer be considered "unusual" or "surprising" given weather changes attributable to global warming. A consumer should not be faced with a large true-up of a levelized bill, however, by a utility argument that "you should have known" that the levelized bill was not matching extreme weather conditions since extreme hot or cold weather is no longer rare (i.e., extraordinary).

LIEN reiterates its recommendation that the term "extraordinary" be replaced with a softer test (e.g., substantial, significant). For example, Collins defines "significant" as meaning "sufficiently great or important to be worthy of attention." That term seems to capture the need for a change in the levelized billing amount more than the term "extraordinary."

Rather than prescribing, by regulation, what deviation would be considered to have met a test of "significance," it would seem to be a better approach for a brief (and perhaps informal) consultation to establish what a "best practice" might involve in defining that test. Such a definition might be agreed upon either in terms of dollars (e.g., a monthly change of $5 or more) or in terms of percentage (e.g., a monthly change of 5% or more).[12]

Clarification Request #1:

LIEN requests clarification that electricity distributors are required to allow customers with arrears to enter into levelized billing plans, upon request, but utilities are ***not*** allowed to require a customer to enter into a levelized billing plan as a condition of an APA.

LIEN requests clarification of the intersection of two separate, but related, OEB regulations set forth in the SSSC and the DSC. Section 2.6.2 of the SSSC provides as follows:

> a distributor may only refuse to provide an equal monthly payment plan option to a customer that is in arrears on payment to the distributor for electricity charges, as defined in the Distribution System Code, and that has not entered into an arrears payment agreement with the distributor as referred to in the Distribution System Code.

[12] These figures are intended only to be illustrative. LIEN does not intend for these figures to be construed as proposals for a test of substantiality or significance.

In contrast, the offer of Arrearage Payment Agreements ("APAs") is governed by Section 2.7 of the DSC. The above regulation appears to ***allow*** customers in arrears to enter into levelized billing plans. A reasonable precondition of providing levelized billing is to require the customer to enter into an APA.

Where the regulation falls short, however, is with the converse situation. LIEN requests the OEB to amend its regulations to make clear that utilities may not ***require*** a customer to enter into a levelized billing plan as a precondition of an APA.

The last two concerns are inter-related. As noted in LIEN's Initial Comments, the way that the levelized billing option has been operationalized, at least some utilities choose a reconciliation date in a month that subsequently requires a customer, in effect, to prepay their high cost months. The problem arises from the intersection of Section 2.6.2 of the SSSC with Section 2.7.2 of the DSC. DSC Section 2.7.2 provides that "The arrears payment agreement referred to in section 2.7.1 shall allow the residential electricity customer to pay all remaining electricity charges that are then overdue for payment ***as well as the current bill amount***. . ." (emphasis added). DSC Section 2.7.4 then provides that "Where a residential customer defaults on more than one occasion in making a payment in accordance with an arrears payment agreement, or a payment on account of a current electricity charge billing, a security deposit amount due or an under-billing adjustment, the distributor may cancel the arrears payment agreement."

Given that: (1) an APA may be cancelled upon a default in making a payment "in accordance with an arrears payment agreement," and (2) in the absence of the change requested above by LIEN regarding the ability to enter into levelized billing to avoid the need to prepay high cost months, these two sections together would allow a utility to cancel an APA due to a customer's failure to prepay his/her high costs months should the utility impose levelized monthly billing as a precondition of entering into an APA. This result would be at odds with common sense, as well as seeming to be at odds with the OEB regulation (DSC §2.7.2) stating that a customer only be required to pay the overdue charges "as well as the current bill" as part of an APA.

When coupled with the OEB's strict regulations on the ability to enter into subsequent APAs should a customer default on a first APA, the inequity of allowing such a payment default to include the failure to prepay a future bill becomes even more evident.

Accordingly, LIEN renews its request that the OEB clarify that its regulation ***allowing*** a customer in arrears to enter into a levelized billing plan (so long as they also enter into an APA) does ***not*** permit a utility to require that a customer enter into a levelized billing plan as a precondition of entering into an APA. Whether or not a customer wishes to couple the benefits of levelized billing with an agreement to retire arrears through an APA should be completely

discretionary with the customer. The OEB should clarify its regulations to assure that a utility is not permitted to impose levelized billing as a precondition to entering into an APA.

Clarification Request #2: LIEN requests clarification of how USMP customer service rules will be affected by the adoption of Schedule 4 in Bill 66, ***Restoring Ontario's Competitiveness Act, 2018.*** .

The OEB's September 2018 initial report stated on page 10 that "all proposals relating to the Rules in this Report apply to USMPs except for those relating to provisions that the OEB had previously chosen not to impose on USMPs. These provisions are clearly identified in this Report and their applicability to USMPs will be reconsidered as part of and/or following the completion of the USMP Charges Initiative."

Unfortunately, the OEB's USMP Charges Initiative (EB-2017-0371) has been halted due to the provincial government's introduction, on December 6, 2018, of Bill 66 (***Restoring Ontario's Competitiveness Act, 2018***). Schedule 4 in Bill 66 amends the ***Ontario Energy Board Act, 1998*** to remove the Board's authority to set rates, fees and charges for USMPs.

As a result, LIEN is unclear as to how the Board will proceed with determining whether the following provisions for LDCs will also apply to USMPs and look forward to the OEB providing this clarification.

- Equal billing/equal payment plans
- Emergency credit card payments (to avoid disconnections)
- Discontinuing the application of late payment charges on the amount that is covered by the OEB's prescribed Arrears Payment Agreement for residential customers
- Winter disconnection and reconnection
- Non-payment of account charges

LIEN continues to recommend consistency between the customer service rules of LDCS and USMPs. Customers of USMPs and LDCs should be treated equally.

Endorsement #1:[13]

LIEN endorses the OEB's proposed treatment of expenses and "lost revenue" claimed by the utilities to be associated with the OEB's proposed regulations.

LIEN endorses the OEB's proposed treatment of what various utilities claimed as "lost revenues" and "expenses" associated with the amendments to OEB regulations contained in the OEB December Notice. (OEB December Notice, at 40 – 42). LIEN believes the OEB appropriately decided the claims for lost revenue, and for increased expenses, in denying the request to establish deferral/variance accounts. (OEB December Notice, at 41).

Neither "lost revenues" or "lost expenses" should be considered on a stand-alone basis. That is the essence of single-issue ratemaking. Under utility ratemaking principles, a utility is not ensured that it will be allowed to recover all of its expenses on a dollar-for-dollar basis from ratepayers. Instead, the utility is guaranteed the opportunity to generate an allowed rate of return. Determining whether the utility is earning its allowed rate of return involves a consideration of the ***complete*** set of factors which influence a utility's earnings. One set of factors involves the utility's complete set of expenses. Another set of factors involves the utility's complete set of revenues.

The ban on single-issue ratemaking recognizes that even should one factor increase, other factors may be changing at the same time with those other factors mitigating what impact the change might have on whether the utility is earning its allowed rate of return. In a cold winter, for example, a utility may well experience a higher level of uncollectibles. The cold weather, however, will also generate higher sales and thus increased revenues. To consider only the increased level of expense without also considering the increased level of revenues thus would present an incomplete picture of the utility's earnings.

In the same fashion, an increase in the level of one type of expenditure may well be accompanied by a decrease in the level of other expenditures. While labor costs might increase on the one hand, postage costs might decrease on the other hand, with no net increase in overall expenditures and no net decrease in utility earnings.

Moreover, LIEN agrees with the OEB December Notice that there may be offsetting revenues and expenses that should be considered before cost-recovery is allowed for either claims of "lost revenues" or claims of increased expenses. Much of what the OEB has undertaken is designed

[13] LIEN does not separately discuss each area of the OEB December Notice with which it agrees. The issue discussed in this section is distinct in that it is an issue raised by the comments of other stakeholders and addressed by the OEB December Notice without prior LIEN discussion.

to improve the affordability of electricity to Ontario customers and, accordingly, to improve the sustainability of payments. As a result, to the extent that there may be "lost revenue" attributable to waived fees, for example, there is likely to be an offset of increased revenue due to improved payments. Similarly, any claim of "lost revenue" or increased expenses should be offset by the extent that there are reduced expenses attributable to the amended regulations. To the extent that there may be lost revenue attributable to waived late fees, for example, there is likely to be reduced expenses in the form of reduced credit and collection expenses and/or working capital expenses due to improved payment patterns.

Based on the above, LIEN endorses the OEB's decision to deny the request of both the electricity and the natural gas providers to track changes in revenues and/or expenses for future cost recovery. The denial of such tracking for future recovery is consistent with long-established regulatory principles.

Endorsement #2:
LIEN endorses the OEB's statement that it "strongly encourages" distributors to extend the choice of payment dates to customers in appropriate cases, such as where there is a mismatch between receipt of government fixed income and the Utility bill payment date.

While LIEN would have made mandatory the offer of a choice of payment dates to customers where there is a possibility of a mismatch between the receipt of income (e.g., government fixed income) and the Utility bill payment date, LIEN nonetheless acknowledges and strongly supports the OEB's statement of "strong encouragement" for distributors to "extend" such a choice of payment dates. From LIEN's perspective, this strong encouragement represents an OEB recognition of the need for, and benefits from, extending such a payment date choice. For a utility to routinely deny such a payment date choice when requested would, as a result, be inappropriate. LIEN believes that, if and to the extent, that such denials occur in the future, consumer complaints to the OEB will quickly develop a set of case-based standards that will further explicate the standard of "propriety" articulated in the OEB's December Notice.

LIEN notes that the OEB's reference to "a mismatch between receipt of government fixed income and the Utility bill payment date" was set forth only as ***one*** illustration (i.e., "such as") of when extending the choice of payment dates would be "appropriate." LIEN looks forward to working with Ontario's utilities to determine those instances where extending the choice of a payment date involves an "appropriate case."

Endorsement #3:
LIEN endorses the OEB decision that a disconnection of service must be based on a "compliant" disconnect notices in order for the service shutoff to be compliant.

LIEN endorses the OEB decision that for a disconnection of service to be "compliant," the underlying disconnection notices must be compliant as well. LIEN believes the OEB appropriately reasoned when it stated that it:

> wishes to emphasize that a compliant disconnection notice and disconnection process is a requirement for a compliant disconnection for non-payment. Failure by a Utility to comply with the requirements would make the disconnection of the customer non-compliant with the Codes. The OEB therefore wishes to confirm that any disconnection for nonpayment that was executed based on a non-compliant notice is itself considered non-compliant.

(OEB December Notice, at 22 – 23).

LIEN notes, of course, that the implication of the OEB decision is that while OEB regulations now state what ***must*** be included in a notice, they do not necessarily include a comprehensive listing of all information that ***should*** be included. The OEB Regulations, in other words, represent a floor of minimum reasonableness, not a ceiling. A notice missing information prescribed by the OEB, in other words, will necessarily be invalid (along with any shutoff based upon such an invalid notice). This does not preclude LIEN (or other consumers / consumer service agencies) from identifying additional information that would be necessary in order to provide adequate notice of an impending nonpayment disconnection.

While adoption of a minimum "safe harbour" notice would have been the preferable procedure in LIEN's opinion, in the absence of such a safe harbour notice prescribed by the OEB, LIEN looks forward to continuing to work with Ontario utilities to identify the information necessary for a shutoff notice to perform its required functions.