Ontario Energy Board

Electricity Distributors: Customer Service, Rate Classification and Non-Payment Risk

Staff Discussion Paper

EB-2007-0722

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INTRODUCTION

On September 6, 2007, the Ontario Energy Board (the "Board") initiated a consultation process regarding issues associated with the provision of service by electricity distributors and the manner in which they apply certain charges. The issues under review in this initiative were identified from a variety of sources, including customer complaints, stakeholder enquiries, and a review by the Board's Compliance Office of a representative sample of distributors' Conditions of Service.

In its letter of September 6, 2007, the Board set out the issues to be reviewed and provided a preliminary assessment by Board staff on those issues. The issues can be grouped into three categories:

- Customer Service
- Customer Rate Classification
- Specific Service Charges

On October 18, 2007, staff led a stakeholder meeting (the "Stakeholder Meeting") to provide Board staff with the opportunity to outline those issues in greater detail and to receive initial comments from stakeholders.

Additional review is needed in relation to Specific Service Charges prior to issuing a discussion paper for comment on those issues. As a result, this Discussion Paper addresses the Customer Service and Customer Rate Classification issues. A discussion paper on the Specific Service Charges issues will be released for comment at a later time.

The Board has determined that the issues that were being reviewed as part of the "Electricity Distributors and Management of Customer Commodity Payment Default Risk" consultation (EB-2007-0635) are now more effectively addressed within the context of this consultation. Accordingly, this Discussion Paper also covers those issues, and has been informed by stakeholder comments that were provided in the context of the earlier consultation.

In each of the sections of this Discussion Paper, Board staff has provided a description of the issue and a summary of the rules or guidance applicable in Ontario and in a selected group of jurisdictions in Canada and the United States.[1] Staff has also suggested areas for comment by posing a series of questions in each section. A summary of those questions is provided in Part IV.

In several instances throughout the Discussion Paper, staff has suggested different options that could be considered to address the issues. Staff does not necessarily attribute equal merit to all of the options presented in relation to a given issue, but is interested in the views of stakeholders.

[1] The Canadian jurisdictions are: Alberta, British Columbia, Newfoundland and Labrador, New Brunswick, Nova Scotia and Québec. The American jurisdictions are: Illinois, Ohio, New Hampshire, Texas and Wisconsin.

BACKGROUND

Each electricity distributor is required by the Board's *Distribution System Code* ("DSC") to have a Conditions of Service document which describes the distributor's operating practices and connection policies, and to file it with the Board. The Conditions of Service document outlines the rights and obligations of the distributor and its customers on various issues relating to the operation and maintenance of the distributor's distribution system. While the DSC identifies the types of policies that a Conditions of Service document must contain, it does not in all cases specifically dictate what those policies should be. In establishing the operating practices and connection policies described in its Conditions of Service, a distributor must comply with relevant provisions of the *Ontario Energy Board Act, 1998* and the *Electricity Act, 1998*, relevant regulations made under those Acts, and Board orders, licences, and codes applicable to the distributor.

The Board has issued two rate handbooks that contained the Board's framework for addressing certain rate applications and provided some guidance on the provision of service. The Electricity Distribution Rate Handbook ("PBR Handbook"), issued in March 2000, described the framework for the form of performance-based regulation[2] ("PBR") in place when rates were first unbundled. Some of the guidance provided in the PBR Handbook was based on Ontario Hydro's Standard Application of Rates ("SAR") document, which set out rules for the administration of rates and charges. The SAR was also the basis for some of the rules that are currently set out in the DSC and the *Retail Settlement Code* ("RSC"). The 2006 Electricity Distribution Rate Handbook ("2006 Handbook"), issued in May 2005, set out the Board's approach for 2006 electricity distribution rates, and is composed of both filing requirements and guidelines.

The PBR Handbook provided guidance to distributors on a number of policies, such as disconnection and bill payment, only a subset of which was reiterated in the 2006 Handbook. Further, the guidance contained in the 2006 Handbook was developed for application to the 2006 rate year. This has created some confusion as to whether the guidance provided in either or both of the handbooks is still applicable.

Distributors have designed their policies to be specific to the operation and maintenance of their respective distribution systems. The Compliance Office's review has revealed that the policies embedded in the Conditions of Service documents often vary from distributor to distributor, and this has been a cause of concern for customers. Distributors have also sought guidance and clarification from the Compliance Office on how to implement certain legal or regulatory requirements in a manner that is compliant with the applicable rules.

This consultation is intended to assist the Board in developing and, where appropriate, codifying policies as may be required to address these concerns.

[2] Now commonly referred to as "incentive regulation".

The issue of how prescriptive the Board should be in regulating certain business practices of distributors was considered by the "Distribution System Code Task Force" (the "Task Force") as part of the development of the DSC. For various aspects of distributors' operations, the Task Force considered three options:

1) **Minimalist Approach**
   A distributor uses its own discretion and methods as required.

2) **Prescriptive Approach:**
   The DSC will specify the policy for each circumstance.

3) **Modified Prescriptive Approach:**
   The DSC will require the distributor to describe its policies within its Condition of Service document.

In many instances, the Task Force's recommendation was to adopt the Modified Prescriptive Approach, whereby the DSC would contain minimal rules or guidance, and distributors would have discretion to develop policies to implement those rules.

Within the current legal and regulatory framework, distributors have discretion over many policies and procedures regarding bill payment, disconnection, and the opening and closing of accounts. The legal and regulatory framework sets out high level requirements but does not, in all cases, impose specific requirements on distributors regarding the provision of service to customers. For example, the *Electricity Act, 1998* requires that a distributor provide "reasonable notice" to a customer prior to termination of service for non-payment, but does not provide detail as to what constitutes "reasonable notice". The DSC, in turn, sets out grounds for disconnection and recommends, but does not require, 7 days' notice before disconnection.

The question of how prescriptive the Board should be in regulating aspects of distributors' provision of service to customers is an over-arching issue for consideration in relation to each of the topics identified in this Discussion Paper.

The current approach allows a relatively large measure of discretion to distributors to address local needs. As noted above, however, this approach has resulted in considerable variation in policies and procedures amongst distributors, and appears in at least some cases to provide insufficient guidance to distributors in relation to the development of compliant policies and procedures.

In general, comprehensive and prescriptive rules would allow for a standard level of service to customers, regardless of which distributor serves the customer, and provide distributors with clear direction as to the Board's expectations for the provision of service. However, there may be unique characteristics of the distributor's service area and/or customers that warrant policies and procedures that are different from those of other distributors. The "one-size-fits-all" approach would limit or eliminate the ability to address local needs, and this may negatively affect some customers.

Another option is to prescribe certain minimum standards for those issues that are not currently adequately addressed in various legal and regulatory instruments, to ensure that every customer receives at least a certain minimum level of service, regardless of which distributor is providing service. A distributor would have discretion to implement policies that provide a level of service greater than the minimum standards. Such an approach would permit a distributor some flexibility to implement policies and procedures that address local needs or characteristics.

In terms of overall approach, it may be interesting to note that, in the American jurisdictions that were reviewed, comprehensive rules governing electricity distributors are set out in state administrative codes that apply to the majority of distributors.[3] With the exception of Ontario, the framework in the Canadian provinces that were reviewed is such that distributors develop their own conditions of service, which are then approved by the relevant regulatory body. As such, approved conditions of service may differ among distributors, although these jurisdictions have significantly fewer distributors than in Ontario.

[3] In some states, different rules apply to investor-owned utilities as compared to municipally-owned utilities.

PART I: CUSTOMER SERVICE

1.1 BILL PAYMENT

A distributor's billing and payment processing policies and procedures can have a significant impact on customers. This is due largely to the implications for disconnection of a bill not being paid (or appearing to have been left unpaid) by the due date specified by the distributor. Below is a discussion of the following issues related to bill payment:

- Due date for bill payment
- Allocation of partial payments between energy and non-energy charges
- Correction of billing errors
- Equal billing

1.1.1 Due Date for Bill Payment

Electricity bills are payable when rendered by the electricity distributor. Distributors provide customers with a period of time to pay a bill without the application of a late payment charge. It is the end of this payment period that is typically referred to as the "due date" for payment.

Although the PBR Handbook provided guidance on the length of time to allow a customer to pay a bill without penalty, there are no prescriptive rules in place and, as a result, a distributor currently has discretion on how to implement policies on this matter.

Existing Rules and/or Guidance

The PBR Handbook contained guidance regarding the due date for bill payments, and when payments are considered to have been made, which was substantially the same as that previously set out in Ontario Hydro's SAR. Section 9.3.2 of the PBR Handbook stated, in part:

> *Bills are due when rendered by the utility. A customer may pay the bill without the application of a late payment charge up to a due date, which shall be a minimum of sixteen calendar days from the date of mailing or hand delivery of the bill. This due date shall be identified clearly on the customer's bill.*
>
> *Where payment is made by mail, payment will be deemed to be made on the date post marked. Where payment is made at a financial institution acceptable to the utility, payment will be deemed to be made when stamped/acknowledged by the financial institution or an equivalent transaction record is made…*

A related issue that should be considered is how time is computed. The Board's *Rules of Practice and Procedure* provides an example of rules for the computation of time as follows:

Rule 6.01 states:

> *In the computation of time under these Rules or an order:*
> *a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and*
> *b) where the time for doing an act under these Rules expires on a holiday, as defined under Rule 6.02, the act may be done on the next day that is not a holiday.*

Rule 6.02 states:

> *A holiday means a Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed.*

Discussion

As set out above, the PBR Handbook suggested that the due date for payments should be a minimum of sixteen calendar days after a bill was sent. While sixteen days is not a requirement, it is an industry practice followed by most, if not all, distributors.

In establishing the appropriate time period before the application of a late payment charge (i.e. the setting of the due date), consideration must be given to balancing the need of a customer to have sufficient time to arrange payment, and the need of the distributor for an adequate cash flow, having regard to the timely recovery of costs for services that have already been rendered, as well as the distributor's obligation to make monthly payments to the Independent Electricity System Operator ("IESO") to cover the commodity cost of electricity consumed by all of its customers, other than customers that are wholesale market participants. The longer the payment period provided to customers, the more acute the problem of cash flow can become for the distributor, which in turn affects working capital.

In addition to the question of the computation of time noted above, other issues that should be considered are when bills are deemed to have been sent and when payments are deemed to have been made. There may, for example, be a lag between when a bill is printed, and when it is put in the mail. Where a distributor's bill payment period is based on the date the bill is printed, the length of time given to customers for payment may be inappropriately shortened if bills are printed on a Saturday, but not mailed until Monday or Tuesday.

A customer needs to know when a payment is deemed to have been made so that the customer can make informed decisions about when to submit the payment, depending on the form of payment used. This is important to avoid the application of late payment charges, other collection action by the distributor or disconnection that might arise if the distributor considers the customer's payment to have been made after the due date.

The guidance in the PBR Handbook about payments made at a financial institution does not appear to specifically address payments made electronically, for example by telephone or internet banking. The expansion of the options available for payment of an account needs to be considered in the development of any policy. For example, many distributors allow customers to pay by telephone or internet banking, and some distributors are already "delivering" bills electronically, by e-mail or by allowing customers to access bills on the internet.

Experience in Other Jurisdictions

British Columbia Hydro and Power Authority's ("BC Hydro") approved Terms and Conditions provide for a due date that is the first business day after the twenty-first calendar day following the billing date, or such other period as may be defined in a special contract.[4]

In accordance with Bylaw 634 which sets out the rules applicable to Hydro-Québec, bills are due within twenty-one days of the billing date. [5]

The due date in Alberta varies depending on the entity. For customers receiving regulated services from Direct Energy Marketing Limited ("Direct Energy") in the service area of ATCO Electric, the due date for bill payment is no less than thirteen business days.[6] For a customer receiving default supply service from EPCOR Energy Services Inc. ("EPCOR"), the due date for bill payment is no less than twenty-one days.[7]

The rules approved for Newfoundland and Labrador Hydro, New Brunswick Power, and Nova Scotia Power do not indicate the number of days for payment, but rather indicate that bills are due and payable when issued, when rendered, or on the billing date, respectively.[8]

A review of several American jurisdictions[9] indicates that the due date for bill payment ranges from 16 days to 25 days from the date the bill was sent by mail or, in some cases, electronically.

In Illinois, where payment is made in person the utility cannot consider the payment past due unless the payment is made after the due date printed on the bill. Where a customer mails a payment, it is considered to have been made on time provided that payment is received at the utility's office not more than two full business days after the due date printed on the bill. In determining whether a bill is past due, a utility may rely

4 BC Hydro, *Terms and Conditions*. 5.3. The British Columbia Utilities Commission has approved revised Terms and Conditions, effective April 1, 2008. The policies described in this paper were not changed as part of those revisions.
5 Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 90.
6 Direct Energy Regulated Services, *Electricity Regulated Rate Tariff, Terms and Conditions of Regulated Rate Service*, 8.3.
7 EPCOR Energy Services Inc, *Default Supply Terms and Conditions*. 5.1.
8 Newfoundland and Labrador Hydro, *Rules and Regulations*, 10(c); New Brunswick Power, *Rates, Schedules and Policies Manual*, RSP F-2; and Nova Scotia Power, *Tariffs & Regulations*, 5.4.
9 Texas, Wisconsin, and New Hampshire.

on the postmark of the payment and the payment is considered past due if postmarked after the due date printed on the bill.[10]

Staff Options

Staff suggests that there should be a minimum standard as to the number of days that a distributor must allow customers to pay without the application of a late payment charge.

The requirement could be sixteen days from the date the bill is sent, which would be deemed to be the date that the bill is put in the mail. A sixteen day payment period would be consistent with current industry practice. Staff also notes that it would be reasonable for distributors to have the discretion to provide a longer period of time, provided the policy is written as part of its Condition of Service and applied uniformly to all similarly situated customers except where an alternative approach is specifically contemplated in the DSC.

Staff does not see merit in adjusting the payment period based on the method of delivery of the bill. That is, the minimum payment period would be sixteen days regardless of whether the bill was sent through the mail or electronically (by e-mail or by allowing customers to access bills on the internet). Customers who choose to receive an electronic copy of their bill by e-mail or by means of internet access may simply benefit from being able to access their bill earlier than those receiving bills through the mail.

Where bills are sent by e-mail, staff suggests that the sixteen day payment period should start from the day the e-mail was sent. Where bills are accessed on the internet, staff suggests that the sixteen day payment period should start from the day the e-mail is sent advising the customer that the bill is available for viewing on the internet.

With respect to when payments are deemed to have been made, staff suggests that one option is that the guidance previously provided in the PBR Handbook be made a requirement, such that where a payment is made by mail, the distributor would be required to consider the payment to have been made on the date the letter was post marked. Where a payment is made at a financial institution, a distributor would be required to consider the payment to have been made when stamped/acknowledged by the financial institution or an equivalent transaction record is made.

In addition to making payment by mail or at a financial institution, it is likely that many customers make payments by electronic means, such as by internet or telephone banking. However, staff is not currently aware of how internet or telephone banking transactions are processed and brought to the attention of distributors. As such, staff is not in a position to suggest options for rules regarding the effective or deemed date of payment of bills paid by internet or telephone banking. Staff would be assisted in this

[10] *Illinois Administrative Code*, 280.90(a).

area by information from distributors, and has posed some questions below in this regard.

As a related matter, in order to ensure that both a distributor and its customers are computing the time period consistently, staff suggests that the Board consider establishing rules regarding the computation of time, based on those set out in Rules 6.01 and 6.02 of the Board's *Rules of Practice and Procedure* as cited above.

Q1. Are there any reasons why a customer would need or should be allowed more than a sixteen day payment period before application of a late payment charge?

Q2. If a distributor were to provide a payment period longer than sixteen days, how would this affect the distributor's cash flow?

Q3. Where bills are "delivered" electronically, either by e-mail or by allowing customers to access bills on the internet, how should the date that the bill is deemed to have been sent be determined?

Q4. What processes do distributors currently have in place to determine or verify whether payment was received by the billing due date, particularly where payment is made by electronic means (telephone or internet banking)?

Q5. In addition to payment by mail, at a financial institution, or by electronic means (telephone or internet banking), are there any other methods of payment that distributors accept? If so, how do distributors determine or verify whether payment was received by the billing due date?

1.1.2 Allocation of Payments Between Energy and Non-energy Charges

Existing Rules and/or Guidance

In accordance with section 5(2) of the *Definitions and Exemptions Regulation*, O. Reg. 161/99 ("Regulation 161/99"), a distributor is permitted to manage or operate the provision of water or sewage services on behalf of a municipal corporation that has the requisite proportion of ownership of the distributor. Section 71(2) of the *Ontario Energy Board Act*, *1998* and section 5(3) of Regulation 161/99 allow a distributor to provide services related to the promotion of electricity conservation and efficient energy use, clean energy and load management.

In accordance with section 31(1) of the *Electricity Act, 1998*, a distributor is permitted to disconnect a customer for non-payment of amounts owing for the distribution or retail of electricity. Section 31(1) of the *Electricity Act, 1998* states:

> *A distributor may shut off the distribution of electricity to a property if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 29 is overdue.*

Consistent with the above referenced provision of the *Electricity Act*, *1998*, the Board's Compliance Office issued Compliance Bulletin 200701 on January 25, 2007 clarifying the rules in relation to the provision of conservation and demand management ("CDM") activities and compliance with various legal and regulatory obligations. The Bulletin addressed the allocation of payments between charges owing for the distribution or retail of electricity, and charges owing for CDM products or services. The Bulletin states, in part:

> *Distributors are reminded that the right to disconnect a customer for non-payment relates only to the non-payment of charges owing for the distribution or retail of electricity, or for a security deposit. In my view, a customer cannot be disconnected so long as the payment received by the distributor is sufficient to cover those charges. In such a case, it is not permissible for a distributor to disconnect a customer if the payment received is otherwise insufficient to cover charges owing for CDM products or services that are not funded through distribution rates.*

Discussion

The right to disconnect for non-payment set out in legislation and in the DSC relates only to the non-payment of charges owing for the distribution or retail of electricity ("energy charges"). This includes charges for electricity, associated delivery[11] and regulatory charges,[12] the debt retirement charge, and any taxes on those charges.[13] Some distributors, in addition to billing for energy charges, may also bill customers for other services where permitted by law,[14] such as water or sewage services, or CDM-related products or services ("non-energy charges"). Section 31(1) of the *Electricity Act, 1998* does not permit disconnection for failure to make payment for non-energy charges that may be included on the bill.

An issue may arise when a customer has submitted only a partial payment. In some cases, the customer may submit a partial payment because it is disputing the non-energy charges, and may have notified the distributor of the dispute. In other cases, the distributor may not know the reason for the partial payment.

When partial payments are received, some distributors allocate payments received first to energy charges, and any remaining amounts are allocated to non-energy charges.

[11] Includes charges for distribution and transmission.
[12] Includes charges for administering the wholesale electricity system and maintaining reliability of the provincial grid.
[13] Goods and Services Tax.
[14] Compliance Bulletin 200605, issued on July 10, 2006, discusses limits imposed by law on the provision of billing services for non-energy charges.

Other distributors allocate payments received to energy charges and non-energy charges based on the proportion of each type of charge on the overall bill. Under this approach, if the customer's payment was insufficient to cover the entire bill, a portion of the energy charges appears to be unpaid. Distributors that use this method of allocating payments then consider that the customer may be disconnected or assessed a late payment charge due to the non-payment of the energy charges.

At the Stakeholder Meeting, some distributors stated that if they are required to allocate payments first to energy charges, it may be more difficult to collect non-energy charges from customers. As a result, the service provider for whom the distributor is providing billing services, such as a municipality in the case of water or sewage charges, may seek billing services from other providers. If billing costs are shared between the distributor and the service provider for whom the distributor is providing billing services, then some distributors state that their billing costs for regulated services may increase if they lose the revenue associated with providing the billing service.

Staff is also aware of a concern of retailers that involves arrears for non-energy charges and the allocation of payments. In accordance with section 10.5 of the RSC, distributors may refuse to process a request to enroll a customer with a retailer if the customer is in arrears on payments to the distributor. It is staff's understanding that distributors and retailers have agreed that distributors will not refuse to process an enrollment request unless the customer is in arrears by at least a minimum dollar value. At the Stakeholder Meeting, one retailer suggested that, for the purposes of assessing whether a customer is in arrears consistent with section 10.5 of the RSC and the industry arrangement, the distributor should consider only energy charges. If the customer was in arrears only for non-energy charges, the retailer suggested that this should not be a reason for the distributor to reject the customer's enrollment with the retailer.

Experience in Other Jurisdictions

In Alberta, for customers on default supply service with EPCOR, where a bill includes charges for both default supply and other services[15], payment is applied to each service on the basis of the respective amounts for these services.[16] It is not known what rules, if any, exist with respect to EPCOR's right to terminate service or take collection action in relation to charges not associated with default supply service.

In Wisconsin, utilities are permitted to include on the utility bill charges for services, material or work associated with conservation programs approved by the Wisconsin Public Service Commission and, with the consent of the customer, also charges for merchandise and service work. Utilities are required to apply any partial payments first to the amount due for utility service, and the remainder, if any, can be applied to the other charges.[17]

[15] In certain communities in Alberta, EPCOR also provides water and wastewater services.
[16] EPCOR Energy Services Inc, *Default Supply Terms and Conditions*, 5.6.
[17] *Wisconsin Administrative Code,* PSC 113.0406(1)(15)(e).

Staff Options

Staff suggests that the Board should establish rules regarding the allocation of payments between energy and non-energy charges. Staff puts forward the following options for consideration:

(1) Distributors could be required to always allocate payments first to energy charges. Staff notes that such an approach may help to ensure that distributors do not process payments in a manner that would lead to action that is inconsistent with section 31(1) of the *Electricity Act, 1998* (in other words, to ensure that customers are only disconnected for non-payment of energy charges). Any amounts remaining once the energy charges have been accounted for can then be applied to non-energy charges. Staff also believes that this method of allocation would help ensure that retailer enrollment requests are rejected only where there are amounts owing for energy charges.

(2) Distributors could be given discretion as to how payments are allocated. This option would allow a distributor, if it so chose, to allocate payments between energy and non-energy charges based on the proportion of each type of charge on the overall bill. Staff suggests that clear direction from the Board would be required in relation to the permitted scope of the application of late payment charges and of disconnection in circumstances where payment for energy charges appears to be unpaid as a result of the distributor's choice in payment allocation.

(3) Distributors could be given discretion as to how payments are allocated as referred to in (2), except where a customer has made a specific request to the distributor as to how the customer wishes payments to be allocated. For example, where a customer is disputing the non-energy charges, a customer may request that the distributor allocate the customer's payments first to energy charges.

Q6. Are there any technical limitations (e.g. billing systems) that would limit a distributor's ability to allocate payments towards energy charges first and non-energy charges second?

Q7. If there are technical limitations, what options are available to a distributor to ensure that a customer's payment is applied to energy charges first?

Q8. If distributors were given discretion as to how payments are allocated, do distributors need guidance from the Board as to how payments should be processed to ensure that it is not done in a manner that would lead to action that is inconsistent with section 31(1) of the Electricity Act, 1998 (in other words, to ensure that customers are only disconnected for non-payment of energy

charges)?

Q9. What are the implications of distributors being required to allocate payments in accordance with customer requests?

1.1.3 Correction of Billing Errors

It is sometimes necessary for a distributor to revise a customer's bill (or bills) because a meter error or other billing error has been identified subsequent to the issuance of the bill(s). This may result in the customer being credited amounts that were previously over-billed, or the customer may be required to pay amounts that were previously under-billed. Customers who are required to pay additional charges may feel unfairly burdened, particularly if they are required to pay the additional charges in one lump sum, in addition to amounts owing for the current period.

Existing Rules and/or Guidance

Section 7.7 of the RSC addresses the correction of billing errors as follows:[18]

> *Where a billing error, from any cause, has resulted in a consumer or retailer being over billed, and where Measurement Canada has not become involved in the dispute, the distributor shall credit the consumer or retailer with the amount erroneously billed. The credit the distributor remits to the appropriate parties shall be the amount erroneously billed for up to a six-year period. Where the billing error is not the result of a distributor's standard documented billing practices, i.e estimated meter reads, a distributor shall pay interest on the amount credited to the relevant party equal to the prime rate charged by the distributor's bank.*
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> *Where a billing error, from any cause, has resulted in a consumer or retailer being under billed, and where Measurement Canada has not become involved in the dispute, the distributor shall charge the consumer or retailer with the amount that was not previously billed. In the case of an individual residential consumer who is not responsible for the error, the allowable period of time for which the consumer may be charged is two years. For non-residential consumers or for instances of willful damage, the relevant time period is the duration of the defect.*
>
> *The entity billing a consumer, whether a distributor or a retailer, is responsible for advising the consumer of any meter error and its magnitude and of his or her rights and obligations under the Electricity and Gas Inspection Act (Canada). The billing party is also responsible for subsequently settling actual payment differences with the consumer or retailer as described above.*

[18] Where Measurement Canada has become involved, Measurement Canada is responsible for determining the duration of the error.

Ontario Hydro's SAR also contained guidelines regarding the correction of billing errors. In the case of residential customers not responsible for the error, the duration of the under-billing for which distributors were required to correct was also two years, consistent with the rules currently set out in the RSC. For all other cases of under-billing, the SAR set the period at six years.

Discussion

The RSC does not address the issue of over how long a period a customer must be allowed to pay amounts that were under-billed. The RSC is also silent on the manner in and time within which distributors should credit amounts that were over-billed.

Common causes of over- or under-billing include the application of an incorrect rate or billing multiplier and metering incidents such as blown fuses, where Measurement Canada has not become involved.

Distributors commonly refund customers amounts owing through a credit on the customer's account, which can be applied to offset electricity charges owing for a subsequent billing period. However, depending on the size of the amount that was previously over-billed, the amount could remain a credit on a customer's account for a significant period of time.

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. It is staff's understanding that some, but not all, distributors allow customers to repay the amount of the error over the same period of time that the error occurred. In some cases, the customer must request this option, rather than it being automatically offered to the customer.

An additional consideration is whether the rules regarding the length of time a distributor could be permitted to collect under-billed charges should apply differently where the customer was responsible for the under-billing. Such a situation may arise where there has been unauthorized energy use, including meter tampering or theft of power by the customer.

Experience in Other Jurisdictions

In the case of over-billing, Nova Scotia Power and New Brunswick Power both rely on the periods set out in the federal *Electricity and Gas Inspection Act* ("EGI Act"), which is administered by Measurement Canada. BC Hydro only relies on the EGI Act where the dispute procedure in that Act has been invoked.[19]

[19] Nova Scotia Power, *Tariffs & Regulations*, 5.5; New Brunswick Power, *Rates, Schedules and Policies Manual*, RSP F-3; and BC Hydro, *Terms and Conditions*. 5.8.

In the case of under-billing where there is no unauthorized energy use, both New Brunswick Power and Nova Scotia Power limit the duration of back-billing to six months.[20]

In the case of over-billing, BC Hydro will refund all money incorrectly collected for the duration of the error. Where the date when the error first occurred cannot be determined with reasonable certainty, the maximum refund period is six years back from the date the error was discovered. In the case of under-billing, BC Hydro will back-bill the customer as follows: for residential, small general service or irrigation customers, for the duration of the error or six months, whichever is shorter; and for all other customers, for one year. Different rules may apply as set out in a special or individually negotiated contract between BC Hydro and the customer. If requested by the customer, the repayment term will be equivalent in length to the duration of the under-billing. Repayment is interest-free and in equal installments corresponding to the normal billing cycle. A customer may be subject to usual late payment charges where payment of the agreed-upon installments is delinquent.[21]

Nova Scotia Power, New Brunswick Power and BC Hydro all require that, where under-billing was the result of fraud, theft of power or negligence, the period of time for charges to be collected is the duration of the unauthorized use.[22]

Hydro-Québec does not explicitly rely on the EGI Act with respect to billing adjustments. In the case of under-billing, Hydro-Québec will back-bill a customer for a period not to exceed six months. In the case of over-billing, the duration of correction depends on the cause of the over-billing. In the case of a failure of metering equipment, Hydro-Québec will refund the customer amounts owing for all consumption periods affected. In all other cases, Hydro-Québec will refund the customer amounts owing for all consumption periods affected up to thirty-six months. Where the period of the over-billing cannot be determined, the period of the over-billing is deemed to be six months.[23]

In New Hampshire, where a customer has been under-billed due to meter errors or reconciliation between estimated and actual consumption, the utility must allow a repayment period equal to at least the period of time for which the error is being re-billed.[24] For billing errors resulting from a utility's failure to implement a new rate on its effective date, the utility must apply to the New Hampshire Public Utilities Commission for approval to collect the under-billed amounts, and propose the period of time over which it will collect the unbilled amounts from customers.[25]

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[20] Nova Scotia Power, *Tariffs & Regulations*, 5.5; New Brunswick Power, *Rates, Schedules and Policies Manual*, RSP F-3.
[21] BC Hydro, *Terms and Conditions*. 5.8.
[22] Nova Scotia Power, *Tariffs & Regulations*, 5.5; New Brunswick Power, *Rates, Schedules and Policies Manual*, RSP F-3; and BC Hydro, *Terms and Conditions*, 5.8
[23] Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 89.1(1).
[24] *New Hampshire Code of Administrative Rules*, PUC 1203.07(d).
[25] *New Hampshire Code of Administrative Rules*, PUC 1203.05(d) - (e).

In Texas, rules are provided for both over-billing and under-billing. Where a customer has been over-billed due to the application of an incorrect rate, utilities must refund customers for the entire period of the over-billing. The utility is required to pay interest to the customer on the amount of the over-charge, unless the utility corrects the over-billing within three billing cycles of the error, in which case payment of interest is not required.[26] If a customer has been under-billed as a result of the application of an incorrect rate, or if the utility failed to bill a customer for service, the utility can back bill the customer for a period not to exceed six months from the date the error was discovered, unless the under-billing was the result of theft by the customer. Utilities are only required to offer deferred payment arrangements where the under-billing is $50 or more, in which case the payment period must be the same length of time as the under-billing. No deferred payment plan is required to be offered where the under-billing was the result of theft by the customer.

In Illinois, if a utility overcharges a customer due to metering errors or to an incorrect rate having been charged, the utility is required to refund the over-charge with interest from the date of overpayment by the customer. The utility can provide the refund as a credit on the customer's bill, or by cheque if the account is final or if requested by the customer.[27] Where a customer has been overcharged due to two or more consecutive estimated bills, a utility billing error, meter failure or undetected leakage or loss of service (except where tampering is involved), utilities are required to offer an extended payment plan only in certain circumstances. Specifically, where a customer's payment for a previous under-billing is past due, and where the "make-up" bill exceeds an otherwise normal bill by 50%, the utility must allow the customer to pay the amounts owing over a period of time at least as long as the period of under-billing.[28]

In Wisconsin, rules are only provided for where over-billing has occurred. Specifically, utilities are required to pay interest on over-billing only where the amount has not been refunded within 60 days of the overpayment and where the amount to be refunded exceeds $20.[29]

Staff Options

For amounts that were over-billed, it would seem appropriate that a distributor credit the customer as soon as feasible after the error is discovered. The question then is the manner in which amounts are credited back to the customer.

Staff recognizes that it may be cost effective to provide a credit to a customer's account, rather than in the form of a cheque. However, staff notes that where the amount owing to the customer is significant, such that it may take several billing cycles to be offset by current charges owing, or where a distributor bills the customer infrequently, this may create undue delay in receiving the credit.

[26] *Texas Administrative Code*, Title 16, Part 2, Chapter 25, 25.28(c).
[27] *Illinois Administrative Code*, 280.75.
[28] *Illinois Administrative Code*, 280.100(d).
[29] *Wisconsin Administrative Code,* PSC 113.0406(8)(a).

In the case of over-billing, staff puts forward the following options for consideration:

(1) Distributors could be required to refund amounts owing as a credit to a customer's account, regardless of the amount owing;

(2) Distributors could be required to refund amounts owing in the form of a cheque, regardless of the amounts owing; or,

(3) Distributors could be required to refund amounts previously over-billed as a credit on the customer's account only where the amounts owing to the customer are less than a certain amount, for example only where the credit could offset charges that would reasonably be expected to be incurred within the next 2 billing periods. If the amounts previously over-billed exceeded that threshold, then the distributor would be required to provide the refund in full in the form of a cheque.

Consistent with section 7.7 of the RSC, the distributor should be required to pay interest on amounts over-billed, regardless of how over-billed amounts are returned to the customer.

In the case of under-billing, staff puts forward the following options for consideration:

(1) Distributors could be required to allow customers to pay back the amount owing for previously under-billed amounts in equal installments over the same duration as the billing error;

(2) Distributors could be permitted to require payment from the customer in full, on the customer's next regular bill; or,

(3) Distributors could be required to set the duration of the repayment period depending on the amount owing as a result of under-billing. If the amount owing was less than a certain amount, the distributor could require payment in full, on the customer's next regular billing. If the amount owing was greater than a threshold amount, then the distributor would be required to allow the customer to pay in equal installments over the same duration as the billing error. The question then becomes one of defining the threshold amount.

Staff notes that the RSC is silent on the payment of interest by customers on amounts that have been previously under-billed, but that distributors are required to pay interest to customers on amounts that have been over-billed. While this is asymmetrical, it may not be appropriate for customers to pay interest for under-billing where the customer was not responsible for the error. There may, however, be an argument for customers paying interest on previously under-billed amounts where the customer was responsible

for the under-billing, such as in the case of unauthorized energy use, including meter tampering or theft of power by the customer.

Q10. Staff has suggested three options for how distributors should refund to customers amounts owing for over-billed amounts. What are the advantages and disadvantages of each option?

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?

Q12. With regards to the option where refunds would be provided in the form of a cheque if the amount owing was greater than a certain amount, what might be an appropriate threshold or criterion for determining the form of refund? Should the threshold or criterion differ depending on customer class?

Q13. With regards to the option where the repayment period for under-billing would depend on the amount owing by the customer, what is an appropriate threshold or criterion for determining the repayment period? Should the threshold or criterion differ depending on customer class?

Q14. The RSC requires that distributors pay interest on amounts that were over-billed, but does not allow distributors to charge interest on amounts under-billed. Is this asymmetry appropriate?

Q15. Where the customer is responsible for the under-billing, such as in the case of unauthorized energy use, including meter tampering or theft of power by the customer, should distributors be permitted to collect interest on the amount owing by the customer?

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?

1.1.4 Equal Billing

Many distributors offer customers a payment option whereby bills are issued in equal installments over a certain period of time (usually 11 months), and any amount over- or under-billed is reconciled on an annual basis (usually the 12th month). Such a payment option is commonly known as equal billing, budget billing or equal payment.[30] 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

[30] For the purposes of this Discussion Paper, the term "equal billing" will be used to denote these types of payment options.

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. Another benefit to the distributor is that equal billing "smoothes out" the distributor's cash flow. Staff recognizes, however, that the distributor may still be at risk of customer non-payment at the time of reconciliation, particularly if the customer's annual consumption was under-estimated by a significant amount and the customer is then unable to pay the amounts owing on the bill that covers the reconciled amount.

Existing Rules and/or Guidance

Equal billing is addressed in section 2.6.2 of the *Standard Supply Service Code* (the "SSS Code"), which states:

> *A distributor may offer an equal billing plan option (or some equivalent form of levelized or budget billing) to all standard supply service customers.*

Discussion

Section 2.6.2 of the SSS Code does not require distributors to offer equal billing to customers. Currently, a distributor has discretion as to the billing and payment options it offers its customers. As a result, some, but not all, distributors offer equal billing. A distributor also has discretion as to the terms and conditions of equal billing, if the distributor opts to offer this billing option. For example, many distributors require that customers have no outstanding account arrears in order to participate. Other distributors make participation in equal billing conditional upon participation in other payment plans, most commonly "pre-authorized payment" whereby the customer consents to having payments automatically withdrawn from the customer's bank account at certain times.

The issue of whether a distributor should be required to offer equal billing was previously addressed by the task force which was involved in the development of the RSC.[31] Distributor representatives argued that equal billing should be permitted, but not be mandatory. It was concluded by the task force that the RSC was not the appropriate regulatory instrument with which to deal with this issue, as the focus of the RSC at that time was on settlement between a distributor and a retailer, and not on settlement between a distributor and its customers.

Staff is not aware of any customer concerns with respect to whether all distributors should be required to offer equal billing. Both customers and retailers have, however, expressed concern that some distributors do not offer equal billing to customers enrolled with a retailer. An informal survey by Board staff in June 2006 showed that, of those distributors who offered equal billing to residential customers, approximately 40% allowed customers enrolled with a retailer to participate.

[31] Retail Settlement Code Task Force Recommendations: Report to the Ontario Energy Board, October 29, 1999.

Retailers argue that the non-availability of equal billing for customers enrolled with a retailer creates a barrier to customer choice.

Some distributors state that offering equal billing to retailer-enrolled customers increases the distributor's bad debt risk, since prices under retailer contracts are, on average, higher than prices charged under the Regulated Price Plan ("RPP") to system supply customers. They argue that, where consumption over the equal billing period was higher than expected, the amount owing by a retailer-enrolled customer to a distributor would be higher, on average, than would be the case for a system supply customer.

Staff notes, however, that the prices charged to customers enrolled with a retailer are set out in the customer's contract with the retailer and are typically fixed prices. Staff therefore suggests that distributors should not be hindered in their ability to determine appropriate equal billing amounts based on the contract price which, when fixed, is more stable than RPP prices (as these are subject to change twice per year).

Other distributors have indicated that, for the purposes of equal billing, they see no reason to differentiate between retailer-enrolled customers and those on system supply.

Experience in Other Jurisdictions

Nova Scotia Power offers equal billing, and allows customers to enroll at any time in the year. A satisfactory credit history is a condition of participation.[32] BC Hydro's program is also conditional upon a satisfactory credit history.[33]

New Brunswick Power's equal billing plan was reviewed as part of a hearing before the Board of Commissioners of Public Utilities into the utility's rates. In the hearing, intervenors pointed out that many low-income customers were not eligible for the program due to New Brunswick Power's requirement for a satisfactory billing history. In its decision, the Board of Commissioners of Public Utilities recommended that New Brunswick Power extend the equal billing option to all customers who are not in arrears or who are making good faith attempts to deal with arrears, regardless of their payment history. For those customers with an unsatisfactory payment history, the Board of Commissioners of Public Utilities recommended that the entry point for the program be limited to the months of April through July.[34]

Hydro-Québec permits customers to subscribe to its equal billing plan at any time in the year, but the annual period ends on the first meter reading after July 31 of each year.

[32] Nova Scotia Power, *Tariffs & Regulations*, 5.3(A).
[33] BC Hydro, *Terms and Conditions*, 5.6.
[34] New Brunswick Board of Commissioners of Public Utilities, *Decision in the Matter of a review of New Brunswick Power Distribution and Customer Service Corporation's Customer Service Policies arising from a continuation of an Application by New Brunswick Power Distribution and Customer Service Corporation for approval of a change to its Charges, Rates and Tolls*, January 29, 2007.

Continued participation in the plan is conditional upon having no more than one unpaid installment.[35]

Of the American jurisdictions reviewed by staff, only Illinois addresses equal billing. In Illinois, a utility is required to offer a customer a "budget payment plan", which equalizes the customer's payments into monthly installments, where the character of the customer's consumption causes, or is likely to cause, a substantial fluctuation in bills over an annual period.[36]

Staff Options

Staff notes that there may be benefits to both customers and distributors of equal billing, and that these benefits exist regardless of whether a customer is on system supply or enrolled with a retailer. Equal billing can improve a customer's ability to pay by levelizing seasonal fluctuations in electricity consumption, which in turn may reduce the risk to the distributor of customer non-payment.

The Board may therefore wish to consider requiring all distributors to offer equal billing. Staff notes, however, that such a requirement may impose a burden on distributors who do not currently offer equal billing.

Irrespective of whether distributors are required to offer equal billing, the Board may also wish to consider whether distributors should be permitted to differentiate between retailer-enrolled customers and those on system supply. Staff does not see compelling reasons for distributors that offer equal billing to refuse to provide that option for retailer-enrolled customers. Staff therefore suggests that, where a distributor offers equal billing, it should offer that option to all customers, whether they are on system supply or enrolled with a retailer.

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

Q18. If all distributors were required to offer equal billing, what are the implications for:
- Customer information / billing systems?
- Distributor's costs?
- Cash flow?

Q19. For those distributors that currently offer equal billing, but not to customers enrolled with a retailer, what are the implications of being required to offer equal billing to customers enrolled with a retailer? Specifically, what are the implications for:
- Customer information / billing systems?

[35] Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 93.
[36] *Illinois Administrative Code*, 280.120.

- Distributor's costs?
- Cash flow?

1.2 DISCONNECTION FOR NON-PAYMENT

As demonstrated by the volume of complaints logged with the Board, disconnection policies are of great concern for customers. Under the *Electricity Act, 1998* and the DSC, a distributor has a right to terminate service for non-payment of charges owing for the distribution or retail of electricity, and for safety or system reliability reasons. The question then becomes one of exercising that right and the processes associated with it.

Existing Rules and/or Guidance

The grounds for termination of service are set out in the *Electricity Act, 1998* and the DSC.

Sections 31(1) and 31(2) of the *Electricity Act, 1998* state:

> *(1) A distributor may shut off the distribution of electricity to a property if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 29 is overdue.*
>
> *(2) A distributor shall provide reasonable notice of the proposed shut-off to the person who is responsible for the overdue amount by personal service or prepaid mail or by posting the notice on the property in a conspicuous place.*

Section 31.1(1) of the *Electricity Act, 1998* states:

> *A distributor may shut off the distribution of electricity to a property without notice if the distributor has reason to believe that a condition exists in respect of the property that threatens or is likely to threaten,*
> (a) *the safety of any person; or*
> (b) *the reliability of all or part of the distribution system.*

Section 4.2.3 of the DSC states:

> *It is recommended that, whenever possible, distributors provide no less than seven calendar days notice before disconnection for non-payment.*

Section 4.2.6 of the DSC states:

> *In establishing its disconnection policy as specified in its Conditions of Service, consistent with section 30 and 31 of the Electricity Act and good utility practice, a distributor may consider the following reasons for disconnection:*
> - *Adverse effect on the reliability and safety of the distribution system.*
> - *Imposition of an unsafe worker situation beyond normal risks inherent in the operation of the distribution system.*
> - *A material decrease in the efficiency of the distributor's distribution system.*

- *A materially adverse effect on the quality of distribution services received by an existing connection.*
- *Inability of the distributor to perform planned inspections and maintenance.*
- *Failure of the consumer or customer to comply with a directive of a distributor that the distributor makes for purposes of meeting its licence obligations.*
- *The customer owes the distributor money for distribution services, or for a security deposit. The distributor shall give the customer a reasonable opportunity to provide the security deposit consistent with section 2.4.20.*

Section 9.3.5 of the PBR Handbook contained the following guidance regarding disconnection procedures:

> *A disconnect notice will be issued in writing not less than seven days after the due date as defined in Section 9.3.2. Notice must be given by hand delivery or by registered mail. Both the customer and tenants of the customer will receive seven days' notice before cut-off.*
>
> *Prior to the disconnection of the electricity service, a representative of the utility will make reasonable efforts to establish direct contact with the customer. The utility should also, where possible, notify the occupants of each separately occupied unit in the premises. The electricity service will not be disconnected by reason of the non-payment of bills until seven days after a disconnection notice has been given to the customer and as set out in this section.*

Discussion

Although the grounds for disconnection are set out in legislation and the DSC, and there is a statutory requirement for reasonable notice, neither the legislation nor the Board's regulatory instruments provide definitive guidance on what is considered "reasonable" notice. In order to provide more consistent treatment of customers, staff proposes that the Board consider codifying what it considers to be "reasonable notice" for purposes of section 31 of the *Electricity Act, 1998*. Staff suggests that the Board should identify its expectations in relation to timing of the notice, as well as to the form and content of the notice.

Staff appreciates that most, if not all, distributors make reasonable efforts to work with customers to avoid disconnection. A review of the Conditions of Service of a selected group of distributors[37] indicated a range of between 16 days and 24 days from the due date of the bill and actual disconnection. This period also included notice, albeit in different forms and at different times.

Given the variety of practices among distributors, there is potential for confusion by customers, especially those that move from one distributor's service area to another, or those that have an account with more than one distributor, such as a consumer having

[37] Whitby Hydro Electric Corporation, Toronto Hydro-Electric System Ltd., Milton Hydro, Hydro Ottawa, Barrie Hydro, Greater Sudbury Hydro, Hydro One Networks Inc., and Oshawa PUC Networks Inc.

a residence in one distributor's service area and a cottage or business in another distributor's service area.

In addition to consideration of what constitutes "reasonable notice", staff suggests it is also helpful to review whether any person, in addition to the account holder, should receive notice of disconnection.

1.2.1 Form and Content of a Disconnection Notice

As noted in a previous section, most distributors provide their customers with a bill payment period of 16 days before the application of a late payment charge or disconnection. According to some of the distributors' Conditions of Service, many provide an additional period of seven days prior to the initiation of any disconnection activity. It appears, however, that notification to the customer of the possibility of disconnection takes different forms, such as a statement on the customer's regular bill, a separate mailing, or a notice posted on the customer's property. The information provided by each distributor's notice also differs.

A review of some of the distributors' Conditions of Service documents also indicates that many distributors take several steps prior to the physical disconnection of a service and may issue and/or post several different types of notices, although few details are given as to the form and content of those notices. For example, many distributors take steps such as making a collection call at the customer's premises, issuing a "reminder notice", or making a telephone call to the customer. At least one distributor makes further attempts to ensure that the customer is informed as to the consequences of non-payment of its account even after issuing a disconnection notice by placing a "disconnection sticker" on the customer's premises 48 hours prior to the actual disconnection of service. Another distributor issues a "door hanger" in addition to a disconnection notice, but again it is not known what information each contains.

Experience in Other Jurisdictions

Most of the Canadian jurisdictions surveyed allow use of multiple methods of notice to a customer prior to disconnection.

Nova Scotia Power provides written notice of disconnection by personal service, by leaving a notice at the last known address of the customer, or by first class mail. Where notice is sent by first class mail, service is deemed complete upon the second day following the date of mailing. The notice of disconnection states, in bold-faced type at the top of the notice, "Disconnection Notice", and states the date on or after which disconnection will occur, the customer's right to dispute the disconnection and the process for such, and the customer's right to enter into a payment arrangement if the customer is unable to pay the full amount by the due date.[38]

[38] Nova Scotia Power, *Tariffs & Regulations*, 6.1.

After issuing notice, but prior to disconnection, Nova Scotia Power will make reasonable efforts to contact the customer. If no contact is made, then Nova Scotia Power will attempt to contact the customer or other responsible adult at the premises. If no contact at the premises is made, then written notice is left at the premises or sent by priority mail requiring a signature. When service is disconnected, a notice is left at the premises advising the customer that service has been disconnected, and providing contact information for the utility.

Hydro-Québec sends an overdue notice warning of the possibility of disconnection, by a means making it possible to prove that the notice was sent. If a customer so requests, Hydro-Quebec will propose a payment arrangement prior to disconnecting the customer. Prior to disconnecting, Hydro-Quebec will send a second notice, by a means making it possible to prove that the notice was sent.[39]

In Alberta, EPCOR provides written notice, followed by a telephone call to the customer. If the customer does not make satisfactory payment following contact by telephone, no further notice is provided prior to disconnection.[40]

All of the American jurisdictions reviewed require some form of written notice prior to disconnecting a service for non-payment of account. In Texas for example, the notice must be a separate mailing, or be hand delivered.[41] In Illinois, any notice to be delivered or mailed must be delivered or mailed separately from any bill.[42]

Some of the American jurisdictions reviewed also require that notices of disconnection contain specific language or information, including the reason for the disconnection, the proposed date of disconnection, and information on how to contact the utility. Texas requires that the notice state "Disconnection Notice" or similar language, and Illinois requires that any written notice of disconnection be in substantially the form of an approved notice template.[43]

It is also a common requirement in many of the American jurisdictions reviewed that, in addition to providing written notice, the utility make reasonable attempts to contact the customer, or an adult occupant of the property, either prior to, or at the time of, disconnection.

Staff Options

Staff suggests that a notice of disconnection provided by a distributor for the purposes of providing "reasonable notice" within the meaning of section 31(2) of the *Electricity Act, 1998* should provide, at a minimum, the following information:

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[39] Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 96.1 - 97.1.
[40] EPCOR Energy Services Inc, *Default Supply Terms and Conditions*, 5.2.
[41] *Texas Administrative Code*, 25.29(k)(2).
[42] *Illinois Administrative Code*, 280.130(a)(2).
[43] *Texas Administrative Code*, 25.29(k), and *Illinois Administrative Code*, 280.130 (a)(2)(a).

- The amount that is overdue, including any late payment charges that have been, or may be, incurred;
- Scheduled date of disconnection;
- Any action(s) the customer can take to avoid disconnection (e.g., provide payment), and the deadline for taking such action(s);
- Any charges that may be incurred for reconnection; and,
- Contact information for the distributor.

Section 31(2) of the *Electricity Act, 1998* requires that notice be provided by personal service or prepaid mail or by posting the notice on the property. Where distributors provide notice by mail, staff also believes that it is important that customers can clearly identify a disconnection notice, and distinguish it from other mailings from the distributor, such as bills or marketing material (e.g. about the distributor's conservation programs). For this reason, staff suggests that the disconnection notice referenced above should be a separate document from the electricity bill, rather than statements on the electricity bill itself.

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?

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

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?

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?

1.2.2 Timing of a Disconnection Notice

As set out above, section 31(2) of the *Electricity Act, 1998* requires that distributors provide "reasonable notice" of disconnection, and the DSC "recommends" that distributors provide no less than seven calendar days' notice prior to disconnecting a customer for non-payment of account.

It is important that customers receive sufficient advance notice of disconnection so that the customer has a reasonable opportunity to arrange for payment of the outstanding arrears or to contact the distributor to discuss the customer's account.

Most, but not all, distributors provide some form of notice at least seven days prior to disconnection for non-payment of account. Disconnection may occur more than seven days after the notice due to scheduling conflicts and/or staffing constraints. As a result, a customer may not be given definitive information about when service actually will be disconnected.

Experience in Other Jurisdictions

Nova Scotia Power provides written notice twelve days prior to disconnection. As set out above, Nova Scotia Power will also make other attempts to contact the customer, however no timelines are indicated.[44]

As described in the previous section, Hydro-Québec issues both an overdue notice and then a notice of interruption prior to disconnection. The overdue notice is sent at least 15 days prior to the notice of interruption. If the customer does not make satisfactory payment arrangements, a notice of interruption is given at least eight days prior to the date on which Hydro-Québec intends to terminate service. The notice of interruption is valid for a period of 45 days from the date it is sent.[45]

In Alberta, EPCOR has clear timelines associated with its collection process. If payment is not received within 30 days of the due date of the bill, a written notice is issued warning the customer that, to ensure continuation of service, payment is required within seven days. If the customer does not contact EPCOR within the seven-day period, EPCOR will call the customer warning that payment arrangements must be made within four days to avoid disconnection. If the outstanding bill is not paid within four days after the warning, service may be terminated without further notice.[46]

A review of the American jurisdictions reviewed indicates that the period of notice prior to disconnection is at least 5 days, and that most of those jurisdictions require between 10 and 20 days. Some jurisdictions also have a maximum period of time in which the distributor may disconnect service following issuance of notice, failing which another notice is required. For example, in Illinois, a distributor cannot disconnect service until 5 days after hand delivery of a notice, or until 8 days after mailing a notice. A notice is valid for two consecutive 20-day periods, provided that during each period contact is made with the customer by telephone or at the customer's premises. That is, if the utility does not disconnect within 20 days of the notice, the utility is not required to

[44] Nova Scotia Power, *Tariffs & Regulations*, 6.1(b)(1).
[45] Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 96.2.
[46] In this case, EPCOR Energy Service Inc. would instruct its distribution affiliate, EPCOR Distribution/UtiliCorp to disconnect the customer's connection.

provide a second notice if contact is made with the customer. However, if the utility does not disconnect service within the two 20-day periods, the utility cannot disconnect service until at least 5 days after hand delivery or 8 days after mailing of a new notice of its intention to disconnect.[47]

Wisconsin also has a minimum and maximum period of notice. Utilities must issue a notice 10 days prior to disconnection. If the utility has not disconnected within 20 days of that notice, then the utility must post another notice no less than 24 hours, and no more than 48 hours, prior to disconnection.[48]

In Ohio, the utility must provide "proper and reasonable" notice, which is defined as being not less than fourteen days. On the day of the disconnection, the utility must provide personal notice to the customer or, if the customer is not at home, then to an adult consumer at the premises, or the utility must leave a written notice at the property in a conspicuous place.[49] In addition to other information required in the disconnection notice or other accompanying notices, the utility must provide the earliest date when disconnection may occur.[50]

Staff Options

Staff suggests that the Board should consider codifying the minimum number of days of advance notice that a distributor must provide in order for notice of disconnection to be reasonable within the meaning of section 31(2) of the *Electricity Act*.

Consistent with the current guidance in the DSC, the minimum period of notice prior to disconnection could be seven calendar days.

Staff also believes that, in order for notice to be reasonable, the notice cannot be valid indefinitely. In this regard, staff sees merit in the approach taken in other jurisdictions, whereby new notice is required if the distributor has not terminated service within a certain period of time following delivery of a disconnection notice. Staff recognizes that resourcing constraints may not always permit a distributor to disconnect immediately after the end of the minimum notice period, and that in some cases a distributor may postpone the disconnection to allow the customer additional time to pay the amount owing. However, staff suggests it is important, for safety and other reasons, that the customer have a reasonable expectation as to when service will be disconnected.

Staff puts forward as an option that, where a distributor has not disconnected service within a certain length of time after delivering a disconnection notice, the distributor cannot disconnect the service until the end of a second minimum notice period, which staff suggests should also be seven days. For example, assume a distributor delivered

[47] *Illinois Administrative Code*, 280.130(a)(2)(c).
[48] *Wisconsin Administrative Code,* PSC 113.03.1(10)(a) for residential customers and PSC 113.0302(10)(a) for commercial and farm customers.
[49] *Ohio Administrative Code*, 4901:1-18-05(A).
[50] *Ohio Administrative Code*, 4901:1-18-05(A)(5)(b).

a notice advising the customer that disconnection would occur in 7 days time. If the distributor does not disconnect within 14 days of delivery of that notice (or 7 days after the first scheduled disconnection), the distributor would be required to provide a second notice, and could not disconnect until 7 days after delivery of that second notice.

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?

Q25. What are the implications of requiring additional notice where a customer has not been disconnected within a certain length of time following delivery of the first notice? Specifically, what are the implications for:

- Communications with customers?
- Customer information / billing systems?
- Distributor's costs?

1.2.3 Recipient of a Disconnection Notice

Section 31(2) of the *Electricity Act, 1998* requires that a distributor provide notice of disconnection to the person who is responsible for the overdue amount. In the normal course, that person will be the account holder. There may, however, be circumstances where it may be appropriate for a distributor to also provide notice of disconnection to a third party.

In 2004, the Board consulted with interested parties in relation to issues associated with unpaid electricity charges (RP-2004-0166). As part of that consultation, some social agencies reported that they often become aware of the threat of disconnection too close to the date set for disconnection. This typically arises because the client of the social agency does not pass this information along to the agency in a timely manner and, as a result, the agency may be unable to organize a response to the notice in time to avoid the disconnection. These agencies reported that, if they were to receive disconnection notices in a timely manner, many disconnections could be avoided.

At the Stakeholder Meeting, some distributors expressed concern that a requirement to provide notice to someone other than the account holder, such as a social agency, would require changes to their billing systems, given that disconnection notices are automatically generated. Whether this is a concern for all distributors is not known, nor is the magnitude of the cost that might need to be incurred to change billing systems in order to accommodate the provision of disconnection notices to third parties.

Experience in Other Jurisdictions

None of the Canadian jurisdictions reviewed provided a process for customers to designate a third party to receive notices of disconnection.

Ohio and Illinois both require that distributors permit customers to designate a third party to receive notices of disconnection.

In Ohio, utilities are required to permit a residential customer to designate a third party to receive notice of any pending disconnection, or of any other credit notices sent to the customer. The utility is also required to inform the third party that receipt of such notice does not constitute acceptance of any liability for payment of the customer's debts, unless the third party has agreed, in writing, to be a guarantor for the customer.[51]

In Illinois, utilities are also required to send notices to any third party designated in writing by the customer. It is not known whether the third party is liable for any debts of the customer.[52]

Staff Options

Staff believes that it may benefit both customers and distributors if distributors were required to also provide a copy of the notice of disconnection to a third party, such as a social agency or a family member, designated by the account holder for that purpose. Staff therefore suggests that distributors be required to provide such third party notice, although staff is not suggesting that the provision of third party notice be a condition of disconnection. Staff suggests that this requirement should only apply if specifically requested by the account holder (whether as standing instructions or on a case-by-case basis), and that the copy of the notice should only be provided to the third party designated for that purpose by the account holder. The provision of a copy of the notice of disconnection would not, in and of itself, render the third party liable for the arrears owing by the account holder.

Q26. What are the implications of allowing customers to designate a third party to receive copies of notices of disconnection? Specifically, what are the implications for:

- Communications with customers?
- Customer information / billing systems?
- Distributor's costs?
- Communications with social service agencies?

[51] *Ohio Administrative Code*, 4901:1-18-05(A)(3).
[52] *Illinois Administrative Code*, 280.130(a)(2)(b).

1.3 MANAGEMENT OF CUSTOMER ACCOUNTS

Consumers have expressed concern about distributors' policies regarding the management of accounts for electricity service. More specifically, concern has been expressed about the practice of accounts being opened for electricity service without a person's knowledge or express consent, and where no request for service has been received from that person, and the person then being deemed by the distributor to be the account holder and thus liable for payment of charges owing for the distribution or retail of electricity.

The majority of the complaints received by the Board regarding this issue involve rental properties, but similar issues have also arisen in relation to owner-occupied premises.

There are two general types of complaints that the Board has received regarding the practice of opening accounts without the knowledge, request or consent of the new purported account holder:

> **Landlord[53] as the default account holder:** In these cases, when an outgoing tenant customer requests closure of the existing account, and no new request for service has been received, some distributors will open an account in the landlord's name and bill the landlord for any charges going forward. The landlord may not become aware of this until significant amounts are owing on the account. This practice appears to be an alternative to disconnecting service to the rental unit where no new request for service has been received.
>
> **Third party request:** This refers to the practice of some distributors of opening accounts in a person's name on the basis of a request by a third party who does not have legal authority to make the request. Typically this situation involves a landlord requesting that an account be opened in the name of a tenant, or vice versa. In some cases, the party requesting the account may be fraudulently presenting themselves as the new account holder, and the distributor may not be taking adequate steps to confirm the identity and authority of the party making the request on behalf of or in the name of the purported new account holder.

Existing Rules and/or Guidance

The opening and closing of accounts is a key activity of a distributor, but is primarily an administrative activity for which few rules or guidance have been provided. A distributor's obligation to connect is found in section 28 of the *Electricity Act*, *1998*, which states:

> *A distributor shall connect a building to its distribution system if,*
> *(a) the building lies along any of the lines of the distributor's distribution system; and*

[53] The term "landlord" is used here to include also building owners, property managers, or any other person in charge of a building.

(b) the owner, occupant or other person in charge of the building requests the connection in writing.

Section 1.2 of the DSC states:

> *"consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate.*
>
> and,
>
> *"customer" means a person that has contracted for or intends to contract for connection of a building or an embedded generation facility. This includes developers of residential or commercial sub-divisions.*

Section 4.2.5.2 of the DSC states:

> *A distributor may recover from the customer responsible for the disconnection reasonable costs associated with disconnection, including overdue amounts payable by the customer. A distributor may recover from the customer responsible for the disconnection reasonable costs for repairs of the distributor's physical assets attached to the property in reconnecting the property.*

Section 6.1.2 of the DSC states:

> *A distributor has an implied contract with any customer that is connected to the distributor's distribution system and receives distribution services from the distributor. The terms of the implied contract are embedded in the distributor's Conditions of Service, the Rate Handbook, the distributor's rate schedules, the Distributor's licence and the Distribution System Code.*

<u>*Discussion*</u>

In the past, complaints received by the Board involving landlord-tenant issues typically were about a distributor demanding payment from a landlord for the arrears of a tenant, even where it was the tenant who expressly contracted for service with the distributor. In the unpaid electricity charges consultation (RP-2004-0166) referred to above, the Board examined several issues, including the practice of requiring payment and/or guarantees from landlords for the arrears of tenant account holders.

Subsequent to the initiation of that consultation, the Superior Court of Justice established, in *Duong v. Waterloo North Hydro Inc.,* that the distribution and sale of electricity is a matter of contract and that the common law doctrine of privity of contract prohibits an electricity distributor from seeking recovery from any person other than the contracting party.

The Board confirmed its view, expressed through amendments to the DSC and consistent with the line of reasoning expressed in *Duong v. Waterloo North Hydro Inc.,* that it is the customer of the distributor who is responsible for payment, and that the customer is the person who contracted for service.

1.3.1 Distributor Policies - Landlord As Default Account Holder

It is clear from a review of some distributors' Conditions of Service that many distributors have considered how service to rental properties should be managed, and have found that these properties may require different consideration than owner-occupied properties. However, the policies implemented by many distributors do not appear to staff to be appropriate in all cases.

In the case of an account for service to a rental property, many distributors have a policy that the liability for an account defaults to the landlord or owner of a building if there is no request by a tenant for service under the tenant's name.

Many distributors' Conditions of Service contain a provision that mirrors section 6.1.2 of the DSC and states that the distributor has an implied contract with any person connected to its distribution system and receiving distribution services.

Many distributors' Conditions of Service also contain policies which provide that, if the distributor has not received a request to open an account in the name of an occupant, or if electricity is used by a person unknown to the distributor, then the cost for electricity consumed is payable by the owner of the property.

Few distributors that establish new accounts on their own initiative appear to have a policy requiring notification of opening of the account to the purported new account holder. At least one distributor's Conditions of Service suggest that it is the outgoing tenant's responsibility to notify the landlord of the change in liability for the account, and not the distributor's.

Based on information provided by distributors in the course of resolving customer complaints, it appears that there are also some distributors who actively seek out information about a property owner, through municipal or provincial property registry records. Once the distributor obtains the name of the owner, the distributor then opens an account in the owner's name, and bills the owner for any charges owing for service.

It appears that some distributors have policies that are intended to minimize unpaid energy costs where no request for service has been made. For example, some distributors have a policy that, where no request for service has been made, or where the distributor is unable to determine the identity of the owner, the distributor will leave notices at the property requesting that the occupant contact the distributor to make an application for service, and warning of disconnection. If no response to the notices is received, service is terminated. However, based on a review of customer complaints received, it appears that these policies are not always followed. Staff is aware of at

least one situation where a distributor continued to provide service for over two years, despite having no customer of record and receiving no payment.

1.3.2 Distributor Policies - Third Party Request

Most, if not all, distributors permit a customer to make a request for service over the telephone, as this is more convenient for customers, and may be more cost effective for the distributor. However, this may make it more difficult to confirm the identity of the person requesting service, and it appears that distributors may not be taking adequate steps to confirm the identity and authority of the party requesting the account.

It appears that the level and type of information that distributors currently require from a person requesting service differs widely. At a minimum, most distributors require the person's name, address, and telephone number, and where a tenant is requesting service, information about the landlord. Some distributors also request, but do not require, that the person provide a Social Insurance Number, driver's licence number, or date of birth. It is not known what steps, if any, these distributors take to confirm the validity of any information received.

1.3.3 Discussion

Staff believes that it is inappropriate for a distributor to open an account in the name of a person unless that person has requested distribution service (or has confirmed acceptance of continued service in his or her name), or a request for service (or confirmation of acceptance of continued service) has been made on behalf of that person by a third party duly authorized to do so. Staff believes that this view is consistent with the principles expressed in *Duong v. Waterloo North Hydro Inc.* that: there is no intention embodied in the *Electricity Act, 1998* to the effect that liability for arrears attaches to a property and not merely to the contracting person; the provision of electricity service is therefore a matter of contract; and charges for electricity service can only be recovered from the contracting party.

Section 6.1.2 of the DSC contemplates that an implied contract exists between a connected customer and the distributor. Staff notes that, by definition, a customer is a person that has contracted for or intends to contract for electricity service. Staff does not believe that this section of the DSC should be relied upon to support a practice whereby a person that has not requested electricity service (or confirmed acceptance of continued service in his or her name) can nonetheless be made an account holder simply because the distributor has unilaterally decided to provide service for the account of that person.

A number of distributors justify their policy of opening accounts in the absence of a request for service, or on the basis of a request by a third party who may or may not be authorized in that regard, on the grounds that they need to have a customer of record at all times that electricity service is being provided to a property. Distributors have put forward several arguments as to why disconnection is not the appropriate course of

action in such cases, including: the risk of property damage (e.g. from frozen pipes that may burst); a new customer should not be burdened with paying for reconnection; the increased costs resulting from a higher volume of disconnections; and the absence of a Board-approved specific service charge for disconnection for reasons other than non-payment.[54]

While the risk of property damage may be real in some circumstances, staff does not believe that a distributor should assume that a landlord or owner (in non-rental situations) would want service to remain connected. It would, in staff's view, be more appropriate for the distributor to confirm with the landlord or owner whether they wish for service to remain connected. Leaving the service connected in the absence of such confirmation or of a specific request should not be the default position.

Staff is confused by distributors' argument about new customers being burdened with paying for reconnection, as staff notes that with the exception of one distributor, the only reconnection charge approved by the Board for distributors is for reconnection related to non-payment. It is not clear to staff what connection charge would be levied against new customers at a property that was previously disconnected following a request for account closure.

Staff also acknowledges that managing the provision of service to rental properties can represent a challenge for distributors. However, staff also believes that there are more appropriate ways to address such challenges than making the landlord the default account holder without the landlord's request or consent. The experience in other jurisdictions is informative in that regard.

Experience in Other Jurisdictions

In many of the Canadian jurisdictions reviewed, utilities offer plans whereby landlords can provide instructions to the utility as to the provision of service to a property during periods of vacancy.

Under Newfoundland and Labrador Hydro's plan, a landlord can sign an agreement to accept charges for service for periods where there is no contract with a tenant, or to authorize the utility to disconnect service during periods where there is no contract with a tenant.[55]

New Brunswick Power and Nova Scotia Power both have similar landlord service plans, which provide for continuous service to a property even during periods of vacancy. Under the optional plans, the utilities automatically transfer responsibility for the electricity account to the landlord during periods of vacancy. The landlord is not required to pay the usual connection fee that applies for new accounts, and is not

[54] Only one distributor has a Board-approved charge for disconnection/reconnection at a customer's request.
[55] Newfoundland and Labrador Hydro, *Rules and Regulations*, 11(f) and 12(g).

responsible for any arrears of the tenant.[56] It is not known whether these utilities notify landlords each time a transfer occurs.

Hydro-Québec does not have a process for landlords to provide standing instructions, but does have a formal process governing service to rental properties. Following termination of a contract for service by a tenant or where it is determined that premises are vacant, Hydro-Québec will send a written notice to the owner asking the owner to communicate his or her intentions regarding service to the property. Similar to New Brunswick Power's and Nova Scotia Power's landlord service plans, an owner who agrees to become the account holder is exempt from the usual "new file charges". Refusal by the landlord to accept responsibility for service is considered a request for termination of delivery of electricity.[57]

In Alberta, many regulated energy providers have approval to automatically bill the registered property owner for any period of time that an application for service is not received. Service providers also offer several other options to landlords, which may include automatically terminating service to the property when no application is received, automatically billing the owner during certain winter months, automatically terminating service during certain summer months, and calling the owner each time an application for service is required.

In Alberta, Direct Energy will collect, from tenants that request service, information about the tenant's landlord in order to continue service where the tenant later requests closure of the account and no new tenant has assumed responsibility for service. Direct Energy will verify with the landlord the information that was provided by the tenant, and will notify the landlord when service is being transferred to the landlord, along with the reason for the transfer. The landlord is not responsible for any arrears owed by the tenant unless the landlord expressly indicates it is assuming such liability. Direct Energy provides landlords with the opportunity to register all sites that they own and are responsible for in the case of a vacancy.

The New Hampshire Code of Administrative Rules contains a rule regarding the transfer of service between customers.[58] Specifically, where a utility receives a request to change an account for service from one customer to another, or to add another name to the account, the utility must give timely notice (defined as being within 5 business days of receipt of the request) to the new customer, and may require written confirmation of the request from the new customer. Until timely notice is given or until the new customer has given confirmation, the original customer of record remains liable for charges on the account.

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[56] New Brunswick Power, *Rates, Schedules and Policies Manual*, G3; Nova Scotia Power's *Regulations* are silent on the utility's "Automatic Landlord Plan". However, information in available on Nova Scotia Power's website at https://www.nspower.ca/customer_service/residential/landlord.shtml.
[57] Hydro-Québec, *Guidelines for Electrical Service Stipulated in Bylaw 634 Respecting the Conditions Governing the Supply of Electricity*, 14.1.
[58] *New Hampshire Code of Administrative Rules*, PUC 1203.18.

Illinois defines a "customer" as someone who has agreed to pay for utility service and a "user" as someone who receives service.[59] If a utility accepts an application for service by telephone from a third party or a user who will not be a customer (that is, paying for service), and the utility does not confirm the request for service with the customer, then the utility cannot collect from the customer if the customer denies responsibility for requesting the service.[60]

In Wisconsin, utilities are permitted to accept applications for service from third parties, but must send written confirmation of the request for service to the party responsible for the bill payment.[61] It is not clear what the utilities' obligations are if the person responsible for bill payment does not receive the written confirmation, or denies responsibility for the account.

Staff Options

Staff believes that it would be in the interests of both customers and distributors for there to be greater certainty in relation to the issue of the opening of accounts. Staff therefore suggests that the Board should consider codifying what it considers to be acceptable practices in that regard. In that regard, for the reasons outlined above staff suggests that it would be useful for the Board to address the following:

- whether and the extent to which distributors should be permitted to open accounts without the request or consent of the purported account holder, including treating a landlord as a default account holder without the request or consent of the landlord in circumstances where a tenant closes an account and no new request for service has been received;

- whether and the extent to which distributors should be required to confirm the identity and, where applicable, the authority of a person requesting opening of an account; and

- the minimum information that a distributor should obtain in order to confirm the identity and, where applicable, the authority of a person requesting opening of an account.

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?

Q28. When an account is closed, what are a distributor's criteria for determining whether to:
(a) continue to provide service to the property in the absence of a new request for

[59] *Illinois Administrative Code, 280.40.*
[60] *Illinois Administrative Code, 280.50(d).*
[61] *Wisconsin Administrative Code*, PSC 113.0406 (7)(c).

service, or

(b) terminate service to the property?

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.

Q30. What types of information should a distributor collect from a person that is requesting the opening of an account in order to confirm the identity and, where applicable, authority of the person?

PART II: EVALUATION AND RECLASSIFICATION OF CUSTOMERS

When rates were unbundled in preparation for the restructuring of the electricity sector in Ontario in 1999, the Board maintained the then-existing rate classes, which were: residential; general service customers with peak monthly demand under 50 kW ("GS <50 kW"); general service customers with peak monthly demand equal to or over 50 kW ("GS ≥50 kW"); and large users. Distributors were also given the option of applying for other classes, including an intermediate general service class. The rates were set for each class based on the costs allocated to that class and an assumption of the incremental distribution charge for an additional unit of supply. For energy metered customers, the incremental unit was the kWh. For demand metered customers, the incremental unit was the kW.

Classification and reclassification can have a significant impact on customers, as discussed below.

Appendix A to the Board's September 6, 2007 letter identified certain issues associated with the classification and reclassification of customers. For purposes of this Discussion Paper, staff has classified the issues as follows:

- Use of billing demand
- Periodicity of the calculation of demand for rate classification purposes
- Assignment of new consumers to classes
- Evaluation and reclassification of existing customers

2.1 DEFINITION OF DEMAND

2.1.1 Use of Billing Demand

Under the *Ontario Energy Board Act, 1998,* distributors may only charge for the distribution of electricity in accordance with an order of the Board. Rate orders and accompanying tariff sheets issued by the Board therefore provide the basis for distribution charges levied by distributors. As a general rule, rate orders and tariff sheets do not define demand or refer to billing demand. While one might imply kW demand from the tariff sheet, this is not expressly stated. The DSC does not define demand or billing demand or any of the units commonly associated with each of those concepts.

Power factor is the ratio of the real demand (kW) to the apparent demand (kVA). Typically, a distributor's system is designed around kVA criteria (e.g., distribution transformers are rated by kVA).

The practice of most Ontario distributors has been to determine the "billing demand" - the value used for billing purposes - based on the higher of the kW demand reading or

90% of the kVA demand reading in a billing period. In other words, if a customer's power factor falls below 0.9, the distributor can use the determination of the billing demand to account for extra costs associated with serving that customer. This only applies where the meter installation provides both kW and kVA readings. Typically, only customers with demand over 500 kW or 1000 kW have such meters, although in some service areas customers with demand over 200 kW do as well.

Existing Rules and/or Guidance

Only Toronto Hydro-Electric System Limited has kVA on its Board-approved tariff sheet as the basis for its demand-based volumetric distribution rates for large customers. Other distributors determine the billing demand and multiply it by the per-kW rate on their tariff sheet to calculate the variable portion of the bill.

The 2006 Handbook provided guidance to distributors in relation to the continued use of kVA as a measure for setting billing demand. Specifically, section 10.8 of the 2006 Handbook states as follows:

> **10.8 Demand Determinants**
> *T]he distributor will continue its current practice to establish the billing demands at the greater of 100% of the kW, or 90% of the kVa amounts. A distributor that has established its level of the volumetric demand rates based upon the application of 100% of kVa may continue on this basis.*

Discussion

As noted above, most tariff sheets are silent on the definition of demand. There is therefore uncertainty as to the basis for using a kVA measurement as the determining factor for rate classification. While the 2006 Handbook provided high level guidance to distributors, details that could assist in minimizing issues between consumers and distributors are missing. As a result, disagreements have arisen between distributors and consumers regarding the circumstances in which kVA should be the basis for determining billing demand.

Staff understands that there have been instances where distributors have used a billing demand based on 90% of the kVA demand to determine whether a customer should be classified into a different rate class. Since the calculation resulted in the customer exceeding the kW demand level for its then-existing rate class, the customer was re-assigned to a new rate class. Had the evaluation been based on the kW demand, re-assignment into another rate class would not have occurred.

Experience in Other Jurisdictions

Newfoundland and Labrador Power classifies larger classes (over 100 kW) by kVA.[62]

[62] Newfoundland and Labrador Hydro, *Rules and Regulations*, 2.

Nova Scotia Power Inc. applies the following rules:[63]

> *POWER FACTOR CORRECTION*
> *When charges are based on maximum demand measured in kilowatts, the customers shall maintain a power factor of not less than 90%.*
>
> *Where the Company determines that a customer's power factor is less than acceptable, the Company shall have the right to meter the customer in kVA demand and to calculate a kW billing demand based on a power factor of 90%.*

Staff Options

Staff suggests that greater clarity around the determination of billing demand would benefit both consumers and distributors. Since the account history data kept in the distributor's billing system will be the billing demand, staff suggests that the Board should define demand and include the concept of billing demand.

One option is to allow billing demand to be determined on the basis of either kW or 90% kVA. Staff suggests that this approach should be structured such that the general rule is that billing demand be determined on the basis of kW, which is in greater use in the industry. Use of 90% of kVA would be permitted, but only in specified circumstances.

Alternatively, billing demand could be expressly defined as kW demand. Any distributor that wished to apply a kVA-based billing demand for rate classification purposes would be required to apply for permission to do so.

Q31. What are the advantages and disadvantages of each of the options identified above?

Q32. Should the general rule be that billing demand be determined on the basis of a consumer's measured kW?

Q33. Under what circumstances should a distributor be permitted to assign a consumer on the basis of kVA as opposed to kW?

Q34. Should use of 90% of the kVA demand as billing demand be limited to cases where a determination of below standard power factor has been acknowledged to the customer (as with Nova Scotia Power)? This would give the customer an opportunity to correct the situation at its own cost before being re-classified.

[63] Nova Scotia Power, *Tariffs and Regulations,* 4.7.

2.1.2 Periodicity of the Calculation of Demand for Rate Classification Purposes

The Board has received complaints from customers to the effect that they have been unfairly reclassified when their demand does not justify it.

Existing Rules and/or Guidance

The PBR Handbook used two different definitions of demand to set customer classifications. Classification in the "intermediate use" class was based on average monthly demand, while classification in the "large use" class was based on monthly measured maximum demand (kW) averaged over the most recent 12 consecutive months.

The current rate tariff sheets usually provide for classification in the GS <50 kW class based on either average monthly maximum demand or monthly peak demand (with or without a specification that service is taken at less than 750 V).

The only other reference in the Board's regulatory instruments to the use of demand as a criterion is in regard to metering requirements. In this regard, section 5.1.3 of the DSC states in part as follows:

> *…MIST [metering inside the settlement timeframe] meters are for existing customers with an average monthly peak demand during a calendar year of over 1 MW…* [emphasis added]

Discussion

Customer peak demand is not usually consistent from month to month. Customer demand in shoulder months is often lower than in mid-summer or mid-winter. This means that the annual average monthly peak demand will be lower than the highest peak demand experienced in the year. Therefore, distributors that move a customer into a higher rate class when peak monthly demand crosses a specific demand level will reclassify more customers than those who use annual average monthly demand.

Staff understands that many distributors use the highest monthly peak demand over a year as the basis for consumer classification. In theory, that peak is the demand that the system was designed to supply and represents the costs imposed on the system by that consumer.

Board staff believes that using an annual average demand measure would solve a significant source of customer complaints. Customers would be reclassified less often since increased demand would have to be sustained over a period of time to move the average. Customers would not feel that they were "caught" because demand crossed the threshold once.

In setting an annual average demand definition, Board staff does not suggest using the concept of "average monthly maximum demand" that is currently used in some tariff sheets. That concept is imprecise in that it does not prescribe the period over which the average is taken. Nor is it clear if there is intended to be a difference between peak demand, as used in some tariff sheets, and maximum demand, as used in others. Board staff prefers the term average peak demand as it conveys the idea of averaging several single points rather than potentially being confused with a maximum average.

The downside of using an annual average demand measure arises from the fact that customer use is not static. A specific event could create a persistent, ongoing change in customer use. Expansion of a customer's premises could increase demand while installation of significantly more efficient equipment could reduce it. Neither the distributor nor the customer should be forced to wait for the rolling average to cross the threshold for a change in rate classification where a persistent, ongoing change in customer use would dictate that such a change be made. This is addressed in the section on reclassification below.

Experience in Other Jurisdictions

The following examples from the United States and from Canada are illustrative of how demand is defined in other jurisdictions.

The Public Utility Commission of Texas defines peak demand as the highest 15-minute or 30-minute demand recorded during a 12-month [rolling] period. Customer eligibility for customer choice programs[64] are then defined with regard to the annual peak demand.[65]

The state government of Montana uses average monthly billing demand in a calendar year to restrict eligibility for customer choice programs.[66]

Nova Scotia Power Inc. defines "demand" as the maximum kW/kVA recorded over a specified time period (5 minutes, 15 minutes, a half hour or an hour, depending on the purpose).[67]

Staff Options

Among the options discussed in section 2.1.1 are that billing demand be used for rate classification purposes and that the Board identify how billing demand is to be determined or applied.

[64] Customer choice programs have to do with electricity deregulation and commodity options.
[65] Access to Utility Service: Regulated, De-regulated and Unregulated Utilities, Deliverable Fuels, and Telecommunications 3rd ed., Charles Harak and Olivia Bae Wien, National Consumer Law Center, 2004
[66] Ibid.
[67] Nova Scotia Power, *Tariffs and Regulations,* April 1, 2007, 1.1.

With respect to the periodicity of the calculation of demand, staff suggests that the demand level for customer classification purposes could be defined as the average monthly peak billing demand calculated for the most recent 12 month period. That is, a customer would be classified based on the average of the monthly peak billing demand for a rolling 12 months. Many distributors' tariff sheets would need to be changed to implement this approach.

Alternatively, the demand level for customer classification purposes could be defined as the maximum monthly peak demand occurring within the year, in which case customers would be reclassified whenever their monthly usage crosses the threshold.

Q35. What are the advantages and disadvantages of each of the options identified above?

2.2 CLASSIFICATION AND RECLASSIFICATION OF CONSUMERS TO CLASSES

2.2.1 Assignment of New Consumers to Classes

Existing Rules and/or Guidance

The PBR Handbook contained guidance regarding the initial classification of standard supply service customers. Section 10.3.7 of the PBR Handbook stated:

> *Distributors will be responsible for categorizing new customers according to their expected consumption characteristics and service size. Once categorized, new customers will maintain their status until a one year period of data are available. Should the data indicate a different classification, the distributor shall perform a reassignment.*

To facilitate the initial classification and one-year review, section 5.1.2 of the DSC allows distributors to install a demand or interval meter in order to assign the customer to a rate class.

Discussion

At the present time, there are no mandatory rules relating to initial classification. The first issue is therefore whether or not codification of an applicable rule regarding initial classification is required. If so, then the nature of the rule needs to be determined.

New customers sometimes request service connection capacity in excess of their immediate needs. They may anticipate future expansion or simply be acting out of an abundance of caution. In either case, the immediate revenue stream from the customer may not be covering the cost of the over-sized assets. In fact, sometimes the customer seeking connection is not aware of what the ultimate load will be.

At the Stakeholder Meeting, one of the stakeholders suggested that a good estimate for the expected consumption of a new customer is 80% of the design/installed service size.

Staff sees merit in this approach, as it would give an economic incentive to the customer to properly size the connection and reduce instances of unnecessary over-design leading to under-utilization of assets.

However, the approach may be economically inefficient for customers who design and build anticipating expansion of their operations after a year or two. In that case, it would be their choice to over-size the connection and accept a higher rate classification than immediate use would justify.

This issue appears to staff to apply in only a small number of cases where a customer's anticipated demand is at the threshold between rate classes.

Experience in Other Jurisdictions

Board staff found a relevant example in Wisconsin. Specifically, Wisconsin utilities apply the following rule:

> *When it is difficult to determine what rate should be applied until there has been actual usage, the rate classification shall be reviewed when there has been adequate usage to determine the lowest applicable rate but no later than the end of the first 12 months of usage…*[68]

Staff Options

Board staff suggests that the Board consider codifying the rule applicable to the initial classification of customers. In this regard, staff has identified two options.

Under the first option, the initial classification would be based on 80% of the customer's design/installed service size. Under the second option, the initial classification would be based on the customer's expected billing demand characteristics and service size (this is as stated in the PBR Handbook).

In either case, the customer's classification would be re-evaluated based on actual billing demand at the end of the first 12 months of use, and the customer may be reclassified at that time.

Q36. What are the advantages and disadvantages of each of the options identified above?

Q37. How does classification on the basis of 80% of service size relate to customer contributions for connection costs? In other words, is the distributor already compensated for over-sized assets by customer contributions?

2.2.2 Evaluation and Reclassification of Existing Customers

As noted above, the Board has received complaints from consumers to the effect that they have been unfairly reclassified when their use does not justify it.

[68] *Wisconsin Administrative Code*, section 113.0406 Billing(4)(b).

In its Decision with Reasons in proceeding RP-2000-0069 (the "RP-2000-0069 Decision"),[69] the Board acknowledged a potential difficulty at the boundary between rate classes, particularly where customers move from the GS <50 kW class to the GS ≥50 kW class. That is, a customer in the GS <50 kW class who may cross, even marginally, the 50 kW threshold can face a major bill impact. This is due not only to the different fixed monthly customer charge and different variable rate, but also to the difference in being billed on a kWh versus a kW basis. In paragraph 3.5.7 of the RP-2000-0069 Decision, the Board acknowledged this issue and directed that, for purposes of utility filings for establishing initial rates, utilities shall "continue to bill these customers as if they were in the same under 50 kW category up to a demand level of 100 kW" until such time as the Board addresses the cross-over issue.

There is a similar issue for customers at the 3000 kW boundary, if the distributor has an intermediate class, and at the 5000 kW boundary, if the distributor has a large use class. In these cases, the difference is in the fixed monthly customer charge and the demand rate, but does not entail a change in billing determinant. This issue arises less often as a customer complaint to the Board because of the fewer number of customers at those service levels.

Existing Rules and/or Guidance

Paragraph 3.5.7 of the RP-2000-0069 Decision states in part as follows:

> *…the Board will initiate a review of the rate design for the general service class as soon as practical. For purposes of utility filing for establishing initial rates, and until such time as the Board addresses the cross-over issue in a separate process, the utility shall continue to bill these customers as if they were in the same under 50 kW category up to a demand level of 100 kW.*

In the chapter on standard supply service, the PBR Handbook states:

> ***10.3.8 Abnormal Conditions***
> *Distributors may take into account abnormal conditions that may have occurred during the measurement period and choose to maintain the existing customer characterizations if they are considered to be reflective of normal operations. Abnormal conditions would include significant weather events having a direct influence on normal electricity demand levels.*
>
> ***10.3.9 Customer Request for a Change of Assignment***
> *All customers, excluding those that use demand or interval meters, may request to be deemed by the electricity distributor to be below or above the 50 kW demand level. In such cases the utility will review the customer's most recent 12 consecutive month consumption and any other information provided by the*

[69] Ontario Energy Board, "In the matter of a proceeding under sections 129(7) and 78 of the *Ontario Energy Board Act, 1998,* c. 15, Sched. B to determine certain matters relating to the Minister's Directive dated June 7, 2000", Decision with Reasons dated September 29, 2000.

customer that may be relevant to future consumption levels. If a re-assignment is warranted, the distributor shall re-assign the customer before the next billing period is finalized. Customer-requested re-assignments shall be limited to once annually, unless the customer is able to demonstrate that its load will be permanently expanded or reduced by a significant amount.

10.3.10 Review of Assignment

Following an assignment review, the distributor shall notify those customers whose actual or deemed demand reflects a potential change in assignment to either the fixed or WAHSP [Weighted Average Hourly Spot Price] price. Such notice shall be given no later than January 31st of each year.

Discussion

a. Frequency of reclassification

This issue is closely linked to the one of the definition of demand discussed in section 2.1 above. Where a distributor uses a single monthly peak as the definition of demand for rate classification purposes, customers are reclassified more frequently.

In addition, if reclassification is based on a single monthly peak measurement, reclassification could be subject to "gaming" downward since monthly peak demand is affected by season. A customer whose summer or winter peak is above 50 kW could request evaluation in the shoulder months where demand falls below 50 kW.

Using the annual average monthly peak demand for customer reclassification purposes (one of the options suggested in section 2.1.2) would lessen these concerns and would likely eliminate the need for the 100 kW threshold.

Section 10.3.8 of the PBR Handbook referred to above allows distributors to choose to maintain a customer in an existing class when a change in demand that would otherwise justify reclassification appears to be the result of an abnormal condition. Staff understands that there can be disagreement between distributors and consumers as to what constitutes an abnormal condition as opposed to a persistent, ongoing change.

As suggested above in relation to the definition of demand, if there is a persistent, ongoing change in a customer's demand, the distributor should have the flexibility to consider this information and waive the once-per-year rule for reclassification. This should apply equally to both distributor-initiated and customer-requested evaluations. To illustrate using an example, assume that a customer was reclassified in May to a lower rate class because the average 12 month peak demand decreased to 45 kW. In June, the customer adds a new process and the ongoing monthly peak demand increases to 75 kW. In this case, the distributor should be able to re-assign the customer without having to wait until the following May.

b. Notice of reclassification

Where a reclassification is initiated by the distributor, the change goes into effect when the meter is next read (i.e., not on an estimated read or pro-rated basis). It is up to the distributor whether the customer is given any notification that a change has been made. In some cases, reclassification can have a substantial bill impact. The customer may not know that this has occurred until a bill based on the new classification arrives.

Experience in Other Jurisdictions

Staff found two relevant examples from the United States and one from Canada.

Wisconsin utilities apply the following rules:

> *If the utility has information that the customer could qualify for a lower rate by changing voltage delivery, or combining or separating services as allowed under the utility's rules and regulations, he or she shall be notified; but no change in rates shall be made until the customer makes the necessary modifications. If such modifications are made, the utility shall change the customer's rate classification effective for the beginning of the current billing period if required billing information is available, but the change shall be effective no later than the beginning of the second billing period following the customer's request and notification has been made.…*[70]

Southern California Edison applies the following rules:[71]

> *D. Change of Rate Schedule*
>
> *1. A change to another applicable rate schedule or optional tariff provision, for which the customer can properly qualify, will be made only where the customer elects to make such change.*
>
> *2. Should a customer so elect, the change will be made provided:*
> *a. A change has not been made effective during the past twelve-month period; or*
> *b. The change is made to, or from a new or revised rate schedule; or*
> *c. There has been a change in the customer's operating conditions for that service which, in the opinion of [Southern California Edison] , justifies the change; or*
> *…*
> *e. Except as may be specifically provided for in a rate schedule; and*
> *f. The change is not made more often than once in twelve months where service is being supplied under a schedule containing an annual fixed charge or an annual minimum charge; and*

[70] *Wisconsin Administrative Code*, section 113.0406 Billing (4)(d).
[71] Tariff Books, Rule 12: Rates and Optional Rates.

g. The customer has made the request by written notice to [Southern California Edison]. (emphasis added)

Newfoundland and Labrador Power applies the following rules:

> *(l) Where a Customer's monthly demand has been permanently reduced because of the installation of peak load controls, power factor correction, or by rendering sufficient equipment inoperable, by any means satisfactory to Hydro, the monthly demands recorded prior to the effective date of such reduction may be adjusted when determining the Customer's demand for billing purposes thereafter. Should the Customer's demand increase above the adjusted demands in the following 12 months, the Customer will be billed for the charges that would have been incurred over the period if the demand had not been adjusted.*[72]

Staff Options

Staff suggests that provision could be made for one distributor-initiated and one customer-initiated re-evaluation per year for classification purposes. As an exception, if the customer or the distributor can show a persistent, ongoing change, the distributor should be able to waive the once-per-year rule. Alternatively, distributors could continue to re-assign customers as required based on demand, as is the current practice.

Staff suggests that greater clarity as to the parameters applicable to the concept of an "abnormal condition" would be beneficial. For example, the Board could identify its expectations regarding the nature of those conditions and the period of time after which a condition that initially appeared to be abnormal should be considered to be persistent and ongoing.

Staff also suggests that, if the reclassification is expected to result in a bill impact of more than 10%, the distributor should be required to notify the customer before the change in classification takes effect (either by notice on a bill or by direct contact). This would mean that two billing cycles might pass before a change is effected.

Q38. What are the advantages and disadvantages of each of the reclassification options identified above?

Q39. In section 2.1.2, Board staff has suggested a 12 month average billing demand as a definition of demand. If that were to be adopted, would restricting the number of reclassifications become unnecessary?

Q40. Should all customers be notified prior to a rate class change, regardless of the bill

[72] Newfoundland and Labrador Power, *Rules and Regulations,* 9(l).

impact?

Q41. Is there a need for the Board to establish parameters around the application of the concept of an “abnormal condition”? If so, what parameters would be appropriate?

PART III: MANAGEMENT OF CUSTOMER NON-PAYMENT RISK

As noted at the beginning of this Discussion Paper, the Board has determined that the issues that were being reviewed as part of the "Electricity Distributors and Management of Customer Commodity Payment Default Risk" consultation (EB-2007-0635) are now more effectively addressed within the context of this consultation.

Summary of EB-2007-0635 Consultation

On June 4, 2007, the Board released for comment a Board staff Discussion Paper that examined the issue of the management of large customer payment default risk by electricity distributors. The purpose of the Discussion Paper was to solicit stakeholder input on the issue of whether existing risk mitigation measures are adequate for the purpose of managing such risk and protecting ratepayers. The Discussion Paper referred to *ex ante* and *ex post* risk mitigation tools that fall within the ambit of the Board's authority, as well as those that are available in the marketplace.

The Board received written comments on the staff Discussion Paper from eight interested parties (five representatives of distributors and three representatives of ratepayers). The staff Discussion Paper and the comments received on it are available on the Board's website.[73]

The comments received from stakeholders were varied. One distributor representative commented that existing risk mitigation measures are inadequate, while another expressed the view that the current risk management instruments are sufficient.

A number of specific options were identified in the comments. These included: the creation of customer non-payment risk reserve funds or variance accounts around a forecast level of customer non-payment; allowing distributors to hold security deposits provided by large customers in perpetuity rather than requiring that 50% be returned after 7 years of good payment history, as is currently stipulated in the DSC; and more adequately reflecting large customer non-payment risk in distributors' rates of returns. Of note is the fact that representatives of both distributors and ratepayers expressed support for options that involve allowing distributors to bill large customers on a more frequent basis.

[73] EB-2007-0635 materials available from the Board's website: http://www.oeb.gov.on.ca/html/en/industryrelations/ongoingprojects_electricity_distributors_management.htm

Issue for Further Consultation

Board staff does not believe that the Board intends for this consultation to remove from distributors the obligation to manage payment default risk.[74] As such, staff has proceeded to consider solely the issue of risk mitigation, rather than the issue of who should bear the risk of non-payment in the first instance.

Existing Rules and/or Guidance

As set out in the June 4, 2007 staff Discussion Paper, distributors have a number of *ex ante* and *ex post* tools available to them for the purpose of managing non-payment risk.

Ex ante actions include the use of security deposits, negotiation of accelerated billing, proper screening and credit evaluation of large volume customers, customer monitoring, disconnection, load limiters, use of collection agencies, and the inclusion of bad debt expense amounts in the revenue requirement when applying for a rate adjustment.

Ex post actions include the cashing or realization of security deposits, pursuing legal remedies in bankruptcy proceedings and the ability to apply to the Board for specific relief through the mechanism of a deferral account.

Section 2.4.6.2 of the DSC sets out the following general rule regarding the management of non-payment risk:

> *In managing customer non-payment risk, a distributor shall not discriminate among customers with similar risk profiles or risk related factors except where expressly permitted under this Code.*

In its December 2004 Summary Report issued as part of the consultation in relation to unpaid electricity charges referred to in Part I of this Discussion Paper, the Board noted that:

> *In the event that a distributor becomes concerned regarding the ongoing creditworthiness of a customer, which nevertheless maintains a good payment record, and wishes to institute more frequent billing, the distributor is entitled to bring the matter to the Board if it is not able to reach agreement with the customer. The Board does not believe it is necessary at this time to propose Code amendments to address this issue specifically.*[75]

The DSC also contains provisions relating to the collection and return of security deposits (sections 2.4.9 to 2.4.31).

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[74] For example, in its May 11, 2006 Amended Decision and Order in relation to an application by Oshawa PUC Networks Inc. for approval of distribution rates for 2006, the Board stated that it "wishes to avoid reducing the incentive to aggressively manage bad debt levels" .

[75] Report available from the Board's website: http://www.oeb.gov.on.ca/documents/dsc_unpaidelectricity_summaryreport_211204.pdf

Discussion

Based on the consultation to date, Board staff believes that the risk mitigation measures currently available to distributors are generally adequate. However, Board staff suggests that the Board should consider whether additional rules might be beneficial to provide distributors with additional flexibility in addressing non-payment risk in one particular circumstance. That circumstance is where the value of a customer's annual purchases of electricity exceeds a certain percentage of the distributor's revenue from the provision of distribution services, which can arise as described below.

Distributors pass through to their customers the electricity commodity cost, as well as other charges that are billed to the distributor by the IESO (charges for ancillary services, transmission services, IESO administrative services and other services required to operate the IESO-administered markets and direct the operations and maintain the reliability of the IESO-controlled grid). These charges together represent more than half of the total charges on a retail electricity bill issued by a distributor, while charges for the distribution services provided by the distributor are far smaller. As a result, depending on the distributor's customer base, the commodity and other charges passed through to a single large customer can exceed the distributor's total revenue from the provision of distribution services within its service area. While large customer payment defaults are not common, when they occur they can potentially have a significant financial impact on a distributor, especially one with a narrow customer base, and the financial consequences can potentially be visited on a distributor's remaining ratepayers.

Staff suggests that the enhancement of *ex ante* tools (e.g., billing frequency) rather than *ex post* tools (e.g., applying to the Board for specific relief) warrant further examination. Staff believes that *ex ante* tools provide the most direct means by which non-payment risk can be handled prudently.

Of the available *ex ante* tools, staff is of the view that the most effective options within the Board's authority are the rules governing billing arrangements. By changing the frequency of billing (e.g., from monthly to weekly), a distributor can significantly reduce its exposure to non-payment risk in relation to large volume customers. This may better protect ratepayers in circumstances where a distributor's exposure to large customer non-payment, while perhaps a low probability, can have a particularly high impact.

Experience in Other Jurisdictions

In 1987, the Minnesota Public Utilities Commission approved an agreement between Peoples Natural Gas Company (the "Company") and its taconite[76] class of customers from monthly to weekly billing.[77] The taconite class agreed to be billed on a weekly

[76] Taconite is an iron-bearing rock that is mined and processed in Minnesota.
[77] Minnesota Public Utilities Commission, In the Matter of the Request of Peoples Natural Gas Company for Authority to Change Its Billing Procedures, Docket No. G-011/M-87-151, Order Approving Settlement (July 30, 1987).

basis in return for bill credits calculated at the prime interest rate plus 2.5%. The change in billing was provoked by volatility in the taconite industry that exposed the Company to significant potential losses from uncollectible bills.

In Wisconsin, utilities are permitted to bill customers on a weekly basis by the Wisconsin Public Service Commission. For example, in the case of Wisconsin Power and Light:

> *At its discretion, the Company may render electric and gas bills on a weekly basis when a customer meets the following two requirements:*
>
> *a) Average monthly bill for a single account over the previous 12 months is greater than [US]$50,000.*
>
> *b) The Customer has filed Chapter 11 bankruptcy.*[78]

Staff Options

Billing frequency is currently at the discretion of the distributor, and is not mandated by the Board. Staff acknowledges, however, that section 2.4.6.2 of the DSC cited above is understood as limiting the ability of a distributor to increase the frequency of billing beyond what is normally the case based on the distributor's normal billing cycle. Specifically, it is understood that distributors can negotiate alternative payment schedules with customers without prior Board approval. However, it is also understood that if a customer does not agree to an alternative payment schedule, the distributor cannot unilaterally impose it without bringing the matter before the Board.

Staff suggests that the Board consider amending the DSC to clarify that a distributor may, without offending section 2.4.6.2 of the DSC, unilaterally increase the frequency of billing to weekly or bi-weekly for a customer whose annual purchases of electricity exceed a certain percentage of the distributor's revenue from the provision of distribution services. Staff also suggests that the ability to unilaterally accelerate billing should only be available where the distributor has reasonable grounds to believe that the customer's creditworthiness is in question.

Staff suggests that a comprehensive re-examination of the Board's security deposit policy is not warranted at this time, because the Board undertook a comprehensive review of, and consultation on, security deposit policies that began in 2002 and concluded in 2004 (RP-2002-0146).[79]

Staff anticipates that large customers that could become subject to accelerated billing if that option were to be adopted may prefer to make alternative arrangements (e.g., a lesser frequency of billing and/or the giving or retention of security deposits) to address the distributor's exposure to non-payment risk. Such alternative arrangements may be

[78] Wisconsin Power and Light, *Schedule of Rates For Electrical Service*, 49.00.
[79] Background materials available from the Board's website:
http://www.oeb.gov.on.ca/html/en/industryrelations/ongoingprojects_securitydeposits.htm

acceptable to the distributor in question based on the distributor's particular circumstances. Staff believes that distributors may also require the flexibility to negotiate such alternative arrangements in lieu of bi-weekly or weekly billing (as the case may be).

Staff suggests that the options described above can, if adopted, more clearly and better enable distributors to manage large customer non-payment risk in circumstances where the distributor has a single large customer representing a high percentage of total consumption in the distributor's service area.

Q42. Should the DSC be amended to expressly provide for accelerated billing?

- If yes, how should accelerated billing provisions be structured (e.g., triggers, notification process, conditions for returning to the distributor's normal billing cycle, timing of disconnection notices, other customer service implications)?
- Should customers have the option of negotiating an alternative arrangement prior to being placed on accelerated billing?
- Are there other customer non-payment risk management tools that should be considered along with accelerated billing?
- If accelerated billing should not be considered, how should the large customer non-payment risk referred to above be addressed, if at all?

PART IV: NEXT STEPS and SUMMARY of QUESTIONS

This Discussion Paper is being released to solicit stakeholder input to assist Board staff in furthering its work on the issues. Board staff will consider the input of stakeholders in formulating recommendations for the Board's consideration as to whether further action is necessary or desirable and, if so, what form such action might take.

SUMMARY OF QUESTIONS

Outlined below is a complete list of the questions provided throughout this Discussion Paper. In addition to the areas identified in these questions, staff would also be interested in any options that parties may identify to address the issues outlined in this Discussion Paper.

PART I: Customer Service

1.1 Bill Payment

1.1.1 Due Date for Bill Payment

Q1. Are there any reasons why a customer would need or should be allowed more than a sixteen day payment period before application of a late payment charge?

Q2. If a distributor were to provide a payment period longer than sixteen days, how would this affect the distributor's cash flow?

Q3. Where bills are "delivered" electronically, either by e-mail or by allowing customers to access bills on the internet, how should the date that the bill is deemed to have been sent be determined?

Q4. What processes do distributors currently have in place to determine or verify whether payment was received by the billing due date, particularly where payment is made by electronic means (telephone or internet banking)?

Q5. In addition to payment by mail, at a financial institution, or by electronic means (telephone or internet banking), are there any other methods of payment that distributors accept? If so, how do distributors determine or verify whether payment was received by the billing due date?

1.1.2 Allocation of Payments

Q6. Are there any technical limitations (e.g. billing systems) that would limit a distributor's ability to allocate payments towards energy charges first and non-energy charges second?

Q7. If there are technical limitations, what options are available to a distributor to ensure that a customer's payment is applied to energy charges first?

Q8. If distributors were given discretion as to how payments are allocated, do distributors need guidance from the Board as to how payments should be processed to ensure that it is not done in a manner that would lead to action that is inconsistent with section 31(1) of the Electricity Act, 1998 (in other words, to ensure that customers are only disconnected for non-payment of energy charges)?

Q9. What are the implications of distributors being required to allocate payments in accordance with customer requests?

1.1.3 Correction of Billing Errors

Q10. Staff has suggested three options for how distributors should refund to customers amounts owing for over-billed amounts. What are the advantages and disadvantages of each option?

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?

Q12. With regards to the option where refunds would be provided in the form of a cheque if the amount owing was greater than a certain amount, what might be an appropriate threshold or criterion for determining the form of refund? Should the threshold or criterion differ depending on customer class?

Q13. With regards to the option where the repayment period for under-billing would depend on the amount owing by the customer, what is an appropriate threshold or criterion for determining the repayment period? Should the threshold or criterion differ depending on customer class?

Q14. The RSC requires that distributors pay interest on amounts that were over-billed, but does not allow distributors to charge interest on amounts under-billed. Is this asymmetry appropriate?

Q15. Where the customer is responsible for the under-billing, such as in the case of unauthorized energy use, including meter tampering or theft of power by the customer, should distributors be permitted to collect interest on the amount owing by the customer?

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?

1.1.4 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?

Q18. If all distributors were required to offer equal billing, what are the implications for:

- Customer information / billing systems?
- Distributor's costs?
- Cash flow?

Q19. For those distributors that currently offer equal billing, but not to customers enrolled with a retailer, what are the implications of being required to offer equal billing to customers enrolled with a retailer? Specifically, what are the implications for:

- Customer information / billing systems?
- Distributor's costs?
- Cash flow?

1.2 Disconnection for Non-Payment

1.2.1 Form and Content of a Disconnection Notice

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?

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

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?

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?

1.2.2 Timing of a Disconnection Notice

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?

Q25. What are the implications of requiring additional notice where a customer has not been disconnected within a certain length of time following delivery of the first notice? Specifically, what are the implications for:

- Communications with customers?
- Customer information / billing systems?
- Distributor's costs?

1.2.3 Recipient of a Notice

Q26. What are the implications of allowing customers to designate a third party to receive copies of notices of disconnection? Specifically, what are the implications for:

- Communications with customers?
- Customer information / billing systems?
- Distributor's costs?
- Communications with social service agencies?

1.3 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?

Q28. When an account is closed, what are a distributor's criteria for determining whether to:

- continue to provide service to the property in the absence of a new request for service, or
- terminate service to the property?

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.

Q30. What types of information should a distributor collect from a person that is requesting the opening of an account in order to confirm the identity and, where applicable, authority of the person?

PART II: Evaluation and Reclassification of Customers

2.1 Definition of Demand

2.1.1 Use of Billing Demand

Q31. What are the advantages and disadvantages of each of the options identified above?

Q32. Should the general rule be that billing demand be determined on the basis of a consumer's measured kW?

Q33. Under what circumstances should a distributor be permitted to assign a consumer on the basis of kVA as opposed to kW?

Q34. Should use of 90% of the kVA demand as billing demand be limited to cases where a determination of below standard power factor has been acknowledged to the customer (as with Nova Scotia Power)? This would give the customer an opportunity to correct the situation at its own cost before being re-classified.

2.2 Classification and Reclassification of Consumers to Classes

2.2.1 Periodicity of the Calculation of Demand for Rate Classification Purposes

Q35. What are the advantages and disadvantages of each of the options identified above?

2.2.2 Assignment of New Consumers to Classes

Q36. What are the advantages and disadvantages of each of the options identified above?

Q37. How does classification on the basis of 80% of service size relate to customer contributions for connection costs? In other words, is the distributor already compensated for over-sized assets by customer contributions?

2.2.3 Evaluation and Reclassification of Existing Consumers

Q38. What are the advantages and disadvantages of each of the reclassification options identified above?

Q39. In section 2.1.2, Board staff has suggested a 12 month average billing demand as a definition of demand. If that were to be adopted, would restricting the number of reclassifications become unnecessary?

Q40. Should all customers be notified prior to a rate class change, regardless of the bill impact?

Q41. Is there a need for the Board to establish parameters around the application of the concept of an "abnormal condition"? If so, what parameters would be appropriate?

PART III: Management of Customer Non-Payment Risk

Q42. Should the DSC be amended to expressly provide for accelerated billing?

- If yes, how should accelerated billing provisions be structured (e.g., triggers, notification process, conditions for returning to the distributor's normal billing cycle, timing of disconnection notices, other customer service implications)?
- Should customers have the option of negotiating an alternative arrangement prior to being placed on accelerated billing?
- Are there other customer non-payment risk management tools that should be considered along with accelerated billing?
- If accelerated billing should not be considered, how should the large customer non-payment risk referred to above be addressed, if at all?