

Summary of Comments Received from Stakeholders
by 5:00 pm on February 15, 1999

Draft Standard Supply Service Code

29 January 1999

Summary of Comments received from Stakeholders

**ONTARIO ENERGY BOARD STAFF
Staff Draft for Consultation Purposes**

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NOTE: Comments are included within the text of the draft Code as bold typeface. These will not be included in the final Code, but are for discussion purposes only.

GENERAL COMMENTS

Alliance Gas submits that the principle behind SSS should be that customers should have access to electricity through their current supplier at market-based prices. This principle presumes that the transition from system to retail involves decisions based on market prices. Alliance Gas notes that integral to the context of the provision of any utility services in a competitive market is that unbundling of costs allocates avoided costs in a realistic fashion, or else the market may not be true. The importance of unbundling of utility costs should be kept in mind.

Belleville Utilities Commission believes that the methodology outlined in the staff background paper appears to be workable and the Code is clearly stated. In order to fulfill its obligations to bill SSS customers and retailers and to monitor the retail settlements system, the utility would need to retain control of the meter and billing process. Belleville agrees with the concept that making the utility indifferent as to whether the customer is a standard supply or a retailer-served customer is good and will facilitate the opening of the market.

Bennett Jones on behalf of several MEUs (the communities of Sarnia, London, Woodstock, Tillsonberg, Ingersoll, Goderich, Stratford, St. Thomas and Strathroy), Hydro Guelph and the Municipal Electric Association (MEA) note concern that Board staff have not felt bound by the Market Design Committee's (MDC's) advice, and record concern that, in their view, the staff proposal moves even further from the simple intent, regarding section 29 responsibilities and affiliate relationships, of the government and the legislature.

Bennett Jones on behalf of several MEUs and Scott & Ayles for Ottawa Hydro claim that a utility can enter into an arrangement with a third party to meet its obligation without providing customer-specific information. They state that if the arrangement can be structured as if it were a wholesale aggregate supply arrangement, then there would be no need to provide the third party with customer information, only aggregated information, and the third party would not need to be precluded from participating in the unregulated retail market in the distributor's licenced service territory. Their comments and suggestions are based on implementing this scheme.

Borden & Elliot on behalf of Oakville Hydro, Clarington, Enron, Hydro Guelph, the MEA, Oshawa PUC, Sault Ste. Marie PUC, Utilities Kingston and Woodstock PUC convey concerns regarding timing and process. They submit that there was insufficient time given for a thorough examination, consideration and response to the Code. Given the profound importance of the issues involved, the MEA feels that a more formal proceeding or hearing on these issues may be necessary. The MEA requests that its members and other

participants be afforded more time for input and that subsequent process and/or process options be clearly outlined.

Brantford Hydro-Electric Commission notes that a worked example of the new method of calculating SSS is essential, and should take into account the initial average capped price set for Ontario Hydro Power Generation. They contend that this would eliminate any misconceptions.

Brockville PUC's comments generally support the intent of the Code and offer suggestions and comments. Brockville encourages the Board to continue timely completion as the outcome impacts on numerous business decisions. Suggestions unrelated to provisions in the Code include the following:

- To provide customers, distributors and retailers with a better understanding of the relationship of contract pricing versus spot market, a market should exist and operate, with results reported to the general public, before active retailing of electricity and marketers approaching low-volume consumers is allowed.
- Customer education will be required to explain the operation of the market.
- It is important for the spot market price to be communicated on a regular basis (prior to the opening of the retail market) to allow customers the ability to benchmark their agreements with retailers.

Chatham-Kent PUC answered the questions posed by Board Staff in its transmittal letter as follows: 1) Chatham-Kent agrees with the six principles used to create the Code and believes that the simplification mechanism for administering the SSS is appropriate. 2) Chatham-Kent believes that the Code will allow the distributor to be in a position to effectively provide electricity through SSS when requested, but there may be an exception covered under Clause 2.1.3(c). 3) In its view, Chatham-Kent does not feel that the Code appears to add any unreasonable cost to the process and should not negatively affect cost of supply to consumers. However, they contend that there are complications that make it more than a billing function, including customer inquiries, profiling methodology and the period for billing, if standardized. 4) Chatham-Kent believes that risk mitigation procedures are addressed for SSS customers, but the Board also should address risk mitigation measures that are appropriate between a distributor and a retailer. 5) As the SSS offering and the retail energy offerings will be through independent corporate affiliates, activities will be separated. If information systems sharing between these affiliates protects the confidentiality of consumer information, then Chatham-Kent submits that the playing field should not be negatively affected by this structure. 6) In its view, there appears to be minimal regulatory burden or intrusion.

CU Power International Limited focuses on the potential impact the Code may have on the commercial arrangements necessary to fund new generation. CU Power notes that one of the fundamental benefits of deregulation lies in eliminating the obligation for all customers to share in the risk associated with constructing new generation. However, under the proposed

Code that entails a spot price pass-through, CU Power contends that a vast majority of consumers will not be sufficiently motivated to seek alternate supply arrangements from third party retailers, thereby inhibiting demand for hedges and long-term fixed price energy contracts. In addition, they suggest that the profiling approach will create a market-clearing problem during periods of inadequate supply, but all customers will receive the same reliability of supply, substantially reducing the potential benefit of a competitive supply contract, further impeding development of the retail market. Finally, in the event that larger, more sophisticated loads eventually seek bilateral pricing arrangements with generators, CU Power submits that the spot market may become increasingly marginalized and price volatility will increase, exposing SSS customers to increased levels of price volatility. CU Power recommends the following:

- Limit access to pool flow-through pricing to customers with interval metering.
- Encourage the development of interruptible rates for larger customers.
- Require that all other customers be served under some form of hedged rate.
- Charge regulated distributors with providing a default-hedged rate against which retailers can compete.

Donahue & Partners on behalf of Sunoco wrote that the Legislature and the Government intended that the standard supply offer be used as a means to develop competition. However, in their view, the Code's restrictions on who may provide the SSS offer and the information which may be provided to standard supply customers results in serious concerns that these goals will be frustrated since it appears to be aimed at keeping customers uninformed of and immune from competition. They have two areas of concern: 1) restrictions placed on third parties who provide the SSS option, and 2) barriers to allowing a customer to choose a retailer.

Based on a brief review, EnerConnect comments that the Code appears to be quite restrictive for EnerConnect and its Limited Partners to operate effectively in a competitive market.

Enron notes that there are few issues that the Board will consider that will have greater impact on both the wholesale and retail markets in Ontario than the issue of standard service. Accordingly, Enron is dismayed that Board Staff has proposed to give interested parties no more than nine days to digest and respond to the two proposed Codes. Enron notes that there is no need for the terms of the Standard Supply Service (SSS) Code to be settled prior to the issuance of interim Distribution Licences and strongly urges staff to reconsider the timetable it has imposed since the existing timetable is unrealistic and prejudicial to interested parties.

"G6" (Outerbridge Miller on behalf of Hydro Mississauga, London Hydro, Oshawa PUC, Sarnia Hydro, St. Catharines Hydro and Whitby Hydro) notes that a formal presentation by Board staff regarding how these codes would be implemented at an operational level would be very valuable.

G6 also notes that, in their view, the Code in conjunction with the Affiliate Relationships Code attempts to eliminate any perceived advantage associated with a retail company providing the SSS on behalf of a distribution company. Although laudable, they submit that these objectives are not practical and will result in increased costs, lost opportunities to achieve efficiencies, and diminished tax payer value in existing municipal electric utilities. As an alternative, one retail company can provide the SSS while engaging in other retail activities, so long as the licensing process imposes the appropriate confidentiality and information control requirements. The G6 concludes that the SSS is inefficient and cumbersome, operationally flawed, and will result in increased costs to the consumer.

Granite Power Corporation states that the Code, in general terms, takes too simplistic an approach and does not recognize the problems inherent within it. They contend that the approach increases the risk to distributors, multiplies the regulatory approvals manifold and adds to administration duties. Granite Power further suggests that the code puts the existing distributor in an unfair position by increasing its workload, and causing an upward pressure on distribution costs. They propose that as the last resort to customer who will not be accepted by retailers, a distributor incurs additional risk and costs that will not be favorable to those long term customers who stay with the SSS as these customers will pay a cross-subsidization for failures of retailers or bad customers who have to be accepted on SSS. They state that much of this does not protect the customer, but adds to what the customer must pay for power.

Gloucester Power notes that it remains to be seen how the logistics of billing on a weighted average spot market price will work and the amount of effort it will take to sustain such a system for billing and make the system understandable for the normal customer.

Ontario Hydro Services Company (OHSC) notes that the following principles should be reflected in the Code: 1) The Code should encourage the development of the competitive retail market for electricity for the benefit of energy consumers in Ontario. 2) The Code should not disadvantage consumers that remain with SSS, once open access is declared, in comparison to their existing service levels. With respect to services that are not pure supply service and not pure distribution service (e.g., carbon monoxide detectors, water heater rentals, energy efficiency information services), OHSC submits that SSS should continue to provide existing service levels, but not add any new services that may become available from competitive retail merchants. OHSC suggests that the Board set a time frame during which SSS would be made available; then, if meaningful competition had not materialized in a specific market area by the end of that time frame, SSS would continue.

OHSC answered the six questions posed by Board Staff as follows: 1) The purpose of the Code appears to be the promotion of a rapid development of the competitive market through restriction of the activities of the standard supplier, and the provision of ensured supply by those that do not choose a competitive supplier. 2) Reasonable demands for electricity will be met, but significant market price volatility is placed on the standard supply consumer. 3)

The requirements are not clear. Clarification regarding what OHSC can do with respect to existing services outside of distribution (e.g., water heaters, carbon monoxide detectors, etc.) is required. Also, all of the Codes should be reviewed together to fully understand the Code's requirements. 4) It is unclear whether significant risk has been placed on the distributor. 5) The volatility of the spot price may drive customers into the competitive market for supply. However, the lag time needed for customer awareness and education may prevent customers from making wise energy choices right away. While the Code may limit cross-subsidization, it does this by placing simplicity ahead of maintaining service levels to SSS customers. 6) The Code minimizes regulatory burden at the risk of disadvantaging SSS customers.

Ontario Hydro Power Generation (OPG) recommends that the retail market model and settlement system be one of the issues discussed at future consultation sessions. It also submits that the background paper understates the requirements for the retail settlements system. In addition to what a distributor has to do today, a distributor will have to: track customers transferring between SSS and competitive supply, track customers transferring between individual retailers, track hourly prices in the IMO-administered market, handle paperwork associated with transfer of customers, and track dispatchable vs. non-dispatchable load.

Osler Hoskin & Harcourt on behalf of Enron Capital & Trade Resources Canada submits comments and a preliminary critique of the draft Code prepared by London Economics. The submission concludes that a spot market pass-through model imposes large risks on customers, a substantial portion of Ontario load will not be traded in intermediate markets such as contract and forward markets, thereby hindering development of those markets, and new entry will be hindered because the SSS pricing reflects wholesale costs rather than retail costs.

Ottawa Hydro Staff answered the questions posed by Board staff as follows: 1) The purpose of the Code is clear. 2) Demands for electricity should be met, although the cost effectiveness is not immediately obvious. 3) The requirements are reasonably clear. 4) Cost of billings, IT, administration (customer switching) and so forth will be greater than at the present. 5) The playing field is biased in favor of retailers. 6) Regulatory burden appears to be minimized to the extent possible.

Pembroke Hydro notes that their comments are not personal against the Board for its work or against the Market Design Committee for their dedication. The comments do reflect the affects of the direction given to both by the Government of Ontario which is flawed in the first place.

Pickering Hydro answered the questions posed by Board Staff as follows: 1) The content is clear. 2) Costs will go up, particularly in the short run. By how much and if it would be significant is uncertain. 3) Requirements are clear. Costs to distributors will increase. 4) ?

5) Level playing field? Electric utilities are behind the eight ball from day one. There is no way they can compete with marketers who have monies waiting to be used as soon as the market opens while utilities cannot have a reserve and would face startup costs that they cannot fund. So, there is no need to worry about 6) cross-subsidization because there will not be very many utilities in the electricity selling game.

Port Hope Hydro notes that the Code appears to ensure that reasonable demands for electricity are met provided that all participants are reasonable in their conduct. In addition, they contend that the Code allows consumers access to the competitive electricity market, the playing field is reasonably level and the Code does tend to minimize the potential for cross-subsidization. However, Port Hope Hydro envisions a substantial increase in overall costs to customers. Given the requirements, Port Hope Hydro contends that there should be some flexibility in the application of the Code to the extent that open access be opened on a regional basis according to circumstance or phase-in periods established to allow smaller utilities to make the transition. Realizing that these rules and codes are required in order to make the market function, Port Hope Hydro hopes that intrusions by the regulator will become less over time and that the codes themselves will become more succinct.

Sarnia Hydro notes that retail affiliates of MEUs will not be capitalized by their owners, and in order to become established, they suggest that a retail affiliate must have access to a customer base on day one. Sarnia supports the Board's position, however, that this access cannot provide the affiliate with an unfair advantage over other marketers, nor can it create any financial risk for the distributor.

Sault Ste. Marie PUC submits the following questions: 1) Will retail customers know what the equivalent spot market bill cost is? That is, is the spot market price shown on the bill the retail customer receives? 2) Can a distributor direct a bill to a retail customer, or does it only go to the retailer? 3) Can a distributor bill a water customer or any other type of utility service on the standard supply bill?

Scott & Ayleen for Ottawa Hydro voices concern with the limitations placed on third parties and disagrees with the staff paper premise that the provision of SSS is "essentially nothing more than a billing function." Scott & Ayleen claim that the service is a supply obligation. They also question the premise that a third party provider of SSS needs to receive customer-specific information from the distributor in order to enable the distributor to meet the supply obligation.

Toronto Hydro notes that the proposed Code is much broader than is desirable to establish competitive retail markets, and is broader than that required or permitted by the new legislation. In their view, the Code creates barriers for MEUs to compete on a level playing field, creates a financial burden for MEUs that is substantially more than just a billing function, and unfairly punishes MEUs. Toronto Hydro writes that the provisions in the

Code give away all the benefits of deregulation to new private sector entrants and deprives MEU shareholders of the opportunity to obtain an appropriate return on their investment. They further suggest that the Code also provides gas marketers with a huge benefit over the MEUs by allowing them to sell electricity in markets where they already have established a name brand. Toronto Hydro recommends that, in order to create a level playing field, MEUs be allowed to transfer the customer base to their retail affiliates and be given a five year transition period during which they can separate their competitive businesses from their monopoly businesses.

TransCanada notes that the Code has elements that follow the provisions of Bill 35.

UnionGas notes that billing is and should be treated independent of the provision of the SSS. They suggest that a municipality should address and justify a third party billing service separate and apart from the provision of the SSS. In Union Gas's opinion, a third party offering a billing service should not also have to provide and administer the SSS. Furthermore, although the background paper notes that the provider of the SSS has no vested interest in ensuring customers remain on the SSS and is indifferent, a provider of an SSS who purchases electricity through arrangements other than directly from the spot market has an objective to maximize the financial gains resulting from the difference between the spot pool price of electricity and the actual underlying cost of the SSS supply. In this circumstance, UnionGas notes that there is a commercial interest by the SSS provider to maximize the number of customers supplied under the SSS.

Upper Canada Energy Alliance notes that distributors will need tools to create standard supply offerings that are comprehensible to consumers in order to forestall a general negative reaction to restructuring. To help this process, Upper Canada suggests a multi-phase consumer communication process, the first as the market opens and subsequent phases as the market evolves. In the first phase, the OEB/MEST should emphasize the merits of a competitive electricity market and how a variable electricity rate based on the spot market is necessary to deliver the benefits of competition. Materials should anticipate angry reactions from customers who are being forced to accept risk and will not know future prices. Upper Canada suggests that the OEB/MEST consider setting up a 1-800 help line for consumers to confirm the facts as presented by their MEUs.

Utilities Kingston understands the nature of its obligation to serve as well as the requirement related to backstop supply of electricity and does not have immediate concerns. However, given the long term implications of such a document, Utilities Kingston feels that it is important that a full consultation be held.

Waterloo North Hydro makes three comments on the staff background paper:

- 1) The spot market price for electricity may be over 50 percent for the total bill, not a fraction. (Granite Power suggested that electricity is 40 percent, a sizeable percentage).

- 2) The jury is still out on whether competition and the proposed system will produce lower electricity prices.
- 3) While the regulatory burden of a spot price service is minimal for the Board, the administrative burden to distributors is significant.

Weir & Foulds on behalf of the Consumers' Association of Canada (CAC) notes that the design of the SSS and Code are very significant issues for the CAC as the SSS represents the way most residential consumers in Ontario will receive their electricity supply once open access is available. CAC generally supports the model set out in the draft Code and believes, on balance, that the model represents the most appropriate design for SSS relative to other options. CAC agrees with the principles used by Board Staff in designing the Code and believes that the proposed model is consistent with those principles. They submit that the SSS should be designed in such a way that ensures consumer protection while at the same time facilitate the development of a competitive market. CAC will provide more detailed comments to the Board as soon as possible, but urges the Board to give these issues a great deal of attention and to undertake a comprehensive stakeholder process prior to making any final decisions on these matters.

Whitby Hydro supports the purpose of this Code, but contends that several provisions of this Code are inconsistent with its purpose. In its view, the code establishes undue obstacles to the creation of a competitive market, and are contrary to the purpose of the Affiliate Code. If implemented, Whitby Hydro suggests that the market will stand to lose some of the considerable customer benefit that would derive from healthy and competitive municipal utility retail affiliates across Ontario. As thriving utility affiliates are an important part of a comprehensive response to the industry's financial situation, it urges the Board to rethink the code provisions concerned.

1. GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 The Purpose of this Code

This Code sets the minimum conditions that a distributor must meet in carrying out its obligations to sell electricity under section 29 of the *Electricity Act, 1998*. Unless otherwise stated in the licence or Code, these conditions apply to all transactions and interactions between distributors and all consumers of electricity who are connected to the distributor's distribution system.

PIAC/OCAP ask what circumstances would provide for a specific exemption from the Code.

1.2 Definitions

Terrace Bay Hydro suggests that definitions be clearer and use examples so that the Code can stand on its own and not depend on references to legislation or other codes.

In this Code, unless the context otherwise requires:

“Act” means the *Ontario Energy Board Act, 1998*;

“affiliate”, with respect to a corporation, has the same meaning as in the *Business Corporations Act* (Ontario);

“Board” means the Ontario Energy Board;

“Code” means this Standard Supply Service Code;

“consumer information” means information relating to a specific consumer obtained by an energy marketer, salesperson, or other market participant through the process of selling or offering to sell electricity or gas to the consumer, and includes information obtained without the consent of such consumer;

“contract” means an offer that has been entered into between a consumer and an energy marketer, and accepted by the consumer in writing;

OPG notes that this appears to limit telemarketing and Internet marketing activities, which could slow development of a retail competitive market.

“Director” means the Director of Licensing appointed by the Board under section 5 of the *Act*;

“distribute” with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;

“distribution system” means a system for distributing electricity at voltages of 50 kilovolts or less along with the related facilities and structures, including those facilities and or systems that operate above 50 kilovolts that the Board has determined, pursuant to section 84 of the *Act*, are part of a distribution system;

Waterloo North Hydro notes that this definition is good because it allows the Board to include utility-owned transmission as part of the distribution system.

“distributor” means a person who owns or operates a distribution system and is licensed as such under Part V of the *Act*;

“energy marketer” means a person who is licensed as a gas marketer under Part IV of the *Act*, or who is licensed as an electricity retailer under Part V of the *Act*;

“IMO” means the Independent Electricity Market Operator established under the *Electricity Act, 1998*;

“marketing” means to provide for consideration an offer, and is characterized by door-to-door selling, telemarketing, direct mail selling activities, and any other means by which an energy marketer or a salesperson interacts directly with an energy consumer;

OPG notes that this does not cover advertising, providing product information, or brand awareness techniques that do not include an offer to customers. OPG suggests that if this is not the Board’s intentions, the definition should be clarified.

“Market Rules” means the rules made under section 32 of the *Electricity Act, 1998*;

“offer” means a proposal to enter into a contract, agency agreement, or any other agreement or combination thereof, made to an existing or prospective consumer for the sale of natural gas or electricity;

“profile” means a methodology approved by the Board for allocating consumer-specific usage measured by a kilowatt-hour metre for a billing period to hourly periods for the purpose of calculating average electricity prices;

Terrace Bay Hydro suggests that a definition for prudential requirements is required.

“regulation” means a regulation made under the *Act*;

“retail” means:

- (a) to sell or offer to sell electricity to a consumer; or
- (b) to act or as an agent or broker for a retailer with respect to the sale or offering for sale of electricity; or
- (c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity;

TransCanada notes that section (b) should read, “(b) to act or offer to act as an agent . . .”

“retailer” or “electricity retailer” means a person who retails electricity and is licensed as such under Part V of the *Act*;

“spot market” means the IMO-administered wholesale market for electricity;

"spot market price" means the hourly price for electricity in the spot market as determined by the IMO. The price may include IMO settlement charges, charges for transmission and distribution losses, or other costs attributable to wholesale purchases as approved by the IMO and/or the Board;

The MEA suggests that once the market has moved beyond the transition phase and congestion pricing comes into effect, the “spot market price” will reflect that cost for the local service area. The MEA contends that the definition does not seem to explicitly catch this issue as written.

Sault Ste. Marie PUC requests clarification on why distribution losses would be included in the wholesale market spot price.

Terrace Bay Hydro suggests that this definition be clarified.

“standard supply service” means the sale of electricity in accordance with the provisions of section 29 of the *Electricity Act, 1998*;

“standard supply service customer” means a customer who is supplied with electricity under section 29 of the *Electricity Act, 1998*;

“third party” with respect to a distributor, means a person other than the distributor, including other distributors, energy marketers, affiliates, consumers and other persons.

Oshawa PUC has extreme difficulty with the definition of “third party” in that it references an affiliate of a distributor as a third party. It states that an “affiliate” is municipally owned or controlled electricity company and any entity that will be established by a municipality to operate in the energy area will be an affiliate of the distribution company. Oshawa notes that it has not seen other definitions of “third parties” that include affiliates as “third parties” and wonders why the OEB considers affiliates as such.

1.3 Interpretations

Unless otherwise defined in this Code, words and phrases shall have the meaning ascribed to them in the *Ontario Energy Board Act, 1998* or the *Electricity Act, 1998* as the case may be. Headings are for convenience only and shall not affect the interpretation of this Code. Words importing the singular include the plural and vice versa. A reference to a document or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision of that document. An event that is required under this

Code to occur on or by a stipulated day which is not a business day may occur on or by the next business day.

1.4 To Whom this Code Applies

This Code applies to all electricity distributors licenced by the Ontario Energy Board under Part V of the *Ontario Energy Board Act, 1998*. These entities may be obligated to comply with the Code as a condition of their licence.

PIAC/OCAP ask: What circumstances would provide for a specific exemption from the Code? Are any exceptions providing for less onerous conditions anticipated?

1.5 Hierarchy of Codes

The order of hierarchy for the Standard Supply Service Code in relation to other codes, subject to any specific conditions of a licence that apply to the distributor, are as follows:

1. Affiliate Relationships Code
2. Distribution System Code
3. Retail Settlements Code
4. Metering Code
5. Standard Supply Service Code

Toronto Hydro notes that there is significant interdependency among the codes, and it may have further comments on the hierarchy of codes once the Retail Settlements and Metering Codes have been issued for consultation.

Whitby Hydro notes that the Affiliate Relationships Code takes first position in the hierarchy and suggests that all codes should reflect the Affiliate Code's purpose.

1.6 Amendments to this Code

This code may only be amended in accordance with the procedures set out in the licence issued to a distributor.

Alliance Gas notes that as the market matures, it may be operationally difficult for a small utility to administer a form of SSS with only a handful of customers. It proposes that the Board have the foresight to plan for an orderly exist from the merchant function for electric utilities by separating the circumstances where customers receive SSS.

1.7 Coming into Force

This Code comes into force on the day section 29 of the *Electricity Act, 1998* comes into force.

2. STANDARDS OF BUSINESS PRACTICE AND CONDUCT

2.1 Standard Supply Service Customers

2.1.1 In accordance with section 29 of the *Electricity Act, 1998* and with its licence, a distributor shall provide standard supply service to any person connected to a distributor's distribution system who:

- (a) has not advised the distributor in writing that the person does not wish to purchase electricity from the distributor; or
- (b) requests the distributor in writing to sell electricity to the person; or

OPG suggests that clause (b) should be dropped so that there is no obligation for new customers to notify a distributor in writing that they require electricity. OPG contends that it would be simpler and easier for new customers if distributors assumed that they have an obligation to provide SSS until advised by the customer otherwise.

- (c) purchases electricity from a retailer other than the distributor and the retailer is unable for any reason to sell electricity to the person.

Granite Power notes that if a distributor must automatically supply the customer (sometimes without warning) when a retailer is unable to provide electricity, then there may be a significant risk to the distributor as the customer in question will not have any or sufficient deposit with the distributor. Meter readings at the beginning and end of the supply service presumably would not be available due to the communications lag time. In addition, a retailer may refuse to supply due to financial considerations if the price of electricity is high during several hours over a number of days. Granite Power suggests that any additional costs for this retailer should be allocated over that retailer's customers to prevent a cross-subsidization.

Toronto Hydro argues that the obligation to supply under section 29 fundamentally is an obligation to supply persons not currently supplied by the distributor directly or on its behalf through an affiliated or contracted third party. It submits that the predecessor to section 29 is section 55 of the *Public Utilities Act, R.S.O. 1990, c. P52*, as amended. This received judicial interpretation in *Holmberg v. Sault Ste. Marie P.U. Commission* 1966 2 O.R. 675, a decision of the Ontario Court of Appeal.

2.1.2 In accordance with section 29 of the *Electricity Act, 1998*, a distributor shall discontinue standard supply service to a person who is connected to the distributor's distribution system if:

- (a) the person or a retailer acting on behalf of the person informs the distributor in writing that the person wishes to purchase electricity from the retailer; and

Gloucester Hydro, Granite Power, Pickering Hydro and OHSC note that part (a) allows for a retailer to act on behalf of a person to change the service without a signature of the customer. Gloucester Hydro notes that this already is a problem because it has received written notification from retailers “acting” on behalf of customers who did not knowingly contract with the retailer. Granite Power suggests that a retailer should provide proof that it can act on the customer’s behalf.

Toronto Hydro notes that section 29 does not provide that a retailer may act on behalf of the person. The phrase could be modified to say, “(a) the person or a retailer who provides written authorization from the person . . .”

- (b) the person or the retailer acting on behalf of the person provides the distributor with the following information:
 - the date after which the retailer is prepared to provide service to the person;
 - the person's account number with the distributor or address;
 - the retailer's licence number;
 - the retailer's account number with the distributor, if different from the licence number; and
 - other information necessary for implementing a change in service that may be required by the distributor or the Board.

Donahue & Partners on behalf of Sunoco note that 2.1.2(b) says that customers do not have access to their utility account number unless they are at home. Thus, it would be more difficult to sign up a consumer at retail centers or other places besides door to door.

The MEA notes that this section should include a statement as in 2.1.3 “subject to final meter reading date.”

2.1.3 In accordance with section 29 of the *Electricity Act, 1998*, a distributor shall begin to provide standard supply service to a person who is connected to the distributor's distribution system and purchases electricity from a retailer if:

- (a) the person or the retailer informs the distributor in writing that the person wishes to purchase electricity from the distributor or the retailer is unable to sell electricity to the person; and
- (b) the person or the retailer acting on behalf of the person provides the distributor with the following information:
 - the date after which service no longer will be provided by the retailer, subject to the final meter reading date;
 - the person's account number with the distributor or address;
 - the retailer's licence number;
 - the retailer's account number with the distributor, if different from the licence number; and
 - other information necessary for implementing a change in service that may be required by the distributor or the Board.

Alliance Gas notes that allowing customers to return from a retail supplier to SSS at any time would create confusion in the marketplace and invite customers to breach any agreements which may be for fixed terms. Alliance recommends that a customer's return to SSS should be limited to cases where either the retailer has consented to the return or the customer's agreement has come to an end. It submits that a return to SSS does not terminate the contractual obligation of a customer to a retailer, and if the retailer were to resubmit the customer to the electric utility, the utility would be obliged to accept the retailer's contract. Alliance Gas submits that if there is a dispute, a dispute resolution procedure should be able to resolve any concerns.

Granite Power notes that another condition to switch back to SSS would be the payment of any deposits, prepayments, etc. which a distributor requires. In addition it suggests that, all arrears outstanding, to whatever retailer, must be paid as well before a change back to SSS can be made. Granite Power believes that distributors will require more sophisticated billing systems if customers can switch back and forth between competitive retailers and SSS.

OPG suggests deleting clause (b), points 3 and 4 since it is not clear that a customer seeking to return to SSS (perhaps because of a dispute) would know the number of the retailer.

Osler Hoskin and Harcourt on behalf of Enron submit that the term "in writing" can be defined to provide for electronic commerce.

Ottawa Hydro Staff inquires that if a retailer cannot for some reason continue to supply, how is the transfer date/time to be established?

2.1.4 If a request under clause 2.1.2 or 2.1.3 is made to a distributor directly by the person, the distributor shall notify the person's retailer of the request in writing within ten (10) days of the request.

Direct Energy Marketing and Enershare note that there is no mention of the procedure to be followed if the customer is still under contract with a retailer. They suggest that this section goes beyond the power of the Board if this is an attempt to effect customer mobility by sanctioning the breach of private contracts. Unless such a right is directly conferred on the Board by Regulation, the companies will vigorously resist. They cite the MDC Retail Technical Panel Report that distributors must notify retailers currently providing service to a customer prior to making the change, and cease transfer processing until the matter has been resolved (rec. 4-7).

Gloucester Hydro, the MEA and Upper Canada Energy Alliance suggests that the actual date the service will switch should coincide with the normal reading date for that person. If the normal reading date is unacceptable to the retailer or the switching person, then an extra administration fee approved by the OEB should be charged.

Port Hope Hydro notes that in California, there were specific dates on which a customer could change suppliers (e.g., the first of each month) which prevented instances where a customer could switch suppliers on a daily basis. Port Hope Hydro suggests that a similar approach be taken here.

Toronto Hydro notes that 15 days is becoming the standard "cooling off" period for purchased goods and services and the notification requirement in this clause should be synchronized with the rescission period. Toronto Hydro contends that in some cases, a customer may have signed a new offer, forgetting that an existing contract still is in force with their current retailer. However, if a transfer notice takes ten days, there still is time for the existing retailer to advise its customer of the existing contract and for the customer to rescind the new contract within the "cooling off" period.

Terrace Bay Hydro suggests that minimum timelines must be established for notice of change of supply to allow for meter readings and processing of customer information and these should be at least 30 days.

2.2 Fulfillment of the Standard Supply Service Obligation

2.2.1 A distributor shall provide standard supply service for the entire amount of electricity consumed by a standard supply service customer.

Pembroke Hydro requests clarification on whether this means that a distributor has to forecast load requirements for retailers without full data of the customer. When does a retailer calculate his purchased power requirements?

Upper Canada Energy Alliance notes that any person taking standard supply must take 100 percent of their requirements from standard supply, but that this concept is not clearly stated.

2.2.2 A distributor that chooses to fulfill its standard supply service obligation directly shall purchase the electricity required to fulfill its obligation to sell electricity to consumers under standard supply service directly from the spot market.

Brockville PUC and Whitby Hydro note that the use of spot market prices removes the need for a distributor to procure power in the open market. This avoids risk and does not require extensive infrastructure at the distributor to predict load, purchase power and mitigate risk. This approach may be useful for small distributors. However, they believe that a larger distributor may determine that taking risk on the cost of power is a viable business decision that could allow them to increase their return to shareholders. Whitby Hydro notes that section 29 of the *Electricity Act, 1998* sets out no requirements as to where a distributor or its SSS agent must get its power, or how much it must charge. In their view, this requirement goes beyond what is contemplated in the *Act* and is not consistent with the minimalist purpose of the Code. They ask : What if a distributor could procure power on a risk managed basis less expensively from a source other than the spot market? Shouldn't SSS customers benefit from this competitive advantage? To ensure that the retailer is not placed at a disadvantage and to allow a distributor to act as a company, control costs and take risks deemed appropriate, Brockville contends that power procurement by a distributor should be allowed, but any profits should not be utilized to impact on the cost of SSS power or on the distribution charge. They suggest that this section should be modified to allow for supply solutions other than the spot market, with prior approval of the Board.

Canadian Niagara Power Co. notes that under an existing arrangement, it is provided with a set amount of electricity at Niagara Falls. The cost of transmitting the electricity from the Beck Facility to Niagara Falls is embedded in other services provided under the arrangement and cannot be isolated. If it must sell this electricity to the spot market or to another party, then it will effectively be double-charged for transmission. Canadian Niagara therefore asks the Board to allow it to receive this electricity up to the limits specified in the water and power exchange agreements at any point on the OHSC transmission grid without being

subject to the IMO transmission charges since it will be paying charges to OHSC under the arrangement.

OPG believes that requiring a distributor to obtain supply from the spot market is unnecessarily restrictive. While supportive of the objective to limit financial risk to distributors, OPG believes that a distributor should be allowed to contract for SSS power through a physical bilateral contract indexed to the spot market price with a discount. This discount would benefit customers. It submits that the potential use of indexed contracts meets the need to eliminate price and volume risk for the regulated distributor while preserving a contracting option that may provide a benefit to consumers.

Osler Hoskin and Harcourt on behalf of Enron submit that provisions of the *Act* require Board approval of rates for SSS. In their opinion, this statutory duty cannot be satisfied merely by including a particular pricing methodology such as a spot price pass-through in the licence.

Pembroke Hydro notes that this will eliminate EnerConnect as far as the distributor is concerned since EnerConnect would only be an advantage to retail companies.

Upper Canada Energy Alliance notes that they did not think that a distributor was “purchasing” electricity, but only providing “access” to electricity; the customer purchases electricity, thereby keeping the distributor free from any risk. Upper Canada asks: Is it the intent that a distributor take possession of electricity?

- 2.2.3 If a distributor chooses to fulfill its standard supply service obligation through a third party, the distributor shall ensure that the third party:
- (a) is licensed to retail electricity under Part V of the *Act*; and
 - (b) has the capability of fulfilling the distributor’s obligations to provide standard supply service; and
 - (c) fulfills reasonable prudential requirements and other conditions specified by the distributor or the Board.

Direct Energy Marketing and Enershare recommend a clear statement be included in this subsection indicating that the transfer to a third party of the utility’s obligation for SSS customers does not make the customers any less contestable and that the same rules apply for the transfer to a retailer of a utility supplied customer as for a third party supplied customer. They emphasize the MDC’s statement in its final report that the OEB must be satisfied that the code of conduct will ensure that: 1) there will be no cross-subsidy due to SSS, 2) no preferential access to customer data within the competitive portion of the entity providing SSS, and 3) that SSS customers remain effectively contestable. Furthermore they note that if a utility transfers its obligation to provide SSS to a third party, the Board should

approve all the conditions since a regulated function such as SSS should not be removed from the direct regulation of the Board with the Board's approval of the conditions under which it is to be removed.

Granite Power suggests that any prudential requirements from third party retailers should hold the distributor, IMO and all other parties harmless in the case of a retailer default. The terms of requirements should take into account the normal billing cycle delays and meter-reading estimations associated with the electrical industry, and the need for a security deposit from the third party.

Granite Power suggests that the Board's requirements and conditions should be listed here.

Pickering Hydro notes that 2.2.3 (b) and (c) would require constant monitoring by the distributor. Pickering asks: Who is to pay for this cost? Where does the distributor turn if the third party cannot fulfill its obligations? Hopefully, there will be enough marketers available if needed.

PIAC/OCAP ask who the third party is likely to be -- a competitive retailer who is not allowed to market gas or electricity in the distributor's licensed service territory?

Toronto Hydro suggests that the term "reasonable" be clarified. If these requirements are in addition to IMO prudential requirements, they may prove to be burdensome.

Toronto Hydro suggests that clauses 2.2.3, 2.2.4 and 2.2.5 put Ontario MEUs at a significant disadvantage to gas utilities who have enjoyed the freedom to engage in distribution and retailing in their licensed service territory. Toronto Hydro believes that MEUs should be allowed a reasonable period (e.g., five years) to undertake the organizational, operational and systems transition from being integrated monopolies to separated monopoly and competitive businesses.

2.2.4 A distributor shall ensure that a third party that provides standard supply service on behalf of the distributor does not retail electricity to consumers in the distributor's licensed service territory other than those consumers who are supplied electricity through standard supply service.

Borden & Elliot on behalf of Oakville Hydro feels that this is unduly burdensome and adds administrative and management complexity because, in essence, a distributor that wishes to offer SSS through a retail affiliate will be required to establish another affiliate for this very purpose. Aside from the additional costs, Borden & Elliot suggest that this will create additional costs through the loss of efficiencies and the duplication of administrative and functional services.

OPG does not support this provision because it severely limits an MEU's ability to create a viable retail affiliate since it is forced to create either two retail affiliates, one for default supply and one for competitive supply, or to create one retail affiliate and forego marketing in their own franchise area. In OPG's view, it essentially requires an MEU to choose between scale and brand equity, both of which will be needed to succeed in the new market.

Ottawa Hydro Staff questions whether this provision makes sense and suggests putting a firewall around the Ottawa standard supply operation and letting the affiliate market in Ottawa as well.

Pembroke Hydro notes that this clause means its affiliate cannot market power in Pembroke. Ontario Hydro cannot market power in its area. Pembroke claims that it is a lot cheaper to keep a customer than to acquire and get a new one and questions whether this clause makes sense.

Toronto Hydro intends to supply all of its existing customers with electricity through its retail affiliate until they choose an alternate supplier. If at any time during the extensive debate leading up to the passage of the *Energy Competition Act*, Toronto Hydro had felt that its future retail affiliate would have been excluded from offering new products, new services and attractive new pricing packages to meet its existing customers' needs, Toronto Hydro would not have supported the move to competitive retail electricity markets. Toronto Hydro states that the *Electricity Act* and the White Paper did not contemplate nor require treating existing customers as second-class customers who are denied access to new products and services their utility can offer through its retail affiliate.

2.2.5 A distributor shall ensure that a third party that provides standard supply service on behalf of the distributor does not engage in marketing of electricity or gas in the distributor's licensed service territory.

Under the scheme advocated by Bennett Jones on behalf of MEUs and Scott & Ayles for Ottawa Hydro, subsections 2.2.4 and 2.2.5 would be deleted so long as a distributor only provides aggregated information to the third party and only the distributor provides the invoice for SSS to the end-use customer. Bennett Jones notes that if third parties and affiliates were to envisage sharing of customer specific information which could result in a competitive advantage in the direct purchase retail market, then *for those standard supply arrangements only*, there would have to be additional protection afforded, likely in the form of these subsections, but only for those types of arrangements. Bennett Jones suggests that these subsections be redrafted to accommodate this "critical and legitimate" variation on the rule where the third party and affiliate providers do not and will not have access to customer specific information.

Bennett Jones notes that in Peter Budd's view and given his experience, neither Bill 35 nor the MDC intended this wide reaching, strict prohibition, which will likely stifle the formation and development of any MEU retail affiliates, and will likely render the Ontario market sufficiently unattractive for other third party retailers, such that the market may lack liquidity due to lack of market participants.

Brockville PUC submits that the limitation on the ability to assign SSS customers to a retail affiliate or any other company actively marketing in the area appears to be an infringement on the retail market. Brockville suggests that perhaps there is a better way of achieving the objective of no cross-subsidies without limiting the ability of a retail company to market if they are servicing SSS customers.

Donahue & Partners on behalf of Sunoco note that they do not understand why energy retailers cannot provide the SSS option. In their view, retailers will be subject to standards in their licences and could provide this service in a way which is consistent with the market goals of the Board.

Enterprise Canada, Granite Power, and Pickering asked about affiliates of third parties. Enterprise Canada is concerned that subsections 2.2.4 and 2.2.5 could be circumvented by an affiliate who creates a subsidiary affiliate. Although both affiliates would be subject to the Affiliate Relationships Code, an argument could be made that the subsidiary affiliate would not be subject to these requirements in the SSS Code and there could compete in the marketplace in that service territory. Enterprise Canada requests that this concern be considered and wording be included within the Board's codes to ensure that its provisions apply in such a case. Pickering wonders what checks and balances are in place to stop a marketer from setting up a separate company to do the retailing and marketing in the licensed service area.

G6 argues that the five reasons noted in the Staff Background Paper for subsections 2.2.4 and 2.2.5 can be addressed by creating internal firewalls and operating codes. They lay out an elaborate approach to ensuring a level playing field that would provide all licenced retailers customer information of all customers, allow customers to stipulate that their information should not be provided, update standard supply customer information on a periodic basis, require any retail company providing SSS to certify that customer information would not be sold or transferred to another party and would be used solely to SSS customers, and bill standard supply customers in the name of the distributor rather than the name of the retailer.

G6 disagrees with the Board Staff premise that SSS is only a billing function. Billing functions must operate in conjunction with call centre and collection functions and other retail support functions. These require information technology, staff and other infrastructure in order to support the business. They argue that it would not make sense for a "contractor" retail company, servicing either a distribution company or a retail company,

to provide billing services alone. Under the proposed Code, two call centers would be required by an MEU to service SSS customers separately from the customers of the retail affiliate. The customer would bear the cost of the duplication of infrastructure and staff necessary to achieve this.

Ingersoll believes that subsections 2.2.4 and 2.2.5 are too artificial and restrictive and not well-founded in today's commercial realities. Furthermore, Ingersoll suggests that the subsections are contrary to the MDC and section 73(1) items 1-9 of the *Act* that imply that the distributor's affiliate can provide both SSS and also retail electricity to consumers directly in the distributor's service territory.

Ingersoll, London Hydro, Osler Hoskin and Harcourt on behalf of Enron, and Woodstock PUC note that subsections 2.2.4 and 2.2.5 appear to be at odds with the recommendations of the Market Design Committee, and contradict the spirit of *The Electricity Act, 1998*. If these were implemented, they argue, MEUs would be placed in an unfair position to compete with other competitors, both domestic and international. Osler Hoskin on behalf of Enron states that the legislative intent is clear: distributors through commercial arrangements with other parties should be able to seek out economies of scale and scope in the provision of SSS. However, in Osler Hoskin and Harcourt's view, these sections impairs the ability of distributors and others to pursue legitimate economies and efficiencies for the benefit of Ontario energy consumers.

Ingersoll, London Hydro and Woodstock PUC argue that these subsections significantly diminish the value of an asset of the municipality, and hope that there will be full and thorough consideration of these matters to ensure the fair treatment of their customers and the maintenance of the value of its utilities which have been developed over many decades by their ratepayers.

OPG does not support this provision because it will act to reduce competition by reducing the number of competitive players active in a given franchise area. Given that a SSS supplier will not be known to a consumer and subsection 2.4.2, OPG argues that this restriction is unnecessary and not in the consumer's interest.

Oshawa PUC and Sarnia suggest that based on the definition of third party, subsections 2.2.4 and 2.2.5 of the Code appear to prohibit the ability of a municipally-owned distributor to work with a municipally owned retail affiliate. However, the Act allows a distributor to comply with its obligation to provide electricity to customers either directly, through an affiliate or through a third party; it does not constrain the distributors' ability to contract with a retail affiliate whereas the Code does. Oshawa is of the firm opinion that a distributor must be able to deal with its retail affiliate as provided for by the *Electricity Act, 1998*.

Pembroke Hydro argues that this appears to bind the hands of the retail affiliate. If a retail affiliate is to provide service to the utility's customers and compete, Pembroke Hydro believes that it must be able to market to its customers. Pembroke Hydro speculates that perhaps this is why Ontario Hydro has not formed a retail company -- because they will not be able to market in the area in which their wires company serves.

Pickering Hydro asks why a marketer would take over standard supply from a distributor when it would be prohibited from retailing or marketing in that licensed service territory.

Sarnia Hydro argues that SSS is simply a part of retailing electricity, and a retail affiliate would be substantially disadvantaged if the SSS Code was implemented as written in subsections 2.2.4 and 2.2.5. In Sarnia Hydro's view, the municipal owner would be denied the opportunity to establish a successful utilities services affiliate and would lose the opportunity of earning a return on its investments.

Toronto Hydro suggests that, if at any time during the extensive debate leading up to the passage of the *Energy Competition Act*, it had felt that its future retail affiliate would have been excluded from offering new products, new services and attractive new pricing packages to meet its existing customers' needs, Toronto Hydro would not have supported the move to competitive retail electricity markets.

Toronto Hydro suggests that the issues addressed in clauses 2.2.4 and 2.2.5, as elaborated by Board Staff in the background paper, are not related to the public policy objectives of section 29 of the *Electricity Act, 1998*.

Toronto Hydro argues that the issues of sharing of customer information, establishing a level playing field and avoiding cross subsidization are issues properly addressed in an affiliate code and are not related to the section 29 obligation. With an appropriate affiliate code, the terms of the SSS can be stated as "guidelines" for distributors and their affiliates or contractors in developing their conditions of supply for basic residential and general service. Toronto Hydro contends that this form of service would be available to any customer, including customers unable or unwilling to be supplied by a third party.

TransCanada supports the principle that such separation between SSS and "commercial" supply exists, in particular, the mechanism whereby SSS is provided by an entity not providing "commercial" service.

Upper Canada Energy Alliance suggests that this creates an undue regulatory burden on the industry. In their view the Affiliate Relationships Code and PBR regimes contain effective controls over affiliate and third party dealings. They suggest that these subsections indicate that the Board has serious concerns with regard to a distributor's or third party's adherence to Affiliate Relationships and Conduct Codes. Further, they argue that these extra

regulatory measures could be an intrusion into competitive activities and that these sections are not required if the **Affiliate Relationships Code**, as circulated, is adopted.

Whitby Hydro suggests that if the Board is worried about preferential access to information, then it should regulate the treatment of information, not who a distributor's SSS agent's customers can or cannot be. Furthermore, In Whitby Hydro's view, the restriction on natural gas marketing is inexplicable - what does natural gas have to do with electricity? Whitby suggests that these two paragraphs place undue restraints on competition and should therefore be dropped outright.

2.3 Separation of Accounts

2.3.1 A distributor shall maintain separate accounts for expenditures related to standard supply service obligations, and shall do so in accordance with the Distribution System Code.

2.4 Confidentiality of Information

TransCanada supports the principle of protection of confidential information.

2.4.1 A distributor shall not release consumer information except as required to implement standard supply service.

Granite Power asks whether a distributor is not obligated to give information even if instructed to do so by the consumer.

Scott & Aylen for Ottawa Hydro suggests rewording this clause to: "A distributor shall not release consumer-specific information."

TransCanada suggests that this clause also should stipulates that the distributor shall not release consumer information without either consumer consent or without reasonable advance warning to the consumer.

2.4.2 A distributor shall ensure that a third party that provides standard supply service on behalf of the distributor does not use consumer information obtained through the provision of standard supply service for any reason except as required to implement standard supply service.

Granite Power, OPG and TransCanada believe that such provisions are welcome in principle, but are difficult for the distributor to live up to in practicality. In particular, these provisions imply a policing role that most distributors would find difficult to implement or enforce. As section 2.2.3 (a) requires all third parties to be licensed under Part V of the Act, a similar confidentiality provision should be added into the Electricity Retailer Licences. Granite Power notes that a distributor could be required to put this type of protection in the agreement. Ontario Hydro notes that it is appropriate for the Board to obligate licensees to take all reasonable steps to require its third party contractor to follow the rules. However, the licensee should not be held responsible for bad faith on the part of third party contractors.

Under the scheme advocated by Scott & Ayles for Ottawa Hydro, this subsection is unnecessary if the Code is structured to assure that the third party only receives aggregate information.

2.5 Rates

Gloucester Hydro notes that methodology for the rate setting process of the weighted spot market price will need clarification that addresses issues of rate calculation and correction of billing errors. It presumes that this will be in the Rate Handbook.

G6 disagrees with the Board Staff background paper that there is no value to providing SSS unless the provider is able to use consumer information to market competitive products. They argue that the SSS must have a regulated rate of return and the necessary functions, call centre, collection, billing and other functions, will generate some return. G6 believes that this rate of return should be reasonable and in accordance with normal regulated rates of return.

Granite Power notes that the use of a profile adds a great deal of risk to a distributor. While a consumer profile done in Toronto may be acceptable for Toronto conditions, they may not be valid for other cities, towns or rural areas in Ontario. A distributor's customer information base is constantly out of date due to a consumer's activity and a consumer has no obligation to keep a profile type up to date. Commercial load profiles vary from month to month and season to season. In Granite Power's view, this adds risk to a distributor and cross subsidization between classes of load. Furthermore, profiles give the wrong price signals to customers which seems to be against one of the main goals of legislation. Granite Power submits that the Board should encourage time of use metering.

The MEA notes that a non-interval metered customer may request a spot-price pass-through for financial bilateral or other purposes. This would not be a request for SSS although, with the proposed concept, it might look similar. The MEA contends that these two types of service should not be mixed; if the SSS has a larger than average amount of unpaid

commodity bills and this cost is allocated to the administrative costs for SSS, then the SSS cost would be higher than the spot price pass-through service.

Ottawa Hydro Staff, Granite Power, and Pembroke Hydro note that there will be a significant administrative cost when a customer switches between SSS and retail supply. They submit that this cost should not be charged against all default customers, but should be charged as a special charge each time a customer switches. Otherwise, SSS would be disadvantaged, warping the playing field and preventing economic efficiency.

Toronto Hydro suggests that matters dealing with rates should be contained in a distributor's rate order under section 78 of the *Act*, rather than in this Code.

Upper Canada Energy Alliance notes that at some point, distributors and consumers will become sensitive to the weighting mechanism. Upper Canada suggests that the Board may find it desirable to have a monitor mechanism in place to test this sensitivity. For example, a simple monitor could be a comparison of average SSS price versus average competitive offering price by broad customer class within a distributor's jurisdiction.

Wier & Foulds on behalf of the CAC supports the model proposed in the Code. The CAC views some of the fixed price options advocated by others as very problematic, creating difficulties for the Board and in effect intervening in the operation of a competitive market.

- 2.5.1 A distributor shall ensure that a standard supply service customer is charged rates for standard supply service that are approved or fixed by the Board and consist of:
- (a) the price for electrical energy, and
 - (b) an administrative charge that allows the distributor to recover its costs of providing standard supply service.

Borden & Elliot on behalf of Oakville Hydro notes that clause (b) should be redrafted to read, "an administrative charge that allows the distributor to recover its costs and receive a return for providing SSS."

The MEA notes that, due to the specificity of this section, it is not clear how distribution losses or unaccounted for energy are to be handled and does not address how market power mitigation credits are to be handled. The MEA suggests that clarity could be improved if this clause made it explicit that costs associated with the incidence of non-payment of SSS are allocated to the costs of providing SSS and other customers do not bear this burden.

Sault Ste. Marie PUC asks: Are there any cost allocations to the energy cost or is it only the spot market price?

Toronto Hydro notes that in OHSC's applications for transmission and distribution rates, the company has sought a 10 percent return on equity. In Toronto Hydro's view, this is a reasonable rate of return for any business activity, and it should be included in the administrative charge.

2.5.2 The price for electrical energy provided under standard supply service shall be the weighted average hourly spot market price for electricity, for the period over which the customer is being billed, weighted according to the hourly consumption of the standard supply service customer as measured by a meter or estimated using a profile methodology approved by the Board.

Alliance Gas notes that a spot-price pass-through may not be a realistic reflection of a retail market price for a commodity. Alliance Gas submits that there are a number of factors which could negatively impact the spot-price including:

- **The integrity of the forward and spot markets – If the forward market is not fully developed, the spot market will be affected and may reflect a wholesale price for electricity, not the price that would ensue where active trading is taking place for retail loads. This could lead to a spot price that is not a true reflection of what retailers could bring to the marketplace, and would discourage competition and participation.**
- **Implementation of physical bilateral trading at the retail level – Physical bilateral trading is one of the essential lynchpins to a true spot market and is necessary for the spot market to reflect the retail end of the market. Until it is fully and effectively implemented, there is some potential that the spot price may be more reflective of the commercial and industrial markets and therefore would be an improper price signal for retail customers.**
- **The uncertainty and inconsistency of a net system load shape type profile – Under the MDC Retail Technical Panel's recommendation, a kilowatt-hour meter customer will have a profile based on a net system load shape. The profiling method may result in a spot-price to residential customers that does not reflect what the market price for their consumption actually is.**

Alliance recommends that the Board review what has happened in other jurisdictions in assessing whether or not the spot price pass-through will be appropriate, and ensure adequate flexibility in the Code to address an imperfect spot-price to allow for alternatives.

Brockville PUC notes that this subsection meets the goals of placing distributors in an unbiased position and removes the need for a distributor to enter into contracts for the

provision of the product. In Brockville's view, a distributor would be unable to predict the load of its SSS customers since this would be dependent on the success of other marketers in the service area, thereby creating a liability. Brockville submits that some form of spot market pricing is appropriate to ensure that a distributor does not have a vested interest in the sale of power; if a distributor wishes to compete, then it should establish an affiliate.

CU Power International, the Independent Power Producer's Society of Ontario (IPPSO) and Osler Hoskin & Harcourt on behalf of Enron Capital and Trade Resources Canada are concerned that the spot price pass through will impair the development of competitive markets. Requiring entities to provide electricity to a large portion of total load at the spot price creates disincentives to engage in forward energy transactions and would remove the largest portion of provincial load out of the forward market. As a result, it is unlikely that generation developers will be able to attract counter parties with whom they can hedge the price of electricity produced. This would have adverse implications, including reducing the opportunity for new generators to hedge their forward price risk and impairing the development of forward price signals required by new entrants in order to assess investment opportunities. In the long run, costs of developers/generators will go up, electricity prices will increase, and there will be a tighter supply.

Granite Power asks: Who would calculate the weighted average hourly spot market price? What would the price be based on? What would penalties for gross inaccuracy be?

IPPSO notes that both California and Massachusetts have adopted spot market pass-through models, and describes in some detail how the approach adopted in California has impeded, rather than facilitated, competition in retail markets. London Economics on behalf of Enron describes three markets: California, Pennsylvania and the UK, and discusses the lessons that Ontario could learn from them, especially the California market where prices are based on a spot price pass-through.

The MEA notes that the price under SSS does not appear to differentiate whether the customer has an interval meter or kilowatt-hour meter; the price is the weighted average hourly spot market price. If there is no difference, this clause should be explicit about the lack of differentiation.

Osler Hoskin and Harcourt on behalf of Enron submit that provisions of the *Act* require Board approval of rates for SSS. This statutory duty cannot be satisfied merely by including a particular pricing methodology such as the "spot market pass-through" as a condition of the distributor's licence.

Oshawa PUC notes that this subsection places an onerous bill calculation burden on the distributor -- one that is likely to confuse the average residential customer. Oshawa submits that this bill calculation method may be technically impossible for many distributors, would create a costly customer service problem to explain the bills, and would create problems if

meter readings have to be estimated. In Oshawa's view, for residential and small business customers, the price should be a smoothed average, perhaps adjusted quarterly, with a truing up provision; for large customers with interval meters, the proposed pricing method is apparently workable.

Ottawa Hydro Staff notes that there may be moderate volatility while the price cap is in effect, but once that is removed, customers will be upset and frustrated by the variance of their bill. Ottawa suggests an additional smoothing mechanism.

Pembroke Hydro notes that the capability of hourly pricing by a distributor is impractical for a majority of utilities. Pembroke knows of no programs on the market that are proven 100 percent and can do what the retail settlements system would require. Pembroke submits that with customers moving about and different load profiles, the data base would be unbelievable. Customers with different billing periods would have different prices. For example, there would be two prices for usage and yet both customers used electricity during the same month. Pembroke Hydro believes that as envisioned, it is out of the question.

Port Hope Hydro has a problem with billing customers according to a generic or estimated load profile because billing on unmeasurable quantities may fall under the jurisdiction of Industry Canada, not the Board. Port Hope Hydro notes that this is exacerbated should the customer demand proof that the load profile used in the calculation is applicable or if the customer proves that the profile is incorrect. It asks: Are there any mechanisms in place to protect against this?

Sault Ste. Marie PUC asks for clarification on how the profile is determined: Is it the utility-determined profile or a system wide profile?

Scott & Ayles for Ottawa Hydro note that the spot price pass-through approach appears to minimize regulatory burden.

Toronto Hydro notes that, although consumers may benefit from lower prices, risks associated with the lower prices may be substantial. Toronto Hydro submits that under these pricing provisions:

- 1) consumers bear all the risk of price volatility of spot prices, which may be substantial;
- 2) the low spot price and current generation ownership will limit the incentive for new generation; and
- 3) the price will be so low that there is no opportunity for any new retailer to procure power on the wholesale market and beat this spot price, and therefore few would consider taking the cost and risk of entering into the new market.

Toronto Hydro points out experience in other deregulated jurisdictions which have shown that without a margin on retail energy, there is no market, no competitors, and no lowering of cost to consumers due to competition.

TransCanada supports the spot price pass-through, without smoothing.

Upper Canada Energy Alliance notes that, given a commitment to the spot market for SSS, the concept of a weighted average of the wholesale hourly price with no distributor scheduling requirements is very practical and eventually should achieve the economies envisioned. In their view, by making the standard offering as simple as possible to administrate, these costs will be minimized. Upper Canada suggests that the Code state that the weighting requires a load profile for consumers who do not have interval meters; interval meter consumers pay the actual spot price for their known hourly usage.

Waterloo North Hydro expressed concern about the calculation of a weighted average spot price, but after writing the comments, received a presentation on a settlement system that may provide the desired results without the disadvantages of the scenario described.

2.5.3 The administrative charge shall be calculated by the distributor in accordance with method prescribed in the Rate Handbook as approved by the Board.

NOTE: This is a regulated rate, but should consider costs associated with providing standard supply service such as the incidence of non-payment, cost of billing and charges by third parties.

Ottawa Hydro Staff notes that in the event of significant switching, the budget impact will be highly variable. Ottawa staff suggests that this should be considered when preparing the Rate Handbook.

PIAC/OCAP ask: Is this an add-on to regulated distribution charges? If so, why is this required when it is likely that, for some time, most customers will be SSS customers?

2.5.4 Other than the rates for electrical energy, a distributor shall charge a standard supply service customer for other costs that are incurred as part of providing standard supply service, in accordance with its licence and the method prescribed in the Rate Handbook as approved by the Board.

Granite Power notes that there are other charges that a distributor should be able to charge beyond those that are bundled in the SSS contract. For example, customers who initiate a false callout for power problems are now assessed a charge for callouts of the line crew made after hours. The cost can be substantial, and not being able to charge a customer for such items amounts to cross-subsidization between customers.

Toronto Hydro notes that it intends to provide a standard supply offer not unlike current residential and general services for customers who wish only a basic service or who are forced or desirous of obtaining services from Toronto Hydro after having been supplied by a

competitor. Toronto Hydro's standard supply offer would be submitted to the Board for approval under subsection 79(3) of the *Act*. Toronto Hydro contends that if the Board chooses price cap regulation as the form of PBR applicable to Toronto Hydro, the initial standard supply offer could be based on Toronto Hydro's proposed year 2000 rates which are a more harmonized version of the 1999 rates.

2.6 Risk Mitigation Measures

Toronto Hydro notes that this section comprises only "credit" risk mitigation measures, and should be titled accordingly. In Toronto Hydro's view, a distributor's credit risk mitigation measure also should include interruption and disconnection. Toronto Hydro believes that the proposed Code is inadequate from the perspective of addressing a distributor's credit risk and there are several other substantial areas of risk that the Code does not address (e.g., price risk, consumer risk and retail credit risk).

2.6.1 A distributor may mitigate the risk of non-payment from standard supply service customers by using any of the following means as allowed by law and by the Distribution System Code:

- deposits

Granite Power has very serious concerns that legislation no longer will be in place to allow for security deposits. In its view, if the government does not bring out regulations covering this, the Board should be very specific as to what will be allowed. Granite Power notes that security deposits can alleviate many of the problems of non-payment and bad debts, and needs to be allowed for all customers, not only those on SSS.

- late payment charges

Gloucester Hydro notes that the method of late payment charges should be established to avoid current legal challenges on existing methods. The ability to tax role accounts has been lost and Gloucester Hydro expects that losses on unpaid accounts will increase. Gloucester Hydro believes that this burden will be transferred to the "good" customers through more aggressive deposit programs or general loss coverage in administration fees.

- prepayment
- preauthorized payment
- load limiters

Brockville PUC notes concern with nonpayment resulting from the potential volatility of the spot price pass-through. Although customers with good credit ratings would be able to move to fixed contract prices or other price options, some customers will not qualify for service from others and will be mandated into the spot market pricing scheme. Brockville contends that customers remaining on SSS may have minimal margins of disposable income, and price fluctuations could increase the risk of nonpayment. Brockville suggests that the ability to mitigate such events must be evaluated to ensure that individuals are protected and so that a distributor does not incur undue costs due to nonpayment.

Direct Energy Marketing and Enershare suggest that it should be made clear that any deposits or prepayments held by a distributor are automatically transferred to the competitive retailer in the event that the end-use customer making the payment leaves system service for a retailer.

Granite Power suggests guidelines for security deposits and prepayments to distributors so that a sense of uniformity is made across the province and such guidelines should take into account a normal billing cycle. Granite Power recommends that:

- a deposit level be set at two times the highest bill.
- the prepayment option have guidelines that are acceptable to distributors.
- timing of payments as well as penalty/interest charges should be addressed if there is a desire for consistency.

Granite Power suggests that details on the use of the items in this list needs to be clarified for all customers.

Scott & Ayles for Ottawa Hydro suggest that the specific risk mitigation measures ought to be broadened to include third party guarantees and performance bonds from commercial customers, measures currently utilized by Ottawa Hydro.

Terrace Bay Hydro suggests that the only true risk mitigation measure for nonpayment is disconnection and the ability to disconnect must be assigned to the utility and the SSS provider (if different from the utility). Terrace Bay suggests that if a retailer has the ability to disconnect, the rules surrounding disconnection need to be clear.

2.6.2 A distributor shall ensure that a third party which provides standard supply service on behalf of a distributor does not adopt any risk mitigation measures for standard supply service customers without the approval of the distributor.

Direct Energy Marketing and Enershare note that it is unreasonable to expect that a retailer must seek the permission from potentially all 270 municipal utilities every time it determines that some form of a deposit is required from a customer pursuant to the retailer's contract with that customer.

Granite Power asks: Why would approval be required from the distributor since all of the risk would be with a third party, not with a customer or distributor?

OPG believes that such provisions are welcome in principle, but are difficult for the distributor to live up to in practicality. In particular, OPG submits that these provisions imply a policing role that most distributors would find difficult to implement or enforce. OPG agrees that it is appropriate for the Board to obligate licensees to take all reasonable steps to require its third party contractor to follow the rules, however, a licensee should not be held responsible for bad faith on the part of third party contractors.

Pickering Hydro notes that this would require constant monitoring by the distributor. Pickering Hydro asks: Who is to pay this cost?

Under the scheme advocated by Scott & Ayles for Ottawa Hydro, this subsection is unnecessary.

Toronto Hydro suggests that the phrasing above be revised to reflect that this section addresses only credit risk such that it reads, “. . . does not adopt any *credit* risk mitigation measures . . .”

2.6.3 A distributor may disconnect a standard supply service customer for non-payment of standard supply service in accordance with section 31 of the *Electricity Act, 1998* and with the process for disconnection in the Distribution System Code.

Alliance Gas notes that disconnection for non-payment to a retailer should be allowed. Where a customer makes no choice of a retailer, the SSS should be administered by the utility or its designate. Where a customer returns to SSS due to failure to pay the retailer account, the incumbent retailer should be entitled to choose whether to serve the customer under SSS, including pricing, administration and disconnection for non-payment. This would provide a necessary protection for retailers from customers who would attempt to return to SSS in order to avoid paying a retailer’s bill. An alternative is to set a system up similar to Georgia where there is a universal service fund to ensure that market participants can have access to bad debt recovery under certain situations.

Granite Power notes that a retailer will need to post a letter of credit or other acceptable security with a distributor to ensure payment. Granite Power points out that the Code does not address the situation where a retailer is not paid by the end-user, who initiates a disconnect order and who bears the risk of non-payment.

Granite Power notes that a distributor should be able to disconnect SSS, and all supply of electricity, if a customer is in breach of any safety regulation, is in arrears for payment, causes interference in the distribution of electricity which affects the distributor or others (e.g., harmonics), or is ordered by a local government authority to do so (e.g., fire department).

Section 31(2) of the Act provides for “reasonable notice,” which historically has been 48 hours. The specific time frame that constitutes “reasonable notice” needs to be clarified in regulations or in the licences to prevent the Courts from making this determination. Granite Power contends that timing of cutoffs should be consistent with the amount of security deposit, so that the distributor remains at all times fully protected from nonpayment.

Pickering Hydro notes that this works smoothly if a distributor supplies the SSS, but asks: How would it be handled when a third party is responsible?

2.7 Billing

Ottawa Hydro Staff notes that billing and customer IT systems need to be developed and could take one year or more. They are willing to deal with the problem, but would like to know what is required since time is of the essence.

Pembroke Hydro notes that outsourcing billing basically implies that distributors must use Ontario Hydro’s billing system. If these regulations go through and distributors outsource billing, it will create more unemployment in the already deprived out-lying parts of Ontario.

2.7.1 Bills to standard supply service customers shall separate the following charges:

- standard supply service administration fee
- electrical energy (the weighted average price times consumption)
- ancillary services (if not included in the spot market price)
- meter services
- billing services
- distribution
- transmission (including losses and unaccounted for energy)
- special charges (e.g., new account charges, service notices)
- market power credits or rebates
- uplift charges

NOTE: Billing requirements are being developed by the stakeholder group in charge of rates (PBR). This list is an example of what may be required. These requirements also could be imposed in the Distribution System Code, in which case, this clause would be redundant. It is important to ensure

that third parties who fulfill a distributor's standard supply service obligation have the same requirements.

Belleville Utilities Commission notes that the amount of detail required on the bills would increase administrative and billing costs. However, it will be technically possible for Belleville Utilities to provide this.

Borden & Elliot on behalf of Oakville Hydro and the MEA note that the provision for losses and unaccounted for energy in transmission should be included in distribution charges.

Borden & Elliot on behalf of Oakville Hydro, Granite Power, the MEA and Sault Ste. Marie PUC request clarification on what an "uplift charge" is.

Chatham-Kent PUC and Whitby Hydro suggests simplifying the billing requirements to the following:

- Commodity (including administrative charge)
- Distribution
- Customer Specific Charges (new account charges, NSF charges)
- Transmission
- IMO Charges (including stranded debt charges)
- Taxes

The MEA suggests including rural rate assistance.

Granite Power, the MEA, Pickering Hydro and TransCanada suggests including the Competition Transition Charge.

Granite Power and Whitby Hydro suggests that this sets out an unnecessary amount of unbundled detail that likely cannot be handled by very many utility billing systems and will confuse customers.

Pembroke Hydro notes that in addition to these items, the bill also will have to have readings, blocks and rates, making it almost a two page bill. Pembroke contends that this will create issues for the call centre that has to explain high bills to customers.

Terrace Bay Hydro suggests that ten pieces of detail should be required only for large industrial users and absolutely not for residential consumers. A bill for residential consumers should include:

- Electrical energy usage times price
- Distribution costs as a lump sum
- Contribution to Ontario Hydro debt

Toronto Hydro submits that, although it is important to allow customers to see how the cost of their service is disaggregated, all of this information may be more confusing than useful. Toronto Hydro suggests that bills should include basic information that customers need:

- Energy charge
- Customer charge
- Distribution charge
- Transmission charge

2.7.2 Bills to standard supply service customers shall not reference any retailer other than the distributor.

2.7.3 Bills to standard supply service customers shall not include any marketing information or promotional materials, except materials of the distributor or information that the distributor is obligated to send as part of its regulated distribution function.

Alliance Gas agrees with the bill neutrality put forward by the Board, and stresses the importance of neutrality for the development of the market.

Donahue & Partners on behalf of Sunoco note that the prohibition on including marketing information is to prevent customer confusion between the standard option and a competitive option. However, in their view, the greatest threat to a customer's confusion arises by the provision of the service by a distributor's affiliate. Donahue & Partners argues that an important part of a competitive market is customer information; restricting its dissemination appears counter-intuitive.

OHSC notes that, while this clause seeks to prevent favoritism of one retailer over another by a distributor, it goes so far that it would prohibit all cross promotions between distributors and retail merchants that have won the right to participate in the cross-promotion through an open tendering process available to all competitive retailers. OHSC contends that it also would prevent the distributor from engaging in economically efficient Demand Side Management (DSM) for which it would need a partner to offer the end use portion of any DSM program.

Pembroke Hydro argues that this is not practical if a distributor is sending out bills for retailers and the retailers wish to use their logo or promotional material. In Pembroke's view, the name of the game should be "keep costs as low as possible for the customer, otherwise duplication is required," and duplication is cost.

Port Hope Hydro notes that the definition of promotional material is vague.

TransCanada supports the prohibition of marketing material in bills to standard service customers.

