

ONTARIO ENERGY BOARD

DRAFT GAS DISTRIBUTOR ACCESS RULE

SUBMISSIONS OF

**THE COALITION FOR EFFICIENT ENERGY DISTRIBUTION
("CEED")**

October 18, 2000

BACKGROUND

1. On December 6, 1999, the Ontario Energy Board (“the Board”) invited interested stakeholders to participate in an industry-led task force to consider recommendations for the Gas Distributor Access Rule. On June 8, 2000, the task force issued its final report entitled the *Final Report of the Distribution Access Rule Task Force to the Ontario Energy Board* (the “Final Report”). Ontario Energy Board Staff (“Board Staff”) then drafted and released the Draft Gas Distributor Access Rule (“DAR”) on September 26, 2000 and the Board is now seeking the comments of interested parties issuing a draft DAR pursuant to s. 44 of the *Ontario Energy Board Act, 1998* (the “Act”).

2. The Board has indicated on several occasions that the DAR is a necessary condition to effective competition in Ontario. It has also been treated by the Board and the industry as a threshold issue which must be resolved to facilitate unbundling. The DAR will therefore play an integral role in the development of a competitive retail gas market in Ontario.

3. The Coalition for Efficient Energy Distribution (“CEED”) (currently comprised of Suncor Energy Inc./Sunoco Inc., TransCanada Energy Ltd., Dynegy Canada Inc., and PanCanadian Petroleum Limited) participated in the DAR Task Force and has a particular interest in the provisions of the DAR pertaining to billing options (s.9.3), customer transfers between REMs (s.7.5), billing inserts (s.9.4); and use of customer information (s.8.1). CEED supports these provisions in principle (subject to the need for clarification in a few areas and some enforcement issues which will be discussed below).

4. These issues were contentious during the drafting of the DAR Report, and not all parties agreed with the proposals endorsed by CEED and included in the draft DAR. As the Director of Licencing noted in her letter accompanying the draft DAR, the draft proposals resolve the contentious issues by reflecting “enhanced levels of consumer protection and parity with the Board's requirements for the electricity industry”. CEED

endorses this approach and commends Board Staff for applying these criteria. CEED hopes that this approach will also be followed by the Board in the final DAR.

5. CEED supports the provisions respecting billing options, customer transfers, billing inserts and the use of customer information because they: (i) result in increased customer choice and therefore competition; (ii) are consistent with the rules applicable to the electricity industry; and (iii) are in line with the rules and practices in other jurisdictions. These points will be developed below.

I. BILLING OPTIONS (SECTION 9.3)

6. Section 9.3.1 of the DAR provides that distributors must offer customers three billing options, one of which is marketer consolidated billing. Marketer consolidated billing allows customers to receive only one gas bill that is issued by the marketer. The bill will indicate both the distribution service and the gas commodity charges.

Marketer consolidated billing increases customer choice and competition.

7. Section 2(1) of the *Ontario Energy Board Act, 1998* stipulates that one of the Board's objectives is to facilitate competition in the sale of gas to customers. In order to achieve competition, customers must be provided with a meaningful choice of competitive energy service providers. True customer choice of energy service provider must not be encumbered or constrained by Board rules that impose a single billing entity and/or billing format. In choosing an alternate energy service provider customers should also be provided with a reasonable choice of billing options.

8. CEED submits that the billing options outlined in s. 9.3.1 of the DAR provide reasonable and practical choices for customers seeking to have gas supplied by a competitive supplier. Specifically, customers choosing to access distribution services

through a REM must also have the ability to choose whether or not their gas bill should be solely or partially provided by that REM.

9. By providing billing options in the DAR, Board Staff has crystallized the paramount importance of customer choice in gas distribution access. Neither the distributor nor the retailer may impose a billing relationship on customers as a condition of access to monopoly distribution services. Rather, in the vein of true competition, customers must be left with the ultimate choice of which billing option is best suited to their choice of gas supply arrangement. In doing so, customers must have the choice of having both the distribution service and commodity costs reported on one bill and the choice of having that bill delivered by either the distributor or the retailer. To do otherwise would frustrate the goals of achieving full competition through informed customer choice.

10. Until quite recently, offering customers these choices was unanimously agreed to in the gas sector of the energy industry. The ability of consumers to choose their billing option in the market was addressed in the Report of the 10 Year Market Review. Similarly, in the MDTF Report, it was contemplated that wholesale service would allow marketers to include billing and collection of distribution services no later than April 1, 2000. Furthermore, Enbridge's May, 1999 Discussion Paper filed with the Board in RP-1999-0001 (ex. D2, Tab 5, Schedule 1, page 25 of 53), stated the following:

"In keeping with the Company's customer-driven approach to unbundling of rates and services, the Company believes that the customer should determine from which party they prefer to receive their gas bill(s). As such, the Company envisions three billing options:

- 1. one bill – ABM bills the commodity and utility distribution charge;*
- 2. two bills – ABM bills commodity and utility bills the distribution charge; and*

3. *one bill – the Company renders a single bill for both the commodity and its distribution charge (similar to ABC Service).*" (Emphasis added)

9. Similarly, in RP-1999-0017, Union's original evidence, filed December 10, 1999, was that it proposed to file for a wholesale billing service which would allow marketers to issue a consolidated bill for September 1, 2000. As a result, although positions may have changed over time, it is clear that marketer consolidated billing is a practical and manageable option.

Billing options are also provided to competitive electricity customers.

11. Section 7 of the Retail Settlements Code for electricity distributors ("RSC") also requires electricity distributors to accommodate customer choice of three billing options. Electricity customers are thus provided with the choice of having both the electricity distribution service and commodity costs reported on one bill, and the choice of having that bill delivered by either the distributor or the retailer.

12. CEED submits that it is essential that the billing options given to electricity consumers to also be given to gas consumers. Parity in customer choice of billing options between the gas and electricity industries facilitates symmetry in the gas and electricity markets which, in turn, will increase customer awareness and decrease customer confusion resulting from the transition to competition in both sectors of the energy market.

13. In addition, CEED submits that failure to provide parallel billing options in the gas and electricity sectors will seriously impede the efficient and intended convergence of those sectors. Specifically, if marketer consolidated billing is not permitted in the gas sector, then the convergence of the gas and electricity sectors will be frustrated because gas distribution will be immune from customer choice in the billing context. It will mean

that customers can choose to have a retailer bill for electricity commodity and distribution, but have no choice when it comes to gas distribution.

The Board has authority to provide customers with billing options.

14. The Board is statutorily empowered to provide customers with a choice of billing options by sections 44(1)(b), (d), and (f) of the *Ontario Energy Board Act, 1998*.

15. Section 44(1)(b) provides the OEB with jurisdiction to pass rules relating to the conduct of distributors as it relates to REMs. A distributor's provision of billing information to REMs and willingness to allow REMs to bill for distribution services is clearly part of a distributor's conduct relating to REMs.

16. Section 44(1)(d) provides the OEB with jurisdiction to pass rules relating to the conditions of access to distribution services. Billing information, and willingness (or lack thereof) to allow REMs to bill for distribution services falls within the terms of access to distribution services to both end-use customers and other customers including REMs. Furthermore, if customers are not given choice over their billing arrangements, then distributor billing is effectively being imposed as a condition of access for gas distribution services.

17. Section 44(1)(f) provides the OEB with jurisdiction to require statements or reports by distributors relating to transmission, distribution, storage or sale of gas. Such statements could be in the form of a billing statement to a retailer to facilitate retailer consolidated billing.

18. Those opposed to giving customers the option of marketer consolidated billing indicate that a rule which permits marketer consolidated billing constitutes a prohibition on distributor billing. CEED submits that allowing customers to have a choice of billing

options where the distributor may, or may not, be required to bill directly for distribution services clearly constitutes a prescriptive and clear rule allowing customers the ultimate choice of how the bill will be provided – and not a prohibition imposed on distributors to prevent them from billing for the services which they provide.

19. Under any option that the customer ultimately chooses, it is clear that the distributor will have the opportunity or be required to bill for the services that they provide. The only distinction is the entity which is billed. Under distributor consolidated and split billing, the distributor will bill the ultimate customer for those services; under retail consolidated billing, the distributor will bill the REM for the distribution services.

20. It is noteworthy that the jurisdiction of the New York Public Utility Commission was also challenged when it set rules requiring billing options that included marketer consolidated billing. When faced with this challenge earlier this year, the New York Public Service Commission ruled that gas and electric customers in New York that choose an alternative supplier must be provided with the option of receiving one bill to cover both the commodity and delivery charges. The New York PSC indicated that:

...key benefits of competitive markets including customer choice and the ability to meet and respond to customers needs and concerns, ... Our staff's research on the ESCOs' (i.e. "Energy Service Companies") experience in the market to date have shown a strong preference for a single bill for electric or natural gas service" (PSC Chairman, Maureen Helmer, as quoted in Gas Utility Report, 03-10-2000, New York PUC allows one bill option, orders EDI for transactions by 2001).

21. A New York distribution utility also attempted to claim that allowing retailer consolidated billing constituted a prohibition that decreases customer choice. The New York PUC, however, found that:

Because we are only requiring that utilities allow customers a choice of their billing entity, the remaining legal issues raised by Niagara Mohawk are almost completely besides the point; we are not precluding customers

from choosing service from a utility, but are giving customers a choice between either their utility or ESCOs that might offer billing services. Contrary to Niagara Mohawk's claims, we are not restricting competition or denying it a chance to market its billing services. We are responding to customers' expressed preferences for a single bill and encouraging development of the energy services market by giving customers other options in addition to the choice of energy supplier.

22. Further in response to a challenge to the New York PUC's jurisdiction to impose such a billing option the New York PUC found:

There is also no statutory bar to enabling customers to choose their billing entity. Power to set "just and reasonable" rates includes setting delivery charges that do not include a cost for non-existing utility billing and allows us to preclude utilities from subjecting customers to "any undue and unreasonable prejudice" in the form of a denial of customers choices of billing providers."

23. CEED submits that the situation in Ontario is an entirely analogous to that faced by the New York PUC. Consequently, the Ontario Energy Board:

- i) is not precluding gas distributors from providing billing services;
- ii) is not barred from providing this option to customers wishing to seek services from alternate energy service provider; and
- iii) is well within its jurisdiction to provide such a billing option as within the ambit of its power enumerated above and may address the rate treatment of this issue through its power to set just and reasonable rates.

Many other jurisdictions provide customers with marketer consolidated billing options.

24. Several other jurisdictions including Ohio, Maryland (PSC Order No. 76180, Case No. 8794, May 17, 2000 (Md. P.S.C.) as reported by Public Utilities Fortnightly 07-15-2000), California (decision 99-07-015, July 8th, 1999) and Alberta (draft Billing Regulation proposed under the *Gas Utilities Act*) support the necessary competitive

practice of providing customers with a range of billing options that includes marketer consolidated billing.

25. When the Public Utilities Commission of Ohio reviewed the natural gas choice programs of Cincinnati Gas and Electric Company, Columbia Gas of Ohio and the East Ohio Gas Company, the Public Utilities Commission's Staff specifically recommend that marketers be permitted the option of providing a single bill for the commodity and LDC distribution services. In the Public Utilities Commission of Ohio's order dated June 18, 1998 the Commission adopted a staff recommendation permitting marketers to issue a single bill to customers for both the commodity and distribution services on a trial basis. Further, on April 15, 1999, it was reported that the "marketer one bill" trial was working well and it was recommended that the option should continue (p. 2-12, Ohio Public Utilities Commission, Customer Choice Status Report).

26. In light of the considerable support of customer billing option including marketer consolidated billing, CEED submits that s.9.3.1 of the DAR is well founded and consistent with the ultimate goal of facilitating competition. To take this choice away from customers, would be unduly restrictive, lead to customer confusion, and frustrate informed customer choice of service provider and therefore competition in the gas industry.

II. CUSTOMER TRANSFERS FROM ONE MARKETER TO ANOTHER MARKETER (SECTION 7.5 DAR)

27. The Board has recognized the need for customer mobility on a number of occasions. Thus, for example, in its September 27, 1996 *Report on the Ten Year Market Review*, the Board included the "ability to switch suppliers" as one of the "necessary conditions to allow for development of a fully competitive market for natural gas in Ontario." (At p. 9). Similarly, in its December 16, 1997 *Report on Legislative Change*,

the Board acknowledged that "customer mobility" was a necessary element of an effectively competitive market. (At p. 29). The Board now has a historic opportunity to give force to these pronouncements by endorsing the customer mobility rules in s.7.5 of the draft DAR.

28. Section 7.5.1 of the DAR requires distributors to facilitate changes in retailers. This promotes customer mobility and, as a consequence, competition in the sale of gas to end users as required by the *Ontario Energy Board Act*.

29. The one improvement which CEED would propose for s. 7.5.1 is that the new marketer be required to copy the customer on its notification to the current marketer that it has submitted an STR to become the customer's supplier of natural gas. In this way, the customer is made fully aware of the circumstances respecting the transfer between suppliers. This is a vast improvement over the current system.

30. Under the current system, distributors have prohibited consumers from transferring between retailers. The distributor's refusal to transfer consumers is often characterized as the "enforcement" of an existing contract between a consumer and a REM. CEED submits that this type of "enforcement" is inappropriate and unauthorized. The LDC does not have the jurisdiction to act in this role and provide a contractual remedy that is far greater than what the courts will generally allow. In effect, the distributor is using access to distribution services as a means of preventing consumer mobility. Lack of consumer mobility prevents customer choice of competitive service options and thereby frustrates the end goal of facilitating competition in the sale of gas to users as required by s.2 (1) of the *Ontario Energy Board Act, 1998*.

31. The gas distributors' refusal to transfer customers essentially penalizes customers who initially choose a REM and then wish to switch to another competitive service

supplier. Customers that are not satisfied with their initial choice of REM essentially have no choice and are enjoined from firing their marketer. The resulting lesson learned by customers will taint their attitude toward, and instill fear of, competition, rather than contribute to consumer education, informed choices and equitable development of the marketplace.

32. Forcing a consumer to stay with a REM that is not meeting their needs also provides signals to the REM that are antithetical to what the market would otherwise dictate. If the REM's service is inadequate for, or unresponsive to, the customer's needs, a competitive market would dictate that the REM should lose the customer, not gain a distributor imposed strong hold on them.

Facilitating customer mobility avoids unnecessary litigation.

33. Moreover, by formulating section 7.5.1 in a fashion that facilitates the transfer of customers between retailers, Board Staff has avoided unnecessary interference with the consumer's right to exercise common law and contractual remedies by preventing consumers from "firing" a retailer. The rule, as written, avoids unnecessary litigation that would most certainly arise if consumers were left with no choice regarding their ability to replace their supplier.

34. In addition, section 7.5.1 also rejects the suggestion that the restrictions on current customers to transfer from a retailer be grandfathered. Grandfathering is unthinkable: it creates two classes of consumers – those that are free to choose their suppliers and those who are not. Such a distinction results in unauthorized and illegal discrimination among customers which would be virtually impossible to enforce. CEED submits that the Board should continue to reject any suggestion that would lead the creation of second class customers.

Electricity distributors are also required to facilitate customer transfers

35. Section 7.5.1 of the DAR is analogous to section 10.5.4 of the RSC. Both provisions require distributors to facilitate customer transfers from one REM to another REM. This similarity is absolutely necessary to ensure that customers have the freedom to manage their energy portfolio by choosing alternate energy service providers. Section 7.5.1 of the DAR requires less administrative action, however, on the part of the distributor and thereby decreases the distributor efforts and therefore costs and facilitating customer transfers.

36. CEED submits that it is essential that: (i) the customer mobility options given to electricity consumers are also given to gas consumers; and (ii) the electricity distributor obligations required to facilitate customer mobility are also required of gas distributors. Parity in customer mobility provisions between the gas and electricity industries facilitates symmetry in the gas and electricity markets which, in turn, will increase customer awareness and decrease customer confusion resulting from the transition to competition in both sectors of the energy market.

37. In addition, CEED submits that failure to provide parallel customer mobility rights in the gas and electricity sectors will seriously impede the efficient and intended convergence of those sectors.

38. It is worth noting in this regard that the negative experience with the lack of customer mobility in the gas industry contributed to the positive customer mobility provisions in the RSC. The minutes from the RSC Task Force's treatment of this issue records the following advice from Board Staff.

"the right of customers to choose their electricity supplier ... is one of the *Act's* primary goals and the most important responsibility of the Board. Board staff advised the Task Force that electricity supply and delivery are separate businesses and that LDCs should not be allowed to use control of

the delivery business to deny customers access to supply. In the opinion of Board Staff, customer mobility is fundamental to a successful market. The Board has made its opinion clear on this issue in recent decisions in the gas industry and there is little reason to believe that their opinions will differ in electricity. Furthermore, Board staff feels that it is inappropriate to design a market around the belief that customers will break contracts. In the opinion of Board staff, most customers will not, without just cause, knowingly break a contract and if they do, the appropriate remedy is through the courts, not through a refusal by LDCs to transfer a customer to another supplier upon request." (RSC Task Force Final Recommendations p. 1-17).

39. The Board, and the industry, thus have experience with a lack of customer mobility in the gas sector, and learned from that experience to create more positive rules for electricity. It would be a perverse irony if the Board does not apply the same learning to gas. Failure to apply the electricity customer mobility rules in the gas sector will perpetuate a major obstacle to the development of a competitive retail gas sector.

Other jurisdictions facilitate customer mobility.

40. Other jurisdictions have rules that address customer choice and distributor obligations to facilitate transfers between REMs.

41. In Pennsylvania, the Pennsylvania Public Utilities Commission has promulgated standards for changing a customer's natural gas supplier, which also require natural gas distributors to facilitate the transfer. The process is as follows:

- customers are required to contact a REM to request change
- when new REM receives direct oral confirmation or written authorization from the customer, new REM required to: notify distributor of customer's choice by end of next business day following completion of application process.

- Distributor required to: verify accuracy of information provided by REM and match 2 data elements with distributor's records; send customer a letter confirming proposed change and 10 day waiting period during which transfer order may be changed.
- Distributor must make change at the beginning of the first feasible billing period following the 10 day waiting period

42. It is noteworthy that the Alberta Government has recently proposed to repeal the Gas Utilities Core Market Regulation (GUCMR) which contained provisions limiting customer mobility following a return to utility supply (Alberta Resources Development Notice, September 26, 2000). The Alberta government is proposing to repeal the regulation on the basis that: (i) the stringent regulatory requirements and the regulation are outdated and create unnecessary barriers to entry; and (ii) it is not warranted for consumer protection. Ontario has been a leader in the development of gas competition. It should maintain that leadership role by not permitting marketers and utilities to prevent customers from changing suppliers.

43. The existence of regulatory standards to facilitate the transfer of customers between marketers in other jurisdictions which are in the transition to a competitive gas market illustrates the importance of such customer mobility provisions to the development of true customer choice and competition.

III. BILLING INSERTS (SECTION 9.4.1)

44. Section 9.4.1 of the DAR indicates that when a distributor issues a bill to a SSO customer, it cannot include any marketing or promotional material in the bill. The Rule also indicates that the distributor may include material that it is obliged to send to

customers as part of its regulated function and marketing and promotional material that it makes available to any or all other perspective customers of SSO Service.

Requests for clarification.

45. CEED supports protecting customer information from unauthorized use by distributors. However, four aspects of the Rule as written require clarification. First, CEED understands that the restriction on including marketing materials in distributor bills is to extend to all bills issued to end use consumers (i.e. not marketers) for gas distribution, whether the distributor bills end use consumers directly or under the auspices of a third party. The concern here is that distributors should not be allowed to evade this restriction by having bills technically issued by a third party. These types of inter-corporate "shell games" should be clearly prevented.

46. Second, the types of materials which are covered by the rule are described as "promotional material provided by any marketer". This phrase is not entirely clear and may be subject to further dispute. The prescription in s. 2.7.3 of the SSS Code for electricity is much more definitive. It provides that bills for SSS customers "shall only include the distributor's marketing information or promotional materials, and any materials or information that the distributor is obligated to send as part of its regulated distribution function".

47. The SSS Code language is preferable because it (i) applies to all bills, whether those bills are directly issued by a distributor or technically issued by a third party; and (ii) clearly describes and limits the type of material which *may* be disseminated, and therefore does not invite debates over the types of materials which *may not* be disseminated (i.e., in this case, whether these materials are, in fact, "promotional material provided by a marketer").

48. Third, the restriction should apply to all bills sent by (or under the auspices of) a gas distributor, to end use consumers. In other words, CEED understands that the Board did not intend for distributors to be able to insert third party marketing materials in their distribution bills provided to split-billing customers. As written, Rule 9.4.1 does not clearly indicate that distributors are not authorized to include marketing materials in their bills to both SSO customers and customers requesting a split-bill.

49. Fourth the second bullet point in Section 9.4.1 states that the distributor may include "only the marketing and promotional material which it makes available to any or all other perspective customers of SSO service". This bullet point is confusing and defeats the purpose of the substantive rule in 9.4.1. The purpose of s. 9.4.1 is to prevent using the LDC billing service as a promotional vehicle for competitive services offered by third parties. In light of that purpose, the foregoing is somewhat confusing. The bullet point should therefore be deleted. In this way, Section 9.4.1 may be consistent with the analogous provision in the electricity Standard Supply Service Code ("SSSC"), which will be addressed immediately below.

Restrictions on distributor billing inserts are also stipulated for electricity distributors.

50. Section 2.7.3 of the SSSC indicates that bills to standard supply service customers shall only include the distributor's marketing information or promotional materials, and materials or information that the distributor is obligated to send as a part of its regulated distribution function. In other words, the distributor is only permitted to send out its own marketing or promotional materials and not marketing materials of its affiliate or any other REM.

51. CEED submits that it is essential for gas distributors to have billing insert restrictions that parallel the restrictions on electricity distributor billing inserts. Parity in

these restrictions between the gas and electricity industries facilitates symmetry in the two markets which, in turn, will assist in the efficient convergence of the gas and electricity sectors. In addition, by providing for parallel restrictions in both sectors, Board Staff has avoided circumventing the restrictions by using gas distribution bills for electricity marketing inserts and vice versa.

52. CEED submits that the restriction on distributor's billing inserts is necessary to ensure that no particular marketer is provided with an unfair competitive advantage as a result of the distributor's actions and or access to the distribution bill. In this way, fair competition in the sale of gas to end-users is facilitated, and the Board complies with its objectives set out in Section 2(1) of the *Ontario Energy Board Act*, 1998.

IV. USE OF CUSTOMER INFORMATION (SECTION 8.1)

53. Section 8.1.1 provides that "Distributors shall collect data necessary to provide distribution services, to provide SSO, or for the purpose expressly set out in the Service Level Agreement and for no other reason." This section thus correctly limits the purposes for which customer information may be collected. Section 8.1.2 and 8.1.3 go on to restrict a distributor's ability to release customer information to third parties. Again, CEED supports this restriction on the grounds that customers should be protected with respect to how their information is collected and disseminated to third parties. However, customer protection should also be extended to ensure that the distributor does not *use* this information for anything other than the purposes for which it was collected.

54. In other words, s. 8.1.1 should be amended as follows [with the amendments underlined]: "Distributors shall only collect and use the data necessary to provide distribution services, SSO, or for the purpose expressly set out in the Service Level Agreement and for no other reason".

55. Such a clarification would provide parity to the rules respecting the use of customer information in the electricity sector. For example, s. 16.5 of the Generic Electricity Distributor's licence provides: "The Licencee shall not use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer in writing." Protecting a gas distribution customer from unauthorized use of customer information would put this customer in the same position as an electricity distribution customer.

V. ENFORCEMENT ISSUES (SECTIONS 1.4, 1.7 AND 12)

56. The DAR is only as good as it is enforceable. In order to ensure that the DAR is effective, three particular issues should be addressed: first, it should be made clear that the intent of the DAR cannot be avoided by doing indirectly what cannot be done directly; second, that applications for exemptions are open to public scrutiny; and third, that the DAR includes effective remedies for non-compliance. Each of these will be addressed in turn.

The Purpose of the DAR (s. 1.4)

57. The purpose of the DAR should not be frustrated by imaginative attempts to avoid its application, such as restructuring utility billing operations (for example) to create an arguable technical avoidance of the application of the rule respecting billing requirements. This temptation for technical avoidance can be mitigated by an interpretative clause which makes it clear that the DAR will be given a broad interpretation so as to give effect to its remedial purpose. Section 11 of the *Interpretation Act* can be a model in this regard. The clause should also make clear that distributors must comply with the DAR unless and until they are expressly exempted from doing so

by an authorized decision of the Board. Otherwise, distributors may ask for forgiveness and not permission.

Applications for Exemptions from the DAR (s. 1.7)

58. The DAR differs from other Board mechanisms (such as decisions and orders) in that it is of general application. It therefore establishes rules on an industry wide basis. This is extremely important for commercial certainty. If a distributor applies for an exemption from the DAR, it is crucial that affected parties be made aware of it so that they have the opportunity to address the exemption. It is simply not satisfactory to find out about an application for an exemption several months after it has been applied for. It is therefore requested that the exemption provision (s.1.7) expressly state that all applications for exemptions be filed in electronic form and posted on the Board's web site.

Remedies for Non-Compliance (s. 12)

59. Section 12 provides that parties may complain about non-compliance, first to the distributor, and then to the Board. However, it contains no remedies for non-compliance. This is a serious inadequacy which must be addressed. The DAR Task Force unanimously agreed that the rule should (i) include a provision which authorizes the Board to order the distributor to comply with the Rule; and (ii) require distributors to subscribe to a Board approved third party complaints resolution agency. (Recommendation #9.3). It is not clear why neither of these recommendations are included in the draft.

60. In addition, the lack of any penalties for non-compliance could seriously frustrate the effectiveness of the Rules. In CEED's submission, penalties for non-compliance must be specifically set out in, and have sufficient impact to deter non-compliance with the Code.

61. Penalties for non-compliance are particularly important here because, unlike consuming customers, REMs do not have specific entitlements for service quality indicators ("SQIs") in other forms, such as PBR. In this regard, Union Gas' Final Argument in RP-1999-0017, stated that it was fair to allow parties to ask for penalties if they are unsatisfied with Union's ability to meet SQI's. It also stated that it was premature to begin developing SQIs for REMs until the Board has set the rules governing utility conduct as it relates to REMs. As a result, even according to Union, the time is ripe for penalties for failure to comply with the DAR. CEED therefore submits that the DAR is incomplete without penalties for non-compliance which will provide an effective deterrent.