

**FINAL REPORT
OF THE
DISTRIBUTION ACCESS RULE
TASK FORCE
TO THE
ONTARIO ENERGY BOARD STAFF**

**FINAL REPORT
June 8, 2000**

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INTRODUCTION

1. This Report provides the recommendations and supporting rationale of the Distribution Access Rule Task Force (“DAR Task Force” or “Task Force”) convened by OEB staff in December 1999. The Task Force first met on January 19, 2000 and the first two Committees of the Task Force met in the following week. Ultimately, nine committees were created to address the various issues that have been included in this Report. From late January until early May the Task Force and its committees devoted two days most weeks to working through the issues. This Report is the product of this intensive multi-party effort.
2. The mandate of the Task Force was set out in a letter from the Director of Licensing dated December 6, 1999 (see Appendix A). In this letter, the Director stated that the OEB “has determined that it is appropriate to commence development of rules with respect to the matters under sections 44(1)(b) and 44(1)(d) of the *Act*” and had instructed OEB Staff to undertake a consultation process to develop a draft Distribution Access Rule (the “Rule”). The letter stated that the Task Force would be asked to work with OEB Staff in the identification and development of technical requirements. Following completion of the work of the Task Force, OEB Staff would issue the draft Rule for broad stakeholder consultation. The draft Rule, along with comments from parties, would be presented to the OEB for its review and approval.
3. The letter indicated that:

Staff have prepared the attached table of contents for the Rule¹ in order to assist parties in determining their interest in the task force. The Rule will deal with matters such as customer transfers, mobility, obligations of distributors to provide access to customer information, billing and metering service requirements. The Rule would also establish principles and policy direction regarding the unbundling of utility services. Individual service matters and costs, charges and fees for services would be the subject of each utility’s rates proceeding. The starting point for the work of the task force will be the Market Design Task Force’s Final Report, which can be found on the Board’s website at www.oeb.gov.on.ca. At this time, it is contemplated that access to distribution services will be addressed and that access to transmission and storage will be addressed in the future.
4. The letter concluded by asking for volunteers to participate on the Task Force. Once the membership of the Task Force had been determined, the Task Force commenced its meetings in early 2000. The list of members is included in Appendix C.
5. Although the Director’s letter indicated that the starting point for discussions was the report of the Market Design Task Force (“MDTF”), the Task Force recognized that it was building on the work of the MDTF and was not a continuation of the MDTF *per se*.

Definitions

6. Appendix E to the Report sets out the definitions and terms applied by the Task Force throughout this Report. The Task Force considered the need to distinguish between a

¹ See Appendix B.

customer and consumer to be of special importance. For purposes of this Report the Task Force adopted the following definitions:

- a consumer is a person who uses natural gas for the person's own consumption,
- a distribution services customer is a person who purchases distribution services.

Structure of the Report

7. The issues addressed in this Report are divided into eight additional chapters.
8. Chapter 2 identifies access rights to the services that are, in the view of members of the Task Force, integral to distribution services and within the scope of the Distribution Access Rule, as discussed above.
9. Chapter 3 considers the applicability of the Rule to the supply of system gas.
10. Chapter 4 sets out detailed procedures for processing transfer requests, including authorization standards, information requirements, processing rules and confirmation procedures. Three alternatives are presented for the procedures that a distributor should be required to follow when a service transfer request is received for a consumer when the distributor's records show that the consumer has an existing direct purchase arrangement in place.
11. Permitted prudential requirements that distributors may utilize are provided in Chapter 5. Requirements related to distributor and retailer billing are addressed in Chapter 6. Chapter 7 addresses rules related to customer information. Issues related to distributor/retailer relations are considered in Chapter 8. The compliance and dispute resolution processes are discussed in Chapter 9. The distributors' and customers' rights and obligations in the event of a gas supply emergency are addressed in Chapter 10.

Areas of Dispute

12. The Task Force achieved consensus around many issues addressed in this Report. There are, however, several areas where the Board will have to decide between competing alternatives where the views of the Task Force members diverged.
 - Whether the Rule should include a statement of principles and, if so, what the principles should be. (Recommendation #1.1)
 - Whether the customer's account number should be a mandatory item of information provided by the retailer to the distributor when submitting a service transaction request. (Recommendation #4.3)
 - Whether the present transfer policies of the distributors should be incorporated into the Rule, and if so to which contracts should they apply: none, all, or new. (Recommendations #4.4 and #4.7)
 - Whether the Rule should specify the billing options accommodated by the distributor, and if so, which options should be specified. (Recommendation #6.1)
 - Whether the Rule should address restrictions on the material that distributors may send to their customers, and if so, what those restrictions should be. (Recommendation #6.3)

- Whether the Rule should place restrictions on the use of consumer information, and if so, what the restrictions should be. (Recommendation #7.3)
- Whether the Rule should include an interpretative provision pertaining to non-compliance with the Rule. (Recommendation #9.1)
- Whether there should be mandatory posting of complaints under the Rule on the OEB website. (Recommendation #9.2)
- Whether a distributor should be permitted to call an emergency requiring the curtailment of firm service without prior Board authorization. (Recommendation #10.1)

1 SCOPE OF THE RULE

13. **Issue:** Should the Rule include a statement of principles and, if so, what should they be?
14. Options: A statement of principles could either be included in the Rule or the legislative purposes and objectives could be deemed to be complete and appropriate.

1.1 Background

15. In identifying the purposes and scope of these Rules, it is necessary to refer to the relevant provisions of the Ontario Energy Board Act, 1998
16. In particular, these rules are enacted pursuant to section 44(1)(b) and (d) of the Act. These sections are:

44(1) The Board may make rules,

...

(b) governing the conduct of a gas distributor as such conduct relates to any person,

(i) selling or offering to sell gas to a consumer,

(ii) acting as agent or broker for a seller or gas to a consumer, or

(iii) acting or offering to act as the agent or broker of a consumer in the purchase of gas;

...

(d) establishing conditions of access to transmission, distribution and storage services provided by a gas transmitter, gas distributor or storage company.

17. The objectives of the OEB as set out in section 2 of the *OEB Act, 1998* in relation to gas are also relevant to the development of the Rule. These are:

To facilitate competition in the sale of gas to users.

To maintain just and reasonable rates for the transmission, distribution and storage of gas

To facilitate rational expansion of transmission and distribution systems.

To facilitate rational development and safe operation of gas storage

To facilitate opportunities for energy efficiency consistent with the policies of the Ontario government.

18. The Task Force recognizes that the Board also considers the goal of achieving a level of symmetry between the gas and electricity sectors of the energy market to be desirable. Symmetry is reflected in a number of documents, including the *White Paper*, the Board's *Report on Legislative Change*, and the Undertakings entered into between the Government of Ontario and each of the two major gas utilities. However, the Task Force has identified a number of areas where symmetry may not be appropriate and these are discussed in the relevant sections of the Report.
19. With respect to the term "distribution services", s. 3 of the Act states that "gas distributor" means a person who delivers gas to a consumer and "distribute" and "distribution" have corresponding meanings".
20. In addition to providing distribution (i.e., delivery) services, some gas distributors provide other services, such as the sale of the commodity and ABC-T service. These rules do not regulate access to those services. However, these services will be discussed in the Report and addressed in the recommendations to the extent that the provision of these services impact on access to distribution services, or the conduct of distributors towards retail energy marketers ("REMs").
21. There were two views in the Task Force on the meaning of distribution services and access to distribution services.
22. Marketers were of the view that "distribution services" consist of the delivery of gas to a consumer's meter. In their view, other services currently provided by the distributors, such as gas supply, meter provisioning, billing and collection and load balancing are gas sales services. These services could be provided by a range of service providers, including marketers. The fact that these services are currently provided by distributors does not mean that they are distribution services. On the contrary, to the extent that distributors provide all or some of these gas sales services as a condition to providing monopoly distribution services, the provision of these services is effectively being imposed as conditions of access.
23. The characterization of these services as either "distribution services" or "gas sales services" raises very important issues respecting the Board's ability to oversee the future unbundling of these services. Subsection 42(3) of the OEB Act provides that "Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease providing any gas sale service." (emphasis added). As a result, the Board may only order a distributor to cease providing a "gas sale service"; it cannot order a distributor to cease providing a distribution service. Accordingly, the characterization of services such as meter provisioning, billing and collection, and load balancing, as either sales or distribution services will have a significant impact on the Board's ability to order the unbundling of these services in a future proceeding. If the Board determines that meter provisioning, billing and collection and load balancing are sales services, it will have the

ability, in a future proceeding, to order the unbundling of those services. This flexibility would be adversely affected by a determination that these are distribution services.

24. The distributors take issue with the marketers' classification of meter provisioning, billing and collection, and load balancing as gas sales service. Gas sales service is the sale of the commodity by the distributor and the above inclusion of other services is not supported by the legislation. The distributor bills its customers for the distribution services it provides to its customers. This is an ongoing business function independent of any gas commodity sales activity. Business infrastructure functions such as billing and collection, legal, human resources, accounting, etc. are integral to the operation of the business entity. The business entity can direct how to best meet its requirements. It can do so directly or it may purchase the services from others. The arrangements that it makes to meet these functional requirements do not, in and of themselves, change their character nor do they affect management control over the function. For example, a distributor may outsource its requirements for human resources. This does not mean that the utility is in the business of providing H.R. services.
25. The distributors' view that meter provisioning, billing and collection and load balancing are not services, implies that the submissions of the marketers set out above are not relevant to the issues before the Board in the Distribution Access Rule. As the Board found in its ruling on the CENGAS motion in RP-1999-0001, there is an "orderly way of dealing with these matters". In the distributors view, to put the Board in the position of making findings on future unbundling in the context of a distribution access rule is out of step with that orderly process and with the legislative authority.
26. These fundamental differences in view influenced the parties' views on several recommendations through the Report. In addition, the Board will need to address the classification questions as unbundling further proceeds.

1.1.1 Discussion of Alternative A

27. With respect to access to distribution services, however they are defined by the Board, marketers take the view that persons entitled to the benefit of these access rules are all customers of distribution services, not just consumers. Although the Act does not specifically identify who is entitled to access to distribution services, the *Electricity Act, 1998* is informative here. Section 26 (1) of that Act provides that access rights to electrical distribution systems are available to "generators, retailers and consumers". Applying that in the context of gas distribution, access to 'services' referred to in s. 44(1)(d) should be available to gas producers, gas suppliers, REMs, embedded distributors and consumers. All of these categories of persons are customers of distribution services and are therefore entitled to access to those services in accordance with these rules.
28. This interpretation is consistent with the Board's *Report on Legislative Change* where it advised the Government that it required the power to make access rules in the following terms:

'The Board concludes that the OEB Act should be amended to provide the regulator with clear and sufficient authority to govern the relationship between the franchised LDC and gas suppliers transporting gas on the distribution system, including the approval of terms and conditions of access.' (emphasis added) (at p.19).

29. Marketers are also of the view that the Access Rules should specifically address principles of access. These principles are important to ensure that distributors cannot favour one category of customers over another. Of particular importance, distributors carry out distribution services both for their own standard supply consumers, and consumers served by a third party, such as an REM or an embedded LDC.² This role puts them in a potential conflict of interest. In other words, serving system customers provides an incentive to prefer those customers over other customers. This has the effect of impeding the development of competition in the provision of gas sales services. Addressing that conflict of interest and facilitating competition requires non-discriminatory access rules. These principles of access should recognize, as the Board observed in its *Report on Legislative Change* (at pp. 16-19), that access rules are an important step forward in facilitating competition in gas sales services.

1.1.2 Recommendation #1.1A

30. The Rule should include a provision which states that distribution services be provided in accordance with the following principles:
1. Non-discriminatory treatment towards gas producers, suppliers, REMs, embedded distributors, and standard supply and direct purchase customers;
 2. Maintaining reasonable system integrity;
 3. Minimizing unnecessary transaction costs; and
 4. Facilitating competition in gas sales services.

1.1.3 Discussion of Alternative B

31. The distributors agree with the marketers that persons entitled to access to distribution services are all customers of distribution services, not just consumers. However, they disagree that membership in one or more of the groups enumerated in the preceding discussion of Alternative A automatically means that each member of those groups is a customer. For example, a REM acting as consultant to an end-use customer would not be entitled to distribution services, solely by virtue of that relationship. Thus gas producers, REMs and consumers may be customers of distribution services and, if they are customers of distribution services, then they would be entitled to access to distribution services in accordance with the Distribution Access Rule.
32. The distributors were also of the view that sections 44(1)(b) and 44(1)(d) were dealing with related, but separate, matters. The first matter relates to the distributor's conduct vis-à-vis REMs, e.g., processing service transfer requests or providing customer

² The Task Force notes, however, that distributors do not have the obligation to provide distribution service to the consumers of an embedded distributor.

information to marketers, subject to appropriate authorization. The second is in relation to access to distribution services. Section 26(1) of the *Electricity Act, 1998* deals only with non-discriminatory access to the electricity distribution system, rather than access to distribution services. Other than “non discrimination” no other principles are specified. In the distributors’ view, the primary principle of access is non-discrimination, i.e., that similarly situated customers shall be treated similarly.

33. If the Board believes that principles of access beyond the principle of non-discrimination are required, it should ask specifically for submissions on this matter in the upcoming consultation process. The above list is unsupported by the legislation and comparable Rules in the electricity sector, particularly the first and fourth items, e.g., the Retail Settlement Code (“RSC”) does not include principle statements.

1.1.4 Recommendation #1.1B

34. If the Board believes that principles of access beyond the principle of non-discrimination are required, it should ask specifically for submissions on this matter in the upcoming consultation process.

1.1.5 Positions of Parties

35. **Supporting Alternative #1.1A:** CEED, Collingwood, DEML, Kitchener, ECNG, OESC
36. **Supporting Alternative #1.1B:** Enbridge, NRG, Six Nations, Union
37. **No position:** IGUA

2 ACCESS TO DISTRIBUTION SERVICES

38. For the purposes of this report, distribution service includes the delivery of gas by the distributor from the distributor system point of receipt to the consumer’s point of receipt or the customer’s meter. This chapter addresses the rights of access to this distribution service.
39. Included with the primary distribution service are other services which directly contribute to the safety of the distribution system that may be impacted by unbundling of the traditional distributors’ services. Section 2.1 discusses the obligations of distributors with respect to four functions that the Task Force considers to be integral to distribution service.
40. The rights of persons to be physically connected to the existing distribution systems, and the rights of persons to distribution service once connected are addressed in sections 2.3 and 2.4, respectively. Section 2.5 deals with the access rights of non-consuming customers to distribution services.

2.1 Functions that are Integral to Distribution Service

41. This section deals with four functions that the Task Force considers to be integral to distribution service:
- Emergency gas leak response,
 - Line locates,
 - Inspection and record keeping, and
 - Provision of safety information.

2.1.1 Emergency Gas Leak Response

42. **Issue:** What are the conditions of access to emergency gas leak response and who provides it?
43. **Options:** Emergency response could be provided by (1) the distributors, (2) Retailers, or (3) a third party (chosen by the customer).

2.1.1.1 BACKGROUND

44. The Task Force used the term “emergency gas leak response” to distinguish emergency response from emergency supply planning in chapter 10 of this Report. The emergency responses discussed here would include, for example, when the fire department requests the distributor to attend at the scene of a fire, or when the customer calls with a gas-related safety concern, as well as a suspected gas leakage. This response is defined as an expeditious response for the purpose of making safe. It does not necessarily include diagnosis or repair of the underlying cause of the emergency.
45. In the view of the Task Force, distributors have an implicit responsibility to provide emergency response as part of running a safe distribution system. These obligations are generally part of each distributor’s Standard Practice or Policy, Practices and Procedures manuals

2.1.1.2 DISCUSSION

46. Implicit in all Codes, Acts and Regulations is the distributor’s responsibility to provide distribution service in a safe and secure way. When there is an incident where gas is involved or suspected to be involved, it is incumbent upon the distributor to respond and make safe. This onus is direct when there is a release of gas from a distributor’s facilities because of ownership and competency. However, even on customers’ premises, the distributor’s expertise is frequently called upon as the first response to a suspicion of gas release.
47. From a public interest and business point of view, distributors would not want emergency response to suffer through restructuring. Historically, the emergency

response has been funded through monopoly distribution rates. Under PBR, distributor's have established emergency response as a service quality indicator.

2.1.1.3 RECOMMENDATION #2.1

48. Distributors should continue to be obligated to provide access to emergency gas leak response for all of its customers, regardless of who supplies the commodity or other services.

2.1.1.4 POSITIONS OF PARTIES

49. **Supporting Recommendation #2.1:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.1.2 Line Locates

50. **Issue:** What are the conditions of access to line locates and who provides them?
51. **Options:** Provision of line locates is necessary for public safety and to avoid costly damage. No alternatives to provision of this service by the distributors were considered by the Task Force.

2.1.2.1 BACKGROUND:

52. Section 18 of the Energy Act provides for the duty of the excavator to request and the obligation of the distributor to provide line location information on distributor-owned pipe. Beyond the legislative responsibility, the distributors recognize that, for the purposes of safety and system integrity, provision of location information is essential. Other standards and Acts require the distributor to maintain records of plant for the life of the plant. The cost of providing line locates is currently recovered in distribution rates.

2.1.2.2 DISCUSSION

53. Given legislative responsibility, distributors must provide the line location information. There was, however, discussion of whether the distributor has to perform the service itself. The obligation is to provide the information. The system to provide can include contracted third parties (One call, contractor locators, etc.). However there is an obligation on the distributor to ensure the system can provide the most accurate information in an economical and prudent fashion. This provision generally includes a requirement from the excavator to provide a minimum 48 hours notice (excluding emergencies).

2.1.2.3 RECOMMENDATION #2.2

54. Distributors should continue to be obligated to provide line location information on distributor-owned underground pipe to an excavator who provides the appropriate notice. The distributor will provide the information through its records and field visits.

2.1.2.4 POSITIONS OF PARTIES

55. **Supporting Recommendation #2.2:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.1.3 Inspection and Record Keeping

56. **Issue:** What are the conditions of access to appliance inspection and record keeping and who provides this?
57. **Options:** No practical alternative to the distributor providing inspection and record keeping was identified by the Task Force.

2.1.3.1 BACKGROUND

58. Section 15(2) of the Energy Act requires, for premises connected to gas for the first time, the distributor to inspect the installation of appliances prior to their activation. The cost of providing the initial inspections is currently recovered through distribution rates. Other sections of the Act provide for audit of inspection records by an inspector in the course of his/her work. Under Ontario Regulation 546-96 and the Ontario Gas Utilization Code, the owner of an industrial, institutional, or assembly building requires an inspection of the gas-fired equipment every 10 years. No such re-inspection requirements are extended to residential occupancies.

2.1.3.2 DISCUSSION

59. Application of the sections of the Act varies amongst distributors. However a common application is the inspection, by the distributor, of the initial appliance(s) and the interconnecting piping system, prior to activation. This occurs where the premise is a new first time user of gas (whether industrial, commercial, residential, etc.). The regulations require that inspections be performed by individuals who are certified to determine that installations meet the requirements of the Act and regulations. It also places an onus on the distributor to see that the inspection of new premises occurs prior to activation. A report of this inspection is required to be kept until the next inspection and report is completed. In the case of owners of industrial, institutional and assembly buildings this would not exceed 10 years as the obligation of record keeping would then revert to them.

2.1.3.3 RECOMMENDATION #2.3

60. Distributors should continue to be obligated to provide all customers and installers an installation inspection of all initial appliance(s) where the premises are supplied by gas for the first time.

2.1.3.4 POSITIONS OF PARTIES

61. **Supporting Recommendation #2.3:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.1.4 Provision of Safety Information

62. **Issue:** What are the conditions of access to safety information?
63. **Options:** Safety information is a public service that could be provided by any of a wide range of possible parties, including a distributor, a government body, and REMs.

2.1.4.1 BACKGROUND

64. Distributors traditionally provided safety information (e.g., respecting the removal of snow around meters and air intakes in the winter, and the need for line locates) directly to consumers, largely through bill inserts. The cost of preparing and distributing this information is currently recovered in distribution rates.

2.1.4.2 DISCUSSION

65. Although recent changes in the energy industry have resulted in some customer confusion over who provides their commodity or appliance service, most customers turn immediately to their distributor if they have a safety concern. Distributors have encouraged customers to contact their distributor through their billing system messages and presence in the community.
66. With potential changes in billing and other deliverables, the impact on customers' perceptions must be considered. If the responsibility for rendering the bill moves to the retailer in whole or in part (through retailer consolidated billing or split billing), consideration should be given to continued prominence of the distributor's emergency number in the retailers system. This prominence could include bill messages or inserts, providing the emergency number first on the retailer's list of automated telephone options or direct links to the distributor's emergency response facility.
67. Under the option of consumers being given the option of retailer consolidated billing, distributors may no longer be in a position to provide this information directly, and the responsibility to provide safety information will fall to REMs. Consumers should be made aware of who should be contacted in case of emergency. The Task Force discussed the methods of providing the information to consumers and the

appropriateness of making it a condition of allowing REM provided billing. Since these conditions would more likely fall into the Gas Marketers' Licence or be part of negotiated protocols between the distributor and the REM, the consensus was to be silent on these conditions in the recommendation.

2.1.4.3 RECOMMENDATION #2.4

68. In the event of retailer consolidated billing, distributors and REMs should be required to produce a protocol by which REMs provide safety notification and emergency response information to their consumers for whom the REM provides retailer consolidated billing.

2.1.4.4 POSITIONS OF PARTIES

69. **Supporting Recommendation #2.4:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.

70. **No Position:** IGUA

2.2 Connection of Customers

71. This section addresses the distribution connection rights of customers:
- when they are located along the line of an existing distribution pipe, and
 - when they are not located along the line of an existing distribution pipe.

2.2.1 Connection Rights When on the Line of Distribution Pipe

72. **Issue:** What conditions of access to distribution connections are applicable to persons requesting service at premises lying along the line of a distributor's distribution pipeline?
73. **Options:** Two options were identified by the Task Force:
- Access to distribution connections along the line of a distributors existing distribution pipeline should be unconditional.
 - Access to distribution connections along the line of a distributors existing distribution pipeline should be subject to conditions such as:
 - a minimum length of connection at no charge;
 - a minimum cost of connection;
 - meeting any relevant safety regulations and codes;
 - the system's ability to meet peak demand once the new connection is in service; and
 - meeting reasonable security/credit requirements.
74. Several variations of the conditions that should apply were discussed by the Task Force.

2.2.1.1 BACKGROUND

75. Section 42(2) of the OEB Act requires that, "Subject to the Public Utilities Act and to the Energy Act, a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor's distribution pipe lines upon the request in writing of the owner, occupant, or other person in charge of the building."
76. Section 50(2) of the Public Utilities Act states that utilities, "may fix the price to be paid for the use of the meter, and the times when and the manner in which the price shall be payable, and may also recover the expense of such alterations, and such price and the expense of such alterations may be collected in the same manner as rents or rates for the supply of the public utility."
77. Section 50(4) of the Public Utilities Act states that any utility, "before supplying any public utility to any person or to any building or premises, or as a condition of continuing to supply the utility, may require any consumer to give reasonable security for the payment of the proper charges therefor or for carrying the public utility into the building or premises."
78. The Energy Act requires the inspection of all appliances and all distribution connections for compliance with the Energy Act prior to the commencement of distribution service. Further, it provides for additional inspections by the distributor at any reasonable time, and the ability to restrict the use of an appliance or work where a contravention of the Energy Act is found.

2.2.1.2 DISCUSSION

79. The above-mentioned Acts require service to be provided where a person requests service to a premise, which is adjacent to the existing system. Therefore persons requesting service to premises adjacent to the existing distribution mains have a right to a distribution connection.
80. The right to a connection is subject to a statutory right of the distributor to require adequate security/credit and to the statutory obligation of the distributor to ensure that the installation of the appliances is safe and remains safe.
81. A minimum length or cost of an extension would have to be set in reference to the cost and rate structure of each distributor; so it is not appropriate for inclusion in the Rule. Such minimums are attempts to provide simple rules for assessing whether connections are economic. Simplified rules are best left to the distributors to develop in complying with rules of general application as opposed to being embedded in the Rule.
82. Utilities are required to meet safety regulations and codes. The construction of a new connection needs to be subject to meeting these regulations and codes. If the cost of safety compliance makes a service installation uneconomic, the person requesting the connection may be required to make a contribution to address the uneconomic nature of the connection.

83. If a proposed service connection lying along the line of the distributor's existing distribution pipelines is uneconomic, the person requesting the service should also be required to make a customer contribution.

2.2.1.3 RECOMMENDATION #2.5

84. Any person, acting directly or through an agent, requesting connection to a premise, of which they are in charge, lying along the line of a distributor's existing distribution pipeline should be entitled to connection to the distribution system. Connections of premises lying along the line of a distributor's existing distribution pipelines shall be provided upon request provided the connection will not impair the safety or reliability of the system, and the customer has made acceptable arrangements for payment of contributions, if required by the distributor. The distributor should be obligated to apply its contribution policy in a non-discriminatory manner.

2.2.1.4 POSITIONS OF PARTIES

85. **Supporting Recommendation #2.5:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.2.2 Connection Rights When Not on an Existing Distribution Pipe

86. **Issue:** What conditions of access to distribution connection are applicable to persons requesting service at premises that do not lie along the line of a distributor's distribution pipeline?
87. **Options:** The Act appears to leave no room for an option other than that set out below.

2.2.2.1 BACKGROUND

88. The previous section addressed the rights to connection to the distribution system for persons with a gas main adjacent to their property under section 42(3) of the *Ontario Energy Board Act*. There is no similar provision in the *Act* for persons whose premises are not currently on gas mains.
89. These persons fall generally into two categories: (i) new construction, for example, in suburbs and (ii) areas where gas service was not initially installed, e.g. all-electric subdivisions or smaller, more remote communities.
90. In 1998, the OEB issued the Report of the Board on Natural Gas System Expansion for the Consumers' Gas Company Ltd., Union Gas Limited and Centra Gas Ontario Inc. ("EBO 188 Report"). The EBO 188 Report applies to the two major gas utilities. It does not apply to the other gas utilities, including the municipal gas utilities. Although it does not apply to NRG, NRG is applying most of EBO 188. The subdivision attachment policies of the municipal gas utilities are determined by the decisions of the municipal councils and the overall capital budget set for the municipal utility.

2.2.2.2 DISCUSSION

91. The Task Force discussed the implications of EBO 188 and its use by the OEB in the ratemaking process. EBO 188 is prescriptive, in that it lays out the policies and procedures that must be followed before the capital expenditures associated with system expansion can be included in utility rate base. However, EBO 188 is also permissive in the sense that it relates to the ratemaking treatment of capital that the utility elects to invest in system expansion. It does not obligate the utility to invest in system expansions that are economic or meet any other system expansion criteria. The ratemaking process affects the utilities' economics of system expansion, but does not directly determine which currently non-connected customers will be attached to the distribution system.
92. The Task Force also discussed the value of consistent application of the EBO 188 policies across the province. EBO 188 creates consistency in the treatment of expansion portfolios, not of communities. Two communities with similar profitability indices may not be treated consistently under EBO 188, depending on the other components of the utility's portfolio in that year and on the rate impact. Since the system expansion expenditures of the municipal utilities are set by their municipal councils, there could also be inconsistencies between how a subdivision within a municipal gas utility is treated compared to a similar subdivision outside the municipal gas utility.
93. There was general consensus that there should be consistency in the analysis of system expansion projects, i.e. the use of the discounted cash flow profitability analysis from EBO 188.

2.2.2.3 RECOMMENDATION #2.6

94. The Rule should not create a right to connection for persons not on main, but would address the rights of persons located on a distribution main and the rights of persons to distribution service once attached.

2.2.2.4 POSITIONS OF PARTIES

95. **Supporting Recommendation #2.6:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.3 Access Rights for Connected Customers

2.3.1 Distribution Service

96. **Issue:** What conditions should apply to the right to access distribution service, by connected consumers, from a delivery point to the consumer meter?

97. **Options:** Two options were identified:

- The right should be unconditional.
- The right should be subject to conditions such as:
 - meeting tariff eligibility;
 - meeting appropriate credit/prudential requirements;
 - service provision being economic; and
 - service can be safely provided in compliance with relevant acts, codes and standards, and not compromise the operation of the system.

98. Several variations of the conditions that should apply were discussed by the Task Force.

2.3.1.1 BACKGROUND

99. The legislative rights of connected customers derive from the same legislation as those that establish the rights of customers to connection, as set out in section 2.2.1.1 above. In particular, the above-cited sections of the OEB Act, the *Public Utilities Act* and the *Energy Act* establish the access rights of these customers.

100. In addition, the distributors' rate orders contain approved tariff conditions, which set the eligibility requirements for access to the distribution system under various rate schedules.

101. The distributor is legally responsible for the safe operation of the system, inclusive of inspection of installation of consumer equipment. If an installation results in an unsafe condition, the distributor is obligated to ensure that the condition be made safe, or failing that, that the service be shut off until a safe condition is restored.

2.3.1.2 DISCUSSION

102. It was acknowledged that consumers that are connected to the distribution system have a right to access to distribution service.

103. Some members pointed out that the right to access distribution service should be subject to that service continuing to be economic for the distributor to provide. For example, if the consumer wished to increase their load to the point that additional facilities were required that were specific to that consumer, then the distributor should be able to require that the incremental load result in an appropriate return on and recovery of the investment in the additional facilities. If the load does not result in an appropriate return on and recovery of the additional investment, then the distributor should be allowed to require a contribution from the consumer, determined on a basis similar to that provided for in Recommendation #2.5.

104. A requirement that a consumer provide appropriate credit/prudential requirements should apply provided the distributor has an appropriate credit policy that is applied

consistently to all consumers. Consumers with similar payment histories and of similar credit risk should be treated in a similar manner. The right of the utility to require reasonable security is provided in the *Public Utilities Act*.

105. Given the requirements of the *Energy Act* and its associated legal liability for the distributor, the consumer's right should be conditional upon the ability to provide service and operate the distribution system in a safe manner.
106. The tariff provisions ensure that consumers are served on the appropriate rate schedule. These provisions are likely to be addressed more often than the Distribution Access Rule so the Rule should not be made too restrictive or unresponsive to changing circumstances.

2.3.1.3 RECOMMENDATION #2.7

107. A connected consumer's right to access distribution service should be limited by:
 1. a requirement to meet tariff eligibility criteria approved by the appropriate rate making authority;
 2. a requirement to meet appropriate credit/prudential requirements applied in a consistent manner between consumers of similar credit risk;
 3. the ability of the distributor to safely provide service and operate the distribution system in accordance with applicable acts and standards; and
 4. the provision or expansion of distribution service allowing for the expectation of an appropriate return on and recovery of the investment in facilities made to serve the consumer.

2.3.1.4 POSITIONS OF PARTIES

108. **Supporting Recommendation #2.7:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

2.4 Access Rights for Distribution Customers Who are Not Consumers

109. **Issue:** What access rights should be available for distribution customers that are not consumers?
110. **Options:** The Task Force identified two options:
 - Distribution customers that are not consumers should have rights to distribution services approved by the appropriate authority from time-to-time.
 - Distribution customers that are not consumers should have no rights to distribution services independent of the rights of the consumers they serve.

2.4.1 Background

111. Prior to the enactment of the *Ontario Energy Board Act, 1998*, persons could not supply gas in Ontario without prior approval of the Ontario Energy Board. This proscription continues to apply to transmitters, distributors and storage companies whose rates are regulated by the Ontario Energy Board. Other persons may freely supply gas subject to Board-imposed licensing requirements.
112. The role of others (e.g., marketers, government bodies) in providing safety information is beyond the scope of the Rule.

2.4.2 Discussion

113. The result of the foregoing is that REMs may sell gas directly to their own customers. Other persons, such as industrial customers, may sell gas among themselves. These distribution customers that are not consumers require access to distribution services so that the gas they purchase from others may be delivered in accordance with their relevant contractual terms.
114. Today licenced REMs are customers of the utilities' agency billing and collection services. They are not customers of distribution services. Utilities provide retail distribution service to all consumers, including those purchasing gas from REMs. The REMs' gas needs to be delivered through the distribution system. This is accomplished through the consumer's access and not through any right of access independent of the consumer.

2.4.3 Recommendation #2.8

115. Distribution customers that are not consumers should have rights to access to distribution services in accordance with the tariffs approved by the appropriate authority from time to time.

2.4.4 Positions of Parties

116. **Supporting Recommendation #2.8:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

3 SYSTEM SUPPLY

117. System supply is not integral to distribution services and could be replaced in the future by a standard supply offering provided by a party other than the distributor. The Task Force addressed the issue of system supply because it currently is a bundled service that includes distribution services.

118. **Issue:** Should the sale of gas by a distributor to a customer be addressed in the Distribution Access Rule?
119. Board Staff directed the Task Force not to address the pricing and components of system supply. Accordingly, for the purposes of the Report, the Task Force is not in a position to address the issue of system supply, except to state that, for definitional purposes, system supply is a component of the gas sales services which distributors provide to customers.

3.1 Background

120. The existing bundled rates components for Enbridge Consumers Gas and Union Gas are set out as follows.

3.1.1 Enbridge Consumers Gas Existing Bundled Rates Components

121. Gas Supply Charge: The gas supply charge recovers the costs associated with the commodity including storage fluctuations, fuel gas, working cash allowance and, commodity-related bad debt expenses. The gas supply charge applicable to system gas customers also includes incremental administrative costs associated with the procurement of system supplies.
122. Gas Supply Load Balancing Charge: The gas supply load balancing charge recovers the cost of pipeline transportation, the premium over the deemed commodity costs for all purchases and receipts, and the carrying cost of gas in inventory. For general service customers (Rate 1,6, and 9), however, the allocated gas supply load balancing costs are included in the delivery charge.
123. Monthly Customer Charge: The monthly customer charge recovers a portion of the customer-related costs including the return on capital, taxes, O&M associated with meters, sales stations, and services, metering reading costs, call center, billing, and credit and collection costs.
124. Delivery Charge: the delivery charge recovers the balance of the customer-related costs not fully recovered in the customer charge, plus the return, taxes, O&M for distribution mains and storage facilities costs, unbilled and unaccounted for gas and distribution related bad debt expenses.

3.1.2 Union Gas' Existing Bundled Rates Components

125. Gas Supply Charge: The gas supply charge recovers the costs associated with the commodity, fuel gas and gas supply working cash allowance. The gas supply charge applicable to system gas customers also includes incremental administrative costs associated with the procurement of and bad debt expenses related to system supplies.

126. Gas Transportation Charge: For Union South, the gas supply transportation charge recovers, on a commodity only rate basis, the cost of TCPL FT. For Union North, the gas supply transportation charge recovers the upstream pipeline transportation costs, storage costs, and related charges for STS service and delivery/redelivery service on Union South's Dawn-Trafalgar system. A seasonal commodity differential is reflected in the upstream transportation charge for general service Rates 01, 10 and 16. The gas supply charge for firm contract rates (Rate 20 and Rate 100) consists of a demand charge and a blocked commodity charge.
127. Monthly Customer Charge: The monthly customer charge recovers a portion of the customer-related costs including the return and taxes and O&M associated with meters, sales stations, and services, metering reading costs, call center, billing, and credit and collection costs.
128. Delivery Charge: For Union South, the delivery charge recovers the balance of the customer-related costs not fully recovered in the customer charge, plus the return and taxes and O&M for distribution mains and storage and transportation facilities costs, unbilled and unaccounted for gas and delivery-related bad debt expenses. Gas supply load balancing charges in Union South delivery rates recover costs above TCPL FT supply used to (i) balance forecast supply/demand direct purchase imbalances as of March 31, which is the end of the winter period and (ii) provide short term flexibility for the General Service requirements. For franchise bundled service customers (Rate M2, M4, M5A, M7, M9, M10) the allocated gas supply load balancing costs are included in the delivery charge. This applies to Union South only.

3.2 Discussion

129. The issue of creating a standard service offering for natural gas has previously been addressed in the MDTF.
130. As noted in section 1.2 above, the appropriate content of the Rule should fall within that contemplated by the underlying legislation. Sections 44.1(a) and 44.1(d) of the OEB Act read respectively "The Board may make rules governing the conduct of a distributor as such conduct relates to any person selling or offering to sell gas to a consumer, acting as agent or broker for a seller of gas to a consumer, or acting or offering to act as the agent or broker" and "The Board may make rules establishing conditions of access to transmission, distribution and storage services provided by a gas transmitter, gas distributor or storage company."
131. The sale of gas by the distributor to a customer has been treated as an activity that does not fall within the definition of distribution. Under the Undertakings between the Government of Ontario and Enbridge Consumers Gas and Union Gas, both distributors are prohibited, except through affiliates, from carrying on any business activity other than the transmission, distribution or storage of gas unless they have the prior approval of the Board. Both companies have sought and have received such approval regarding the sale of gas.

132. Gas sale service by a distributor is distinguished from distribution service in Section 42.1 of the *OEB Act*. This section provides that upon application the Board may order a gas distributor, gas transmitter or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service.
133. Under the Board's rate-making powers, the sale of gas by a distributor is specifically mentioned (identified in addition to distribution, storage and transmission services) and is subject to a Board order. Per section 36 of the *OEB Act* (save for Kingston and Kitchener which are grandfathered), the sale of gas by a gas distributor, gas transmitter or storage company must be done in accordance with an order of the Board. Such orders can include the approving or fixing of just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies.
134. It is evident that the sale of gas by a distributor is distinguished from distribution services in the legislation.
135. In the view of marketers, the Rule should address system supply to the extent that the provision of system supply by distributors has an impact on the principles of access addressed in Recommendation #1.1A above. As currently provided, system supply is inconsistent with the principles of access in that it interferes with the development of competition.
136. System supply uses a pricing mechanism which relies upon forecasts and retroactive pricing adjustments. System supply customers are therefore given inaccurate price signals, and REMs must compete against an artificial price. Another problem is that distributors enter into transportation arrangements, the costs of which may become stranded as system customers move to competitive retailers. In the marketers' view, the result is that system supply is a barrier to the development of competition, and is inconsistent with the principles of access.
137. The original Table of Contents for the Distribution Access Rule provided that the "pricing and components of system supply" was to be addressed by the Task Force. The foregoing concerns could therefore have been addressed in the Rule as originally contemplated by the Director. However, Board Staff subsequently advised the Task Force that pricing and components of system supply should not be addressed. Accordingly, the system supply issues relevant to access are not addressed in these rules. However, the effect of system supply on inaccurate and non-transparent price signals is an ongoing problem which must be addressed. In light of the direction that these issues are not to be addressed in the Rule, the Board has a responsibility to clearly direct when and in what forum these issues will be addressed.

3.2.1 Recommendation #3.1

138. The Task Force requests the Board to initiate a process to review as soon as practicable the terms and conditions of a standard service offering for natural gas sales.

3.2.2 Positions of Parties

139. **Supporting Recommendation #3.1:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, NRG, OESC, Six Nations, Union.
140. **No Position:** Kitchener.

4 SERVICE TRANSFERS

4.1 Introduction

141. This chapter contains the views of the Task Force regarding the procedures that should be defined within the Rule in relation to service transfer requests ("STRs"). Section 4.2 deals with the special case of transfer requests that result from a consumer moving within a distributor's franchise area with no change of the retailer supplying the consumer. Procedures related to transfers between retailers, to a retailer from system supply and to system supply from a retailer are addressed in three separate sections (4.3, 4.4 and 4.5, respectively) since each type of transfer request raises unique issues.
142. The Task Force found that the procedures for service transfer requests were not controversial, with the exception of the procedures that distributors should follow in the circumstance where a transfer request is submitted for a consumer that is not on system supply. Section 4.3 includes detailed procedures of the alternate procedures supported by Task Force members. The rationale for each approach is also provided. This is a critical area where the Board will have to decide between the opposing views.

4.2 STRs for Consumers Moving Within a Franchise Area

143. **Issue:** How should in-franchise customer changes be handled?
144. **Options:** The Task Force discussed two options:
- Retention of the status quo, with direct purchase contracts being terminated when the customer moves.
 - Facilitating the seamless continuation of direct purchase arrangements when a customer moves, where contractually authorized.

4.2.1.1 BACKGROUND

145. Initially, direct purchase arrangements were structured based on the sale of the natural gas commodity to a specific location. REMs were required to provide the account number, which was location-specific. When a consumer moved and did not advise the REM, the REM was advised by the utility on the anniversary date of the contract. The

utilities constructed computer systems assuming that customers were tied to a specific marketer for the duration of a location-specific contract.

146. The utility systems continue to be based on the model that customers were aggregated into a Gas Transportation Agreement or Direct Purchase Agreement at the beginning and would not be moved between contracts. The REM would advise the utility of the rate to charge for all customers in a specific DPA. For a customer that moved locations, the REM could then re-sign the customer, but would not be able to include that customer in the GTA or DPA, as there is no provision to allow different commodity pricing to different consumers on the same DPA. In order to implement changes in tracking customers, including moves, changes in the utilities' computer systems will be required.
147. The distributors' processes also continue to dictate that the contractual commitment between a consumer and a retailer was limited to the premise identified for gas service: the account number was specific to the service address. If the consumer moved, the account number changed and the distributor would sever any direct purchase arrangements made under the old account number.
148. There has been a rise in demand from consumers to "take" their retailer's program to their new residence. Customers have a desire to continue a gas price program they have enjoyed in their former residence. Retailers are interested in retaining the customer wherever they may reside. In response to requests from marketers, Union Gas has initiated a process whereby consumers moving within the Union South franchise area can continue their direct purchase program at their new service address. A monthly report is prepared for the retailer that identifies the old account number, the customer name, the new account number and the new service address for consumers that have relocated. There is no similar service for REMs in the Enbridge Consumers Gas area or in the Union East and North areas. For ABC customers, Enbridge Consumers Gas provides a daily report to marketers that indicates which accounts have been finalized.

4.2.1.2 RECOMMENDATION #4.1

149. When the distributor is advised that a consumer is moving within a distributor's service area, the distributor should process an authorized REM or consumer's verbal or written request to transfer its current retailer supply arrangement.
150. The distributor would communicate a consumer's request to the retailer, as long as the retailer has the consumer's written authorization for the release of confidential information.
151. Where the distributor has been advised by the retailer that the consumer will be requesting distribution service elsewhere in the distributor's franchise area, the distributor would communicate a retailer's request to the consumer and would provide the retailer with a report on a timely basis that identifies the old account number, the new account number and the new service address, subject to the appropriate written

authorization. The timing of these reports will be addressed in the services agreements discussed in section 8.1.

152. Where the distributor has not been advised that the consumer will be requesting distribution service elsewhere in the distributor's franchise area, the distributor will provide the retailer with a report that identifies the old account number.

4.2.1.3 POSITIONS OF PARTIES

153. **Supporting Recommendation #4.1:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
154. **No Position:** IGUA

4.3 Transfers Between Retailers

4.3.1 STR Authorization

155. **Issue:** What form of authorization is required for a service transfer request ("STR")?
156. **Options:** No option was considered other than maintaining the existing provisions which authorize distributors to process transfers when a marketer requests a transfer consistent with the authorization provisions set out in the Gas Marketer Code of Conduct for Gas Marketers.

4.3.1.1 BACKGROUND

157. The Code of Conduct for Gas Marketers, March 2, 1999, deals with the authorization required by a gas marketer when seeking to make transfer requests. This Code specifies that gas marketers are required to acquire a consumer's written authorization to permit service transfer requests. This is similar to the provisions in the Retail Settlement Code for Electricity.

4.3.1.2 DISCUSSION

158. The Code of Conduct for Gas Marketers, in its definition section, states:
- "In writing" means communication through writing, facsimile, or any other means of communication considered legally binding in the Province of Ontario.*
159. Further, section 2.1.4 provides that:
- A gas marketer shall not request a distributor to allow the gas marketer to supply gas to a consumer unless the gas marketer has the permission of the consumer in writing to do so.*

160. The issue is clearly dealt with under the Code of Conduct for Gas Marketers and therefore the Rule need not deal with this issue. However, the Code of Conduct applies only to licensed marketers. On the other hand, the Rule will bind distributors, not REMs.

4.3.1.3 RECOMMENDATION #4.2

161. A distributor should comply with service requests of a customer and those provided by REMs that are in accordance with the rules set out in section 2.1.4 of the Code of Conduct for Gas Marketers. It should be mandatory that these requirements under the Code of Conduct for Gas Marketers be adhered to whether or not the marketer is licensed.

4.3.1.4 POSITIONS OF PARTIES

162. **Supporting Recommendation #4.2:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
163. **No Position:** IGUA

4.3.2 STR Information Requirements

164. **Issue:** What information must be transmitted by the REM to the distributor when submitting a service transaction request.
165. **Options:** Four options were considered by the Task Force:
- The status quo, i.e., maintaining the information requirements currently in place.
 - The RSC approach, i.e., adopting the information process requirements outlined in the RSC.
 - Minimum information provided by the retailer being the account number plus either name or address.
 - Minimum information provided by the retailer being any two of account number, name and address.

4.3.2.1 BACKGROUND³

166. The current procedure for Enbridge Consumers Gas and Union Gas consists of a two-stage process. The first stage can be described as a “pre-submission” or “validation” where a retailer submits a list of account numbers and the associated names for validation. The utility will process the list of accounts to identify the current status of the accounts and returns the file to the retailer indicating a “valid” or “rejected” status for each account. A “valid” status account reserves a system supply customer with the retailer; a “rejected” status account provides the reason the account was rejected (see

³ In these sections “Retailer A” means the existing retailer and “Retailer B” means the new retailer.

process timeline/date line table). The second stage can be described as the “service transfer request” stage of the process which involves the retailer making the necessary revisions to the returned “validation” file and re-submitting the “valid” and “rejected” accounts (acct #, name) that it wishes to service.

167. Currently, if a consumer elects not to renew with the retailer at the contract renewal date and has not selected another retailer at such renewal date, then the consumer is returned to system gas supply and must remain on system supply for a period of one year in the case of Enbridge Consumers Gas and 60 days for Union Gas before the consumer can elect to go onto another direct purchase supply arrangement. A transfer of a consumer between retailers (i.e., from Retailer A's gas supply to Retailer B's gas supply) only occurs at the expiry of the contract between Retailer A and the consumer.
168. Although the current process only requires an account number and name, the Task Force recognized that future submission requirements may include any or all of the following.
- New retailer account number, if available. (This assumes that a retailer will assign an account number prior to requesting the transfer.)
 - Price (If applicable).
 - Retailer account number with a distributor.
 - Date of desired transfer acceptable to a retailer and/or customer.
 - A check list of the desired changes in service, including:
 1. Type of Direct Purchase arrangement.
 2. Desired billing option (e.g., retailer consolidated billing or distributor consolidated billing or split billing).
 3. If a distributor is to bill on behalf of a retailer, a separate form will be required to delineate the retailer pricing option that will be accommodated by the distributor.
169. Both Enbridge Consumers Gas and Union Gas have set a maximum process period of 60 days from submission of a file for gas flow to the actual date of gas flow.

Process Part 1 – Validation	Information Communicated	Timeline
Retailer submits file for validation	<ul style="list-style-type: none"> • Distributor account number and name 	Day 1
Distributor returns validated file	<ul style="list-style-type: none"> • Refolioed account numbers identified • If rejected, account number & reject reason. • If accepted, account number & name (Union includes service address & 12 month historical consumption if new to direct purchase) 	Day 2 to 14

Process Part 2 - Submission for DP	Information Communicated	Date line (for illustration)
Retailer organizes files and submits for flow	<ul style="list-style-type: none"> Account number & name (if a customer is currently supplied by Retailer, then the DP number or DP name which the customer is currently on is included) 	March 30
Distributor process of new direct purchase agreement		60 days
Distributor returns DP files	<ul style="list-style-type: none"> Account number, name, service address, & 12 month historical consumption Mean Daily Volume of the DP & total number of accounts in DP 	May 26
Retailer Nominations		May 28
Gas Flows		June 1

170. The RSC addresses initial screening of an STR, comparable to a pre-submission described above; however, the RSC process is not as flexible. In the RSC, the electricity distributor is required to process STRs provided the retailer provides valid entries for the account number, service address and customer name in their submission. In the absence of meeting all three requirements, the electricity distributor shall reject the STR and notify the retailer that the request cannot be processed. The electricity distributor treats rejected STRs as if they were never received and does not reserve the accounts for the retailer, as is currently the practice in the gas industry. Although the recommendation of the RSC subcommittee suggested that a match on two of the three of the data elements would be a sufficient check to process a request, the RSC was finalized requiring that all three data elements be valid. With this change the likelihood of a submission being processed in error may be virtually eliminated thus enhancing customer satisfaction.

4.3.2.2 DISCUSSION IN SUPPORT OF ALTERNATIVE A

171. Much of today's processes have evolved as deregulation of the gas industry has evolved since 1985. Over half of Ontario's gas consumers have elected to be supplied by retailers in the nine years since the residential market has been opened. The marketers major discontent with these processes lies in the time necessary to implement a service transfer. As the timelines above show, a minimum 62 days (the standard is closer to 70 days) are needed to effect the transfer of a consumer from a system supply to a retailer supply.
172. At minimum, the information needed on a service transfer request between retailers would be two items of information: the consumer name and the consumer account number. Implementing processes and rules identical to those set out in the RSC will

affect over one million contracts currently in place between retailers and consumers. The RSC under Section 10.4 requires the valid entries for the following information: consumer's name, consumer's service address and consumer's account number. A decision to require three pieces of information prior to processing would not create any additional obstacles for the submitting retailer. Requiring the consumer's name is one area of concern because often the databases of distributors and retailers do not agree. A consumer surname or a variation of the combination of two or more named persons on the account may be a source of the inconsistency.

173. Consequently, a change from the current practice to eliminate the utility's customer account number as an obligatory piece of information to be provided in a Service Transaction Request will likely have negative impact on the cost effectiveness and timeliness when executing a STR. An account or customer number is the superior means by which a customer can be reliably identified. It is a fixed numeric field. With this fixed numeric field the likelihood of data element input errors is very low when compared to a customer's name or address; error sources such as abbreviations, spacing, capitals, first name are greatly reduced. Without the account number, many more STRs will be invalidated thereby increasing costs and increasing, not reducing, the STR processing timeline for all participants. The customer account number, on a going forward basis, would provide the common identifying continuity to support contract portability as a customer moves. Names and addresses are insufficient in this regard.
174. Under a retailer consolidated billing scenario, the information to process a service transfer request would mirror the processes above. In this case, the distributor would identify the consumer's current retailer. The validation file should identify Retailer A that the consumer is with. Retailer B can then advise Retailer A that the consumer has indicated a desire to change retailers. Retailer A then can contact and advise the consumer of his contractual obligations to Retailer A. The distributor does not process any transfer request without the release of the consumer by Retailer A.
175. In addition to considering the type of information required for customer transfer, the Task Force also discussed the issue of information format and transmission process. Deciding whether or not there should be a mandatory format for submitting the information necessary for customer transfer requires considering the trade-off between operational convenience for both distributors and retailers. In the view of some members the driving force in determining a standard format for the RSC was the significant number of MEUs (250) currently operating in Ontario. The gas market on the other hand, has far less distributors (5), with two dominant distributors servicing approximately 90% of the Ontario market. In addition, since a relatively efficient submission process currently exists with the distributors and, as such, the need for a mandatory format for submissions may not be critical at this stage.
176. The inclusion of additional information elements beyond that which are currently required will likely add to the cost and/or timeliness of information provision and service transaction completion. The impact on costs, and their recovery, and timeliness should be taken into account when considering the necessity to include new information

elements (e.g., retailers account number for the customer) in a listing of required information items in the Rule.

4.3.2.3 RECOMMENDATION #4.3A

177. The current submission process should remain as is but include the service address as one of the data requirement to process requests. The distributors must process requests if the account number and either the customer name or service address is confirmed with the information contained in the distributors information system, assuming no other fatal errors are contained in the service transfer request.
178. The following information should be provided when a service transfer request is submitted.
 1. Distributor account number (or numbers), and the customer name or service address for which the change in service is requested.
 2. Type of DP arrangement (e.g. ABC-T, Western-T, Ontario-T).
 3. The earliest date after which transfer is acceptable to the retailer and/or customer.
179. The following information may be provided when a service transfer request is submitted.
 1. The requesting retailer's customer-account number.
 2. Identification of any customer-specific data information desired (e.g., usage history, credit information).
 3. Customer mailing address.
 4. Identification of the preferred billing option (e.g., consolidated billing from the retailer, consolidated billing from the distributor, split billing).

4.3.2.4 DISCUSSION IN SUPPORT OF ALTERNATIVE B

180. A member noted that some REMs have consistently expressed concern over the distributors' requirement for a utility account number as part of a transfer request. The problem with this requirement is that it has largely restricted marketing activities to door-to-door sales. Marketing at other locations, such as a Home Show or other public events is restricted by this requirement because consumers will not have their utility account number with them at these events. This is unfortunate because consumers have shown a preference for marketing methods which are less intrusive than door-to-door sales. Marketers who rely on marketing methods other than door-to-door sales have approached both major utilities for years to address this problem. In the view of the marketers who do not opt for door-to-door marketing, these rules should accommodate innovative marketing methods by not requiring a utility account number as part of a service transfer request. In their view, it would be preferable if customer choice could drive utility systems, as opposed to utility systems limiting customer choice.

4.3.2.5 RECOMMENDATION #4.3B

181. Same as Recommendation #4.3A with the exception that distributors must process requests if any two of the account number, the customer name and the service address are provided.

4.3.2.6 POSITIONS OF PARTIES

182. **Supporting Alternative #4.3A:** DEML, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
183. **Supporting Alternative #4.3B:** CEED, Collingwood, ECNG.
184. **No position:** IGUA.

4.3.3 STR Procedures

185. **Issue:** What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from one competitive retailer to another?
186. **Options:** Four options were identified by the Task Force:
1. Maintain the transfer provisions currently in place;
 2. Adopt the standard set out in section 10 of the Retail Settlement Code for electricity;
 3. Adopt a standard that is a variant of the RSC;
 4. Grandfather existing arrangements and apply the RSC rules on a going-forward basis
187. The discussion of this issue is divided into three sections reflecting the three views that were held by Task Force members. The recommendations flowing from each view are set out below as Recommendations #4.4A, #4.4B and #4.4C. The Background section contains non-controversial information that is intended to assist the reader in fully appreciating the relevant issues.

4.3.3.1 BACKGROUND:

188. There are presently two large distributors operating in Ontario: Enbridge Consumers Gas and Union Gas Limited (which includes Union South and Union North). In the early 1990's, a number of gas marketers were selling to low-volume customers through the buy/sell mechanism. These low-volume customers included small to medium-sized commercial users, small industrial users and finally, small-volume residential customers. Some of these buy/sell low volume customers may have become unaware that they were being supplied through direct purchase arrangements because the distributor handled all billing and the supplier was not identified on distributor invoices until early 1997.

189. To facilitate industry practices, the industry participants created a series of associations and committees to address policy issues and make submissions to regulators. The industry created the Direct Purchase Industry Committee ("DPIC"), consisted of the gas marketers, the distributors and other industry stakeholders, including IGUA, TCPL and the OEB staff (from time to time). DPIC prepared a code of conduct in 1995. This code of conduct was succeeded by a second code of conduct made in approximately 1997 by the successor organization to DPIC namely, the Ontario Energy Marketers Association ("OEMA"). In addition to the code of conduct, DPIC and OEMA variously prepared a customer bill of rights and an addendum to the OEMA code for agent billing, collection and transportation service ("ABC-T Service"). The addendum was Board-approved in early 1997.
190. The Code and ABC-T Service addendum, and its subsequent approval by the Board, permitted gas marketers to identify themselves, on the utility invoice, to their low volume customers as their natural gas commodity supplier. In addition, gas marketers were permitted to put their price for the natural gas purchased by a low-volume customer under ABC-T Service as a separate item on the utility bill sent by one of the two utilities. The utility then collected the money on behalf of the gas marketer. This alleviated the need to have two bills and made the marketplace more efficient, transparent and less disruptive to the consumer.
191. During the fifteen years since the Western Accord was reached, there has been considerable market experience and success in the natural gas competitive market. This success has given the market participants, the Board and the government a background of experience that is necessary to consider before any changes are made in the marketplace or are made in the regulation of the gas distribution utilities.

4.3.3.2 DISCUSSION IN SUPPORT OF ALTERNATIVE A

192. In the view of some members of the Task Force,⁴ the overriding issue in the context of recognizing a transfer from one retailer to another is whether a distributor should be entitled to refuse to process a consumer's STR if a consumer is currently under contract with a retailer. Under the current system, distributors have not allowed consumers to transfer between retailers. The distributor's refusal to transfer a consumer is sometimes characterized as "enforcement" of an existing contract. This characterization is inaccurate in that, except in extraordinary cases, contracts are not "enforced" by refusing to allow parties to break them. Rather, courts "enforce" contracts by allowing parties to break their contracts and only requiring them to pay damages for breach of contract. In other words, contractual remedies are typically limited to damages, not specific performance.
193. Seen this way, a distributor's refusal to allow a consumer to change retailers goes well beyond enforcing a contract. Rather, this practice involves the use of monopoly distribution services as a means of preventing consumers from freely choosing their suppliers. In other words, access to distribution services are being used as a means of

⁴ CEED, Collingwood, ECNG, Kitchener.

preventing consumer mobility. A distributor's refusal to allow consumers to break their contracts is unique to the Ontario gas supply industry, and has led to restrictions on consumer mobility to an extent not present in other industries.

194. It is argued in the following discussion of Alternative B that this approach does not support "sanctity of contract", will lead to "litigation and resulting chaos in the market place", and is "a detriment to the public interest". However, the contrary is the case. A rule which directs distributors to refuse consumers' request to transfer between retailers, or return to system gas, effectively prevents consumers from exercising their common law and contractual remedies. Such a rule is an unprecedented interference with the law of contract. It shows no respect for the sanctity of contractual rights. With respect to the threat of litigation, it should be borne in mind that adopting a rule which prevents consumers from "firing" a retailer is also likely to be litigated and will bring the industry into disrepute. It is inconceivable that courts of law, or the court of public opinion, would tolerate a rule that leaves consumers with no choice over the ability to replace their supplier.
195. It is also suggested in the following discussion of Alternative C that different rules should apply to different consumers, so that new consumers should be allowed freedom to choose suppliers, while existing consumers should not. This proposal effectively creates two classes of consumers, those with rights and those without. It is discriminatory, illegal and unconscionable. It is also extremely difficult to enforce this distinction. A distributor will somehow have to determine the category in which a customer falls. It appears that a distributor will have to rely on an REM, not a consumer, to advise whether a consumer is "locked up" or free to leave. This leaves consumers in a very vulnerable position. Furthermore, it creates an incentive to "lock up" customers prior to the rule coming into effect and does not include any transitional deadline or any means by which consumers are informed of when their contracts expire. As a result, this proposed "compromise" is unworkable and unfair to consumers. The Board should not allow parties to use consumers' rights as a pawn to be negotiated in a private negotiation between parties.
196. The rules for processing service transfer requests and their impact on customer mobility should be informed by policy goals respecting the development of a fully competitive market for natural gas in Ontario. The Board has addressed the necessary conditions for the transition to competition on a number of occasions. For example, in its *Report on the Ten-Year Market Review*, the Board listed these conditions as follows at p. 9:
- better price discovery; full transparency; sufficient, reliable market information;
 - wider range of reliable supply choices; choice of pricing options;
 - sufficient number of strong competitors;
 - ability to switch suppliers;
 - quality customer service;
 - unbundled services, fair allocation of costs, ability to rebundle;
 - equal access to monopoly services; and
 - standard rates for all monopoly services.

197. It is important to address customer mobility in the context of the goal of developing competition in the sale of the commodity because customer mobility is part of a larger policy vision of facilitating competition: Competition requires consumer mobility to accommodate the consumers' ability to choose to move from system gas to a retailer, move between retailers, and move from retailers back to the system. Achieving consumer mobility carries with it costs for REMs, consumers and distributors. The question is therefore whether the goal of developing competition is worth the costs. To answer that question, it is necessary to be clear on what these costs are, and how they can be addressed in a fair and equitable manner.
198. The foregoing discussion of Alternative A identified the costs which customer mobility imposes upon REMs. Those costs are real, and should not be ignored. REMs made supply arrangements on the basis of their contractual expectations. These contractual expectations were reasonable in light of the utility rules at that time. If these rules are to change, there should be good reasons to justify the frustration of these expectations.
199. Consumers will also face additional costs under a pro-mobility regime. If REMs cannot be assured that their contracts will be enforced by utilities, other mechanisms will have to develop to hedge the risk of customers' breaking their contracts. These mechanisms could include increased security requirements, exit fees, or higher supply offers which take into account the risk of breaking contracts and the higher cost of enforcement.
200. Distributors will also face increased costs to accommodate customer mobility. The increased frequency of customer switching will require REMs to respond to a changing customer base. Distributors will therefore be required to provide REMs with operational flexibility to meet these demands. For example, flexibility will be required in offering wholesale distribution services that allow REMs to bill customers for all services which were previously supplied by distributors, including transmission, storage and distribution. Flexibility will also be required in the provision of transmission, storage and distribution services to allow REMs to meet their changing customer base. If REMs are not provided with this flexibility, consumer mobility will be frustrated.
201. It should be noted that there are at least two differences in the gas and electricity sector that are relevant with respect to customer mobility. These differences may justify different treatment for gas and electricity.
202. First, the retail gas sector has been operating for many years. Gas REMs have taken on physical and contractual supply arrangements which will be threatened by increased customer mobility. The commercial harm caused by the effect of customer mobility on these supply arrangements is somewhat comparable to stranded costs faced by utilities with the introduction of competition. Having said this, customer mobility is such an important feature in facilitating competition that utility services should not be used to interfere with a customer's choice of REM unless a customer has clearly indicated an intention not to transfer. Some members of the Task Force believe that the RSC could have more clearly articulated this principle in its treatment of written authorisation to cancel a customer's STR request. It should be made clear that this authorisation

relates to specific requests, and does not provide REMs with a generic right to cancel STRs.

203. Second, the operational flexibility which customer mobility imposes on gas utilities is uniquely attributable to persons operating in the gas sector. Electricity distributors do not manage upstream assets in the wholesale market on behalf of system customers. Those assets are managed by the Independent Market Operator (“IMO”). The IMO is responsible for the financial and technical operation of the wholesale market to ensure that electricity travels from the generator to the electric distributors in a fair and efficient manner. Thus, an electricity distributor does not have any responsibility over the transportation of electricity in the wholesale market to the “city gate” for retail distribution. Rather, an electricity distributor functions as a billing service for the IMO, which is responsible for the management of upstream physical and commercial operations in the wholesale market. As a result, when a customer transfers from the SSS offered by an electricity distributor distributor to an electricity retailer (or when customers transfer between electricity retailers), the upstream obligations of the distributor remain unchanged; the distributor merely forwards the IMO’s bill for upstream services to the appropriate retailer.
204. However, the gas sector has so far operated without an IMO. Gas distributors have the ability to both participate in wholesale markets and own assets which will be available for customers to operate in wholesale markets, either directly or through an REM. The absence of an IMO in gas leaves the management of upstream assets for SSO customers under the control of gas distributors. Thus, unlike an electrical distributor, a gas distributor does provide management of upstream services to its SSO customers. It arranges for the transportation of gas from an extra-provincial supplier, and the delivery and storage of gas in Ontario. When a customer moves from the gas SSO to a REM (or when customers transfer between REMs), the new REM will manage upstream assets on behalf of the customer. In other words, the transfer of gas customers involves a concomitant transfer of responsibility for managing upstream assets. Unless REMs are entitled to operational flexibility in the management of upstream assets, providing customer mobility at the burner tip could be effectively nullified.
205. As indicated, both of these differences could justify different treatment for customer mobility in electricity and gas. However, it is also possible for the Board to endorse customer mobility in these rules while taking account of these differences in other Board forums.
206. For example, the fact that gas REMs may face “stranded costs” with the transition to a customer mobility regime that are not faced by electricity retailers may be addressed through accommodations to gas REMs’ licences or code of conduct. The Task Force leaves it to REMs to bring any specific applications they consider necessary.
207. Similarly, the requirements respecting upstream asset management by gas distributors may be addressed in their rates cases.

208. In light of the fact that these other forums exist to address the need to accommodate the differences in gas and electricity suggests that these differences do not have to be accommodated in these rules.

4.3.3.3 ALTERNATE DISCUSSION IN SUPPORT OF ALTERNATIVE A

209. Several members of the Task Force⁵ support alternative A but question the relevance, value and appropriateness of a number of energy market characterizations advanced in the preceding discussion section.
210. The issue to be addressed on this point is “What rules should natural gas utilities follow in order to proceed with consumer service transfer requests from one competitive retailer to another”. The options identified by the Task Force are:
- maintain the transfer provisions currently in place;
 - adopt the standard set out in the Retail Settlement Code for Electricity;
 - adopt a standard that is a variant of the RSC; and
 - grandfathering.
211. The preceding discussion notes that there will be “Costs for Distributors to Accommodate Customer Mobility” and within this context jumps to the conclusion that distributors will be required to provide REMs with operational flexibility such as allowing REMs to bill customers for all services and that customer mobility will be frustrated absent operational flexibility, e.g. transmission, storage, flexibility for REMs. The relevance of these statements under the discussion topic, “Cost for Distributors to Carry out Customer Transfer Requests”, is not apparent. In the same vein the distributors disagree with the view that there is a linkage between asset flexibility and the protocol to be followed by the distributors in processing transfer requests. The distributors also recognize that the use of upstream assets have been affected by customer choice, eg. the development and implementation of services such as under bundled T service, and that there will be further impacts as a result of unbundling.
212. The preceding discussion of the question of service transfer requests compares the electricity and gas sectors and the intended role of the IMO (independent market operator) in the Ontario electricity sector. Although the comparison, in the distributors’ view, is not directly related to the topic, to complete the understanding it is important to note that there are fundamental differences between the sectors that account for different structural requirements. Until very recently the electricity sector in Ontario was largely vertically integrated from generation (production/supply) to transmission to distribution; and OPGI generation still comprises 95% of the generation. Additionally, OPGI and Hydro One are affiliates whereas in the gas sector the many producers are not affiliates of the transmitters and distributors. Electricity organizational re-structuring is underway and the market is awaiting open access slated to occur in November 2000; and supply, i.e. generation, single sourcing will take years to diversify. These emerging market conditions warrant an IMO to ensure price discovery and optimal and reliable electricity dispatching as the previous vertical provider is split up. IMOs are not without

⁵Enbridge, NRG, Six Nations, Union.

costs and it would be expected that the economic benefits from having an IMO will exceed its costs. Unlike the electricity sector, in the natural gas sector market participants have had access to a number of different supply basins and supply routes to the Ontario market for a number of years. There is a robust competitive supply market comprised of hundreds of gas producers. Entrants are able to make upstream transportation arrangements to meet their customers' requirements and can access storage services.

213. Also, in the preceding discussion the electricity distributor's commercial role and obligations are minimized. The distributor is described as providing a billing service for the IMO. On the contrary, the electricity distributor is commercially and legally accountable to pay the IMO for the transmission and any uplift services the distributor has received from Hydro One Networks and other providers. It is the IMO that is providing "billing". Section 4.1.1 of the Market Rules for the Ontario Electricity Market states that "*The IMO shall collect from market participants, and distribute to transmitters, transmission service charges approved by the OEB*".
214. The distributors support recommendation 4.4A, but do not agree with reasons set out in the preceding discussion section. The distributors believe that the processing of service transfer requests should be as cost-effective as possible and ideally would not involve the utility in a "policing" role. Alternative A would require the distributors to act as policemen. Alternative B requires notification responsibilities, i.e., a quasi-policing role and is a very cumbersome process. Other alternatives that are more cost-effective would either remove the consumer notification requirement (e.g., the processing of service transfer requests as implemented in Georgia) or place the consumer notification requirement on the marketer requesting the transfer. In this regard, the distributors note that the differences between the RSC provisions and Alternative B will lead to the consumer being notified by the existing marketer. If the Board decides to implement Alternative B, it should consider removing the obligation on the distributor to notify the consumer, since the consumer will already be notified by the marketer.
215. There will be significant costs in implementing Alternative B, including changes in computer systems, setting up notification processes and retraining the staff who answer consumer and marketer inquiries.
216. The distributors recognize that implementing the RSC service transfer rules (or the variant in Alternative B) would be a significant change in the rules that are currently in place. However, as the Board is aware, this issue has been discussed extensively over the last four years, including the Working Group and the Market Design Task Force. Therefore, the distributors believe that, if wholesale distribution service were made a pre-condition for moving on this issue, further delay would be created, which is not warranted.
217. The distributors also disagree with the view that there is a linkage between asset flexibility and the protocol to be followed by the distributors in processing service transfer requests. The issue being addressed is a determination of what rule the

distributor should follow, i.e. degree of policing, when it receives a request to transfer a customer from one commodity supplier to another.

4.3.3.4 RECOMMENDATION #4.4A

218. The Rule should adopt the Service Transfer Request provisions set out in s. 10.5.4 of the Retail Settlements Code with 2 modifications. These modifications are:
- The addition of the proviso that a specific written authorisation from a consumer to terminate the transfer must be dated no earlier than the date that the current REM is informed of the transfer request; and
 - The removal of the requirement that when there is an existing retailer for the distributor to notify the consumer that the transfer request is on hold, pending clarification as to which retailer will supply the consumer.
219. The Rule should specify when this recommendation comes into effect, which should be no later than April 1, 2001.

4.3.3.5 DISCUSSION IN SUPPORT OF ALTERNATIVE B

220. Throughout the period subsequent to the signing of the Western Accord, a successful balance between competing interests of the various market participants, including the public, has been achieved. The present balance for existing customers and REM's is efficient, fair and effective in the broad public interest and therefore in the interests of the various market players, especially the low-volume customers.
221. In the natural course in a partially regulated retail natural gas marketplace, any party proposing a change has the burden of showing good market reasons why the changes should take place. Additionally, the party should demonstrate that there are no unintended effects which will cause a negative impact in the marketplace. The sale of natural gas itself is now a partially regulated competitive market. To the extent that regulation does not exist, it must be carried out in the public interest. It is this public interest that must be considered when changes are being considered in the regulatory framework.
222. Any changes in the gas marketing regime should be reviewed in accordance with the following principles:
1. the changes must be considered in the context of the history, experience and present market conditions in the natural gas competitive market;
 2. any party suggesting a change in the rules governing natural gas marketing has the burden to illustrate why the change is necessary and what consequences will be visited upon the marketplace which presently exists;
 3. any changes must take into account all market interests and balance those competing interests in a fair, just and reasonable manner.
223. Some of the important items that should be considered in light of the above principles in order to maintain a competitive marketplace in the public interest include the following matters:

1. security of supply should be maintained;
 2. competitive pricing for natural gas should be encouraged;
 3. pricing for transmission, distribution, storage and balancing should be just and reasonable;
 4. market players should have a reasonable opportunity to make profits in a competitive environment;
 5. any rules for the regulation of the market participants in a competitive market should be stable, easy to understand for both sophisticated and unsophisticated persons;
 6. simple procedures should be in place for industry players to maintain low costs;
 7. there should be recognition of the sanctity of contracts, including contracts between producers and marketers and between marketers and customers, including both existing contracts and future arrangements; and
 8. the rules governing contracts should create an atmosphere where there is minimal potential for conflict in the courts for the resolution of those contracts.
224. It is obvious that some of the above principles will compete with one another. As always, a balance must be sought in the public interest.
225. The question is whether changes to existing transfer provisions are desirable at this time, in light of present practices and in light of the existing competitive environment.
226. Existing low-volume consumers have been protected by the following rights with respect to natural gas contracting:
- a consumer, having accepted a gas marketer supply contract, had a ten-day rescission right from the signing of any contract;
 - many consumers received a letter from the distributor which sought to confirm that the consumer wished to switch its gas supply from the distributor to the gas marketer, giving him added understanding and an opportunity to reconsider his or her decision; and
 - upon receiving his first bill setting out the new supply arrangements, the consumer had a second right to cancel the contract within thirty days of receipt of the bill, without any damages;
 - consumers have rights by virtue of legislation under the Consumer Protection Act (Ontario), the Business Practices Act (Ontario), the Competition Act (Canada) and government orders.
227. These rules have been developed and codified over the last decade. The Code of Conduct for Gas Marketers of March 2, 1999 and distributor policies reflect these conditions and was arrived at after careful consideration by the industry players, Board staff and the Board itself. The consumer has a number of benefits from the existence of these rules. Changes to adopt Section 10 of the Retail Settlement Code for Electricity would unnecessarily destabilize and complicate the market for natural gas sales in the Province especially for existing consumers.
228. Consumers have the following benefits from the existing transfer rules.

- The consumer has a stable contract of supply (for a variety of terms of up to five years). A stable contract for supply is a benefit to the consumer creating stability in a broad market.
- Stable prices over fixed contract periods benefits not only the consumer, but also the marketers, the utilities, the Board and the government by avoiding short-term price fluctuation for low-volume consumers. This is a highly desirable principle in a partially-regulated marketplace.
- The consumer has the right to cancel the contract at the early stages and continues to have the right to call on the distributor as the supplier of last resort, adding to his security.
- Price competition remains a marketplace fact at the end of each contract period and a consumer has the ability to assume more risk by contracting for shorter periods and increasing his opportunity for competitive prices.
- The rules for transfer are simple and they avoid the unnecessary and unreasonable competition for customers that is inherent in Section 10 of the Retail Settlement Code for Electricity.

229. Section 10.5.4 of the Retail Settlement Code for Electricity contemplates a different methodology for customer transfer from one competitive retailer to another in the marketplace for electricity. The Section provides, in part, as follows:

“An STR involving a transfer from one competitive retailer to another shall be submitted by the retailer to whom the consumer will be transferred if the process is completed. A distributor shall notify the current retailer that a transfer request has been received and wait ten business days before continuing transfer processing. If no response is received from the current retailer, the request will be processed. The current retailer may request an additional delay of ten business days commencing from the conclusion of the initial ten business-day period, to allow time for the current retailer to inform the consumer and/or the new retailer that the consumer has a valid contract with the current retailer. Upon receiving a request from the current retailer for an additional ten business-day delay, the distributor will provide notice to the consumer indicating the reason for delay. If, at the end of the second ten day-business period, a distributor has not received written authorization from any party to cease processing, a transfer request shall be completed.”

230. The Code does not support sanctity of contract between retailer and a consumer. This is especially true for contracts which were entered into prior to the enactment of the Code. This provision will therefore lead to disruption in the marketplace where either a consumer or a marketer will be compelled to seek to enforce its written contracts. These contracts are small and numerous and could lead to a proliferation of litigation and resulting chaos in the marketplace. It will diminish confidence in the gas supply system and be a detriment to the public interest.

231. It should also be borne in mind that gas marketers will not likely have the opportunity to relinquish its obligation to supply in a rising market. In such a case, competition for existing long term consumer contracts will likely be restricted to short term contracts and the flexibility to purchase gas under long term contracts may disappear. Neither of

these results is conducive to a stable marketplace which deals with low-volume customers who by definition may be unsophisticated and need to be provided with reasonable protections against unreasonable price instability.

232. The following problems occur in a regime where unrestricted switching is contemplated between marketers during the existence of a contract of supply in the low-volume marketplace.
- In a market where natural gas prices are rising, the marketer will be induced to encourage the consumer back to system supply so that it can profit from the rising price. The impact on the consumer is similar to the present impact of rising gasoline prices due to OPEC action.
 - In a market where natural gas prices are falling, the consumer will be induced to switch to another marketer in the possibly mistaken belief that the Government of Ontario and the OEB encourages such a switch and without understanding that he may be breaching his contract.
 - Switching in the face of existing contracts encourages conflict and court action to enforce existing contracts. Instability and conflict is not a proper set of principles upon which to base a market for natural gas.
233. The present transfer provisions are effective, fair, balanced and in the interests of both a stable marketplace and the consuming public. The proposed Retail Settlement Code for Electricity, if adopted into the natural gas marketplace, will cause a decrease in the security of supply, reduced competition in the marketplace, unstable pricing, possible bankruptcy of marketers, add complications to an otherwise transparent and simple regime and encourage conflict in the marketplace. Having regard to the history, experience and present market conditions in the natural gas competitive marketplace, there is no reason to justify these changes. If the changes have some or all of the negative impacts listed above, then the principle of unintended consequences will be visited upon the well-functioning marketplace as it presently exists. The present transfer provisions should therefore remain unchanged.

4.3.3.6 RECOMMENDATION #4.4B

234. The present transfer policies employed by the distributors should be incorporated into the Rule.

4.3.3.7 DISCUSSION IN SUPPORT OF ALTERNATIVE C

235. Alternative C involves retaining the existing transfer procedure for all contracts that are entered into prior to the Rule coming into force. The reasons for retaining the status quo that are set out in the previous section apply equally to option of retaining the status quo under grandfathering.
236. With respect to the assertion made in the discussion of Alternative A that the grandfathering option would effectively create two classes of customers, those with rights and those without, it should be noted that the comment must be taken in the

context of the environment in which the contracts were or will be entered into. Customers currently under a supply contract, entered into these arrangements by exercising their rights and having the freedom to arrange gas supply under the existing set of rules. The suppliers also entered into these arrangements with the same understanding of the market rules. To suggest that the premise in which the contracts that are currently in place limited the rights of the consumer is inaccurate. Going forward, customers retain these same rights and freedom to choose the suppliers but under a different set of market rules. In this new environment the suppliers will have the ability to arrange their offers to address the new market rules and perhaps limit their offers to short term arrangements.

237. It was also stated in the discussion of Alternative A that it would be difficult to enforce this distinction and that the distributor will have to rely on the REM to advise whether a consumer is “locked-up” or free to leave. As the distributors have stated the process is not difficult to adopt, in fact the process is somewhat in place right now under the current environment.
238. With respect to the distributor relying on the REM to advise on the status of the consumer, this procedure will in some form or another remain in place in the future due to the nature of the relationship between the retailer and its customers. It would seem practical for the REM to provide this information given the fact that they are required to retain contract information and the reality is that most residential customers rely on their retailers for this type of information as well. This concept that the customers are left in a vulnerable position is unfounded.
239. The distributors, Union Gas and Enbridge Consumers Gas, recognized that implementing the RSC service transfer rules would be a significant change in the rules that are currently in place. Some retailers (OESC and Cengas) proposed and some LDCs (Union Gas and Enbridge Consumers Gas) did not oppose as a compromise if consensus was reached by the Task Force, that the status quo (Alternative A) remain in place for existing arrangements until the expiry of the agreement with new rules (Alternative B) applying on a going-forward basis (Alternative C).
240. On balance the interests of all market participants would best be met by a Rule which would provide a grandfathering provision for existing contracts (i.e. those in place prior to the date on which the Rule comes into force). This approach would ensure the continuation of existing customer benefits for the remaining term of their contracts, ensure minimum disruption to the marketplace, including existing supply contracts, and provide for increased mobility for new contracts and renewals. This proposal would achieve a fair and effective balance for all market participants.

4.3.3.8 RECOMMENDATION #4.4C

241. Allow grandfathering, with recommendation #4.4B being adopted for all contracts in place as of the date the Rule comes into force, and recommendation #4.4A for all contracts entered into after the date the Rule comes into force.

4.3.3.9 POSITIONS OF PARTIES

- 242. **Supporting Alternative #4.4A:** CEED, Collingwood, ECNG, Enbridge, Kitchener, NRG, Six Nations, Union.
- 243. **Supporting Alternative #4.4B:** None.
- 244. **Supporting Alternative #4.4C:** DEML, OESC.
- 245. **No position:** IGUA.

4.3.4 STR Confirmation Procedure

- 246. **Issue:** What procedure should be used for confirming to the REM the start date and arrangements of STRs?
- 247. **Options:** The options considered by the Task Force were retaining the status quo and streamlining procedures to shorten the time lines.

4.3.4.1 BACKGROUND:

- 248. Currently the procedure for Enbridge Consumers Gas and Union Gas requires the retailer to forward their final submission (or re-submission) to the utility at least 60 days prior to the intended flow date.⁶ Unlike the electricity market where the requested start date can occur at the next scheduled meter read date, the gas market schedules the start date to occur on the first day of each month subject to the 60-day notice period.
- 249. Prior to the intended flow date the retailer will receive from the distributor a contract along with schedules to be executed by both retailer and distributor. The contract will outline the terms and conditions of the arrangements including the start date and the schedules will identify the retailer's customers including account number, historical consumption, service address, name and billing address.

4.3.4.2 DISCUSSION

- 250. The 60-day notice period has been the minimum requirement for the two largest utilities to process the necessary requests. Some suggestions were made to reduce the timeline requirement to 30 days for retailer requests. Timeline comparisons to the electricity market may not be appropriate due to the different billing cycles of each electricity distributor as well as the option for the retailer to opt for a special meter read or to agree upon an estimated read.

⁶ See Background in Section 4.3.2 STR Information Requirements for a description of the submission process.

4.3.4.3 RECOMMENDATIONS #4.5

251. The timing respecting the processing of STRs should be addressed in a services agreement. The goal of that agreement should be to establish an expeditious time frame required to process STRs. Ideally, STRs received prior to a reasonable cut-off date would take effect on the 1st day of the month following the completion of the STR notification period. That agreement would also acknowledge that the meter read for the 1st of the month may be an estimate at the time of processing.

4.3.4.4 POSITIONS OF PARTIES

252. **Supporting Recommendation #4.5:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
253. **No Position:** IGUA.

4.4 Transfers from SSO to Retailers

254. **Issue:** What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from system supply (or the standard service offering) to a competitive retailer?
255. **Options:** The Task Force viewed the options as being parallel to the retailer-to-retailer transfers, but simplified in reflection of the fact that the customer on system supply is supplied by the distributor that is processing the STR.
256. The foregoing discussion respecting transfers between retailers in Alternative B is also applicable to transfers from SSO to Retailers. In both cases, the main issue is how customer mobility may be accommodated. Also in both cases, there will be costs to providing this accommodation. Again, other forums, such as utility rates cases, are available to address these differences, and they do not have to be accommodated in these rules.

4.4.1 Recommendation #4.6

257. The Rule should adopt the Service Transfer Request provisions set out in s. 10.5.3 of the Retail Settlements Code.

4.4.2 Positions of Parties

258. **Supporting Recommendation #4.6:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
259. **No Position:** IGUA.

4.5 Transfers from Retailers to SSO

260. **Issue:** What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from a competitive retailer to system supply (or the standard service offering)?
261. **Options:** The Task Force viewed the options as being parallel to the retailer-to-retailer transfers, but simplified in reflection of the fact that the customer returning to system supply would be supplied by the distributor that is processing the STR.
262. The foregoing discussions respecting transfers between retailers are also applicable to transfers from Retailers to SSO. In both cases, the main issue is how customer mobility may be accommodated. Also in both cases, there will be costs to providing this accommodation. Again, other forums, such as utility rates cases, are available to address these differences, and they do not have to be accommodated in these rules.
263. Section 10.5.5 of the Retail Settlement Code for electricity sets out the following procedures for transfers from a retailer to SSS.

An STR involving a transfer from a competitive retailer to SSS may be submitted either by the current retailer or the consumer.

If the STR is submitted by the current retailer, a distributor shall notify the consumer that a transfer is taking place and the scheduled transfer date but the consumer may not unilaterally terminate this request.

If the STR is submitted by a consumer, a distributor shall notify the current retailer and delay processing ten business days unless the current retailer responds that no delay is necessary. If, during the ten-day waiting period, a distributor is notified, by way of written authorization, by the consumer or the current retailer (acting upon specific written authorization from the consumer to terminate the transfer) that processing should be terminated, the distributor shall cease transfer processing. A distributor shall notify the retailer and the consumer that the transfer will not be completed.

264. The RSC describes two situations under a competitive retailer to SSS transfer request, i.e. a request from a consumer and a request from a retailer. It should be noted that the modification (to the RSC recommendation), that specifies the dating of a transfer cancellation, only applies to transfer requests from customers. Per the RSC, a consumer cannot unilaterally terminate a retailer's transfer request.

4.5.1 Recommendation #4.7A

265. It is recommended that these rules adopt the service transfer request provisions set out in s. 10.5.5 of the Retail Settlements Code with one modification.

- The addition of the proviso that a specific written authorisation from a consumer to terminate the transfer must be dated no earlier than the date that the current REM is informed of the transfer request.

266. The Rule should specify when this recommendation comes into effect, which should be no later than April 1, 2001.

4.5.2 Recommendation #4.7B

267. The present transfer policies employed by the natural gas utilities should be incorporated into the Rule.

4.5.3 Recommendation #4.7C

268. Allow grandfathering, with recommendation #4.7B being adopted for all contracts in place as of the date the Rule comes into force, and recommendation #4.7A for all contracts entered into after the date the Rule comes into force.

4.5.4 Positions of Parties

269. **Supporting Alternative #4.7A:** CEED, Collingwood, ECNG, Enbridge, Kitchener, NRG, Six Nations, Union.

270. **Supporting Alternative #4.7B:** None.

271. **Supporting Alternative #4.7C:** DEML, OESC.

272. **No position:** IGUA.

5 PRUDENTIAL REQUIREMENTS

273. **Issue:** What is the allowable security that a distributor may require of a retailer and a consumer?

274. **Options:** The Task Force identified three options:

1. No security requirement allowed
2. No rules regarding what security distributors can demand
3. Maximum security specified by the Distribution Access Rule

5.1 Background

275. With the existing distributor consolidated billing arrangements under ABC-T service in place in the Ontario natural gas industry, it has not been necessary to place specific security requirements on retailers. Under ABC-T, the distributor is responsible for consumer bad debts, for both the commodity and its delivery and the structure of these

arrangements is such that the distributor is not exposed to significant amounts owing from retailers.

276. As unbundling progresses in the industry, any availability of alternative billing arrangements, such as split billing or retailer consolidated billing, may necessitate security requirements to be imposed on retailers taking service from distributors.
277. The Retail Settlements Code for the Ontario electric distribution industry sets prudential requirements applicable between distributors and retailers. The Code can be looked to as a potential model for the gas industry.
278. Section 50(4) of the Public Utilities Act states that any utility, "before supplying any public utility, to any person or to any building or premises, or as a condition of continuing to supply the utility, may require any consumer to give reasonable security for the payment of proper charges therefore or for carrying the public utility, into the building or premises".

5.2 Discussion

279. In the electric industry distributors are invoiced by the IMO for all energy transmitted, including related transmission and uplift costs, to the distributor's system regardless of whether that energy is retailed by a retailer or by the distributor. Therefore the distributor is exposed financially for the cost of all energy transported for retailers, as well as for the cost of delivery of that energy.
280. In the gas industry there is no IMO and no settlement process as needed in the electricity industry. In the gas industry retailers may contract with producers and transmitters directly. The distributor then takes custody of the retailers' gas once it arrives at the distributor's system but is not required to advance payment for that gas to the producer or to upstream transmission companies for its transmission to the distributor. This is a fundamental difference between the two industries which warrants different treatment of the industries. Under existing ABC-T arrangements, the consumer payable risks are reflected in the ABC-T service fees paid to the distributor by the retailer. Non-payment risk exposure to the distributor arises from Balanced Gas Accounts. Since a retailer delivers the Mean Daily Volume, the distributor is at risk for the over- or under-delivery of a retailer relative to deliveries to that retailer's customers. If a retailer has under-delivered relative to consumption, at a price below current market prices, the distributor is at risk for the difference in prices multiplied by the under-delivered volume. Similarly, if a retailer has over-delivered at prices above market prices, the distributor is at risk for the differences in prices multiplied by the over-delivered volume.
281. If a situation involved split billing, where a retailer billed for all of the services they provided the retail consumer, and the distributor billed for the delivery services it provided to the retail consumer, then security need only be based on any unbundled storage and transportation services contracted for directly by the retailer.

282. In a situation of retailer consolidated billing, the security required would need to be based on any unbundled storage and transportation services contracted for directly by the retailer, plus all delivery charges for the retail consumers served by the retailer.
283. With respect to the security that could be required of a customer, it was noted that it was reasonable that the distributor would continue its ongoing business practices such as the requirements for deposits.

5.3 Recommendation #5.1

284. Distributors should be permitted to require security from retailers as a protection against payment default by the retailer.
285. Distributors should only be permitted to apply security requirements according to a published policy. The policy would have to be applied in a non-discriminatory manner such that retailers of comparable credit risk will be subject to similar security requirements.
- (a) Distributors, at the discretion of the retailer, should accept the required security in the form of an irrevocable letter of credit, surety bond, cash deposit or lock box arrangement. If a lock box arrangement is selected, the distributor and the retailer shall agree on the financial institution to be used.
 - (b) Distributors, at their discretion, should be able to accept bond ratings or credit ratings in lieu of specific security, provided that retailers with similar ratings are treated in a similar manner.
 - (c) If security is provided in the form of a cash deposit, the distributor should pay interest at the lesser of, the interest paid on consumer deposits, or the prime rate charged by the distributor's bank. A retailer should be able to require that cash deposits be held in specified low-risk interest bearing accounts; however the distributor shall have exclusive access to the funds posted for security.
286. The maximum security required should not be more than the amounts set out below:
- Distributor consolidated billing: The maximum security should be the maximum anticipated exposure under the banked gas accounts ("BGA(s)") in accordance with the provisions of the relevant approved rate schedules.
 - Split billing: The estimated charges for storage and transportation contracted directly by the retailer from the distributor for the month during which the bill is expected to be the highest, multiplied by 2.5.
 - Retailer consolidated billing: (i) the sum of the amounts for delivery service only, calculated for each consumer class, of the number of consumers in the class served by the retailer, multiplied by the estimated average delivery charges for the class for the billing period forecast to be the highest for the year, multiplied by a billing period weighting factor. The bill period weighting factor shall be 2.5 for monthly billings, 1.75 for bi-monthly billings, or 1.5 for quarterly billings plus (ii)

the estimated charges for storage and transportation contracted directly by the retailer from the distributor for the month during which the bill is expected to be the highest, multiplied by 2.5.

287. A distributor should be permitted to update periodically the calculation of the security required under the above options. A retailer should be able to require a distributor to update periodically the calculation of the security requirement. If the required security has increased by more than 10 percent over the amount currently in place, the retailer shall meet the new requirement within 20 business days. If the maximum amount has fallen below the amount of security in place by more than 10%, the distributor shall notify the retailer immediately, and the retailer may modify its security arrangement in light of the lower requirement. If security is by way of a cash deposit, the distributor shall, if requested by the retailer, return any excess security held to the retailer within 20 business days of the date on which the new estimate was determined.
288. In the event of default by the retailer, a distributor should not access the funds available through the relevant security provision before a period of five business days has elapsed from the date payment was due. The distributor should notify the retailer, the day after a payment was due, but not received, that the payment was not received and work to remedy the situation with the retailer. If the account remains unpaid after 10 business days, and the parties have not agreed on a remedy, the distributor may notify the retailer's consumers that they will be returned to system gas supply according to a schedule specified by the distributor unless those consumers elect to be served by an alternative retailer. If the distributor receives an STR that identifies an alternative retailer prior to switching the consumer to system gas supply, the distributor should switch the consumer to the new retailer rather than to system gas supply.
- During a default period, a distributor should not retain any revenues collected by the distributor on behalf of the retailer as a security unless the magnitude of the security accessible is insufficient to cover the amount of the default.
 - A distributor should be permitted to charge a retailer interest on any overdue amounts at a rate equal to the prime rate charged by the distributor's bank plus 2 percent per annum.
289. Distributors should be permitted to require security from a consumer as a protection against payment default by the consumer. Distributors should only apply security requirements according to the distributor's policy.

5.4 Positions of Parties

290. **Supporting Recommendation #5.1:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
291. **No Position:** IGUA.

6 BILLING

292. Section 6.1 of this chapter provides the views of the Task Force on the billing options that distributors should be required to accommodate under the Rule. Section 6.2 sets out the information that distributors should be required to provide to retailers in order to facilitate retailer consolidated billing.

6.1 Customer Billing

293. **Issue:** What should be the billing options?
294. **Options:** Three possible billing options were considered by the Task Force: distributor consolidated billing, retailer consolidated billing and split billing.

6.1.1 Background

295. In the early days after the 1985 Halloween Agreement, the only option for billing of the purchase of the natural gas commodity by brokers or suppliers was the split bill option, i.e. the customer received a separate bill from the broker or supplier for the services they provided and received a bill for distribution services, e.g. T-service, from the utility. This option is still used for many large industrial customers.
296. When the buy/sell mechanism was developed, there was no impact on billing arrangements. The end-use consumer was billed by the utility at the same rates as system gas customers in the relevant rate class. The broker's name was not shown on the bill initially, but starting in 1997, a line was added to the bill showing the broker's name and telephone number.
297. ABC-T Service was developed so that brokers could bill, through the utility's bill, prices other than the buy/sell reference price. The major gas distributors, Enbridge Consumers Gas and Union Gas, are obligated under their respective Undertakings with the Government of Ontario to seek the OEB's approval to continue to offer ABC-T service as a non-distribution service by the utility. Both utilities have applied for such approvals and have received them. The Undertakings do not apply to other Ontario gas distributors.

6.1.2 Discussion in Support of Alternative A

298. The Retail Settlement Code for electricity prescribes, for both distributors and retailers, the following billing options:
- Retailer-consolidated billing
 - Distributor-consolidated billing (rate ready)
 - Distributor-consolidated billing (bill ready)
 - Split billing

299. The Retail Settlements Code requires distributors to establish systems that enable them to accommodate offering these billing options to consumers. The RSC does not allow distributors to frustrate this choice by imposing a billing relationship on a consumer where a consumer chooses otherwise.
300. This approach is consistent with the expectations for the gas sector for several years. 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)*
301. 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. Union formally resiled from this position on April 27, 2000. It is not clear when Enbridge changed its position.
302. The mandatory billing options which must be provided in the electricity sector are therefore consistent with what was, until very recently, the long held industry consensus in the gas sector.
303. Electricity consumers will be given a range of billing options in the market. Those options should also be available to gas customers. Otherwise, there will be a lack of symmetry between these two sectors of the energy market. Furthermore, movements towards an efficient convergence of these two sectors will be seriously frustrated if electricity and gas services cannot be included on a common consolidated bill.
304. For the split bill, for large consumers, no changes to the current arrangements would be necessary. For smaller consumers, the utility would be required to provide the consumption information necessary for the marketer to calculate its bill for the commodity. These components are similar to those required to be provided by the Alberta EUB in its decision on ABC-T in Alberta – meter readings; information as to whether meter readings are actual or estimated; and information regarding the heat content of gas. The EUB decision also requires the utility to provide the marketer with customer information, including name, address and telephone number; and billing history, including consumption, billing and payment histories.

305. Distributor-consolidated billing (rate ready) is already implemented through the ABC-T service. ABC-T was introduced as the market evolved in response to market conditions post 1995 and will continue to evolve as unbundling continues. Under ABC-T billing, the information flow is from the marketer to the utility (the rate per cubic metre to be charged for each ABC-T arrangement).
306. Distributor-consolidated billing (bill ready) is not currently available in Ontario. There would be a two-way information flow required to implement bill-ready distributor-consolidated-billing. The information flow from the utility to the retailer would be similar to that under split billing, followed by an information flow from the retailer to the utility of the total amount to be billed. Bill-ready distributor consolidated billing does not appear to offer any advantages that improvements in ABC-T will not deliver and has the disadvantage of requiring two sets of information to be transferred before a bill can be produced.
307. Some members of the Task Force take the position that the Board lacks jurisdiction to require them to accommodate all of the billing options that are required of electricity distributors; others believe that that position is without merit. The Board's jurisdiction arises independently under both of the provisions of the OEB Act which are relevant to these rules. First, ss. 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 (or lack thereof) to allow REMs to bill for distribution services goes to a distributor's conduct towards an REM. Second, ss. 41(1) (d) provides the OEB with jurisdiction to pass rules relating to conditions of access to distribution services. Billing information, and willingness (or lack thereof) to allow REMs to bill for distribution services goes to the terms of access to distribution services for both consumers and other customers, including REMs. In other words, the question is whether a distributor may impose a billing relationship on customers as a condition of access to monopoly distribution services.

6.1.3 Recommendation #6.1A

308. The Rule should require a distributor to accommodate three billing options:
1. Retailer-consolidated billing;
 2. Distributor-consolidated billing (rate ready and bill ready); and
 3. Split billing
309. The selection of a billing option should be determined by the consumer and the retailer. The retailer should notify the distributor of the desired option in accordance with these rules.

6.1.4 Discussion in Support of Alternative B

310. The Retail Settlement Code, as its name implies, has been developed to meet the need for an electricity settlement process. Unlike natural gas, there are currently no settlement processes in place. In addition, unlike natural gas, the legislation is

designed to create a central clearing and settlement process, i.e. all transactions flow through the IMO, which is a market operator, as well as a system operator.

311. As laid out in the RSC, retailer-consolidated billing requires the utility to provide the information necessary for the retailer to bill distribution charges. These components are: non-competitive electricity service costs; distribution charges itemized in terms of billing determinants; GST itemized according to each of the above components; avoided cost credits; individual consumption usage for the billing period; individual peak for the billing period; summary of the net amount owed to the distributor by the retailer for the entire invoice; and payment due date. (Note: this list excludes other elements such as the competition transition charge and net-system-load-weighted price which are not applicable for natural gas). The RSC also prohibits the distributor from sending a bill, when retailer-consolidated billing is selected.
312. The Alberta Board's decision on ABC-T Service is relevant to the OEB's jurisdiction to require, under a Distribution Access Rule, the provision of distributor-consolidated billing, either through ABC-T or a bill-ready option (see Appendix D for AEUB decision). In addition, the OEB has classified ABC-T Service as a non-utility service and there is a requirement to seek approval for the continuation of the provision of this service by the utility under the Undertakings. Similar issues arise with retailer-consolidated billing. It appears inconsistent to classify ABC service as non-utility and then to require it within the Rule.
313. It thus appears that the OEB does not have the jurisdiction to specify billing options in the Gas Distribution Rule.
314. Under split billing, the REM bills consumers for the commodity and any other services it provides to consumers, while the distributor bills for the distribution services it provides to consumers. Under distributor-consolidated billing, the REM makes the choice to bill through the distributor bill, i.e. the distributor is the marketer's agent for billing and the marketer's name is displayed on the bill. Under retailer-consolidated billing, there would be no choice for the distributor and the marketer would not be the distributor's agent for billing. The distributor would be explicitly precluded from billing for the services which it provides to consumers. The marketers characterize this as a condition of access to distribution services. This characterization is fundamentally wrong. Coerced retailer-consolidated billing would mean that the distributors would be the only commercial entities not allowed to bill for the services which they provide.
315. There is also a concern related to the implementation of retailer-consolidated billing related to the history of natural gas direct purchase in Ontario. Most residential consumers elected direct purchase on the basis of marketing material which committed that "you will continue to receive your bill from the utility", "nothing will change", etc. Given this history, consumers should be given the choice as to whether to accept retailer-consolidated billing and this choice should be on the basis of a positive election. Symmetry with the RSC provisions on electricity could result in additional customer confusion.

316. Union and Enbridge take the position that the Board does not have the jurisdiction to prohibit them from billing distribution customers for distribution services provided to them. The REMs rely on such an alleged authority on the rule-making power in section 44 of the Act. Section 44(1)(b) authorizes the Board to make rules governing the conduct of a gas distributor as it relates to a person selling gas, acting as an agent for a seller of gas or acting as an agent of a customer in the purchase of gas. Section 44(1)(d) authorizes the Board to make rules establishing the conditions of access to transmission, distribution and storage service.
317. It is Union's and Enbridge's position that the scope of the Board's rule-making power simply does not extend to the limits contended by the REMs and that neither provision confers jurisdiction on the Board to prohibit them from billing distribution services which they provide to customers. It is clear that section 44(1)(b) deals only with the conduct of a distributor in relation to the activity of selling "gas". 44(1)(b) has nothing whatsoever to do with selling distribution services.
318. Section 44(1)(d) is equally ineffective as a basis for the Board to impose retailer consolidated billing. This is because billing for distribution services provided to customers is not a "condition of access" to distribution service, but an administrative support function. In billing customers for distribution services provided, the distributors are not offering a "service" as it does with respect to ABC-T. It is fundamental to utility regulation and the concept of just and reasonable rates that the utility have the opportunity to earn a reasonable return. Utilities are entitled to bill and to be paid for the services they provide. Thus, it is simply wrong to characterize a billing "relationship" with respect to which a utility is billing for the provision of distribution service as a condition of access with respect to that very distribution service. That is not what section 44(1)(d) means or was ever intended to mean. The presumption of a billing "relationship" is no more a condition of access than the presumption that the utility will be paid for the service provided. In this view, the Board does not have the power to order that a distributor become solely a wholesaler of distribution services or to prohibit it from engaging in the provision of retail distribution service. In this view nothing in section 44 confers such authority.
319. Further, it is a fundamental rule of administrative law that the power to regulate does not involve the power to *prohibit*. Thus, even if the language of these sections could be interpreted to apply to Union's bills for distribution service supplied to customers, which they cannot, "governing" conduct and "establishing" conditions does not entail the power to prohibit conduct or conditions altogether.
320. In the absence of the necessary jurisdiction, the Board should not specify billing options in the Rule.

6.1.5 Recommendation #6.1B

321. The Rule should not specify billing options.

6.1.6 Positions of Parties

322. **Supporting Alternative #6.1A:** CEED, Collingwood, DEML, ECNG, OESC.
323. **Supporting Alternative #6.1B:** Enbridge, Kitchener, NRG, Six Nations, Union.
324. **No position:** IGUA.

6.2 Information Requirements

325. **Issue:** What information process requirements are needed to accommodate Retailer Consolidated Billing?
326. **Options:** The Task Force identified two options:
1. adopt the RSC approach, by adopting the information process requirements outlined in the RSC, or
 2. develop a new information requirement.

6.2.1 Background

327. Retailer consolidated billing is a possibility under a fully unbundled distributor environment. Retailers who elect to direct bill their customers need data that would allow the retailer to handle all calls relating to the customer's gas bill. This data includes; account number, customer name, service address, meter serial number, meter read, read date, previous meter read or estimate, previous read date.

6.2.2 Discussion

328. The right of an electricity consumer to change his or her billing option is set out in Chapter 10.0 of the RSC. An electricity consumer must either provide written notice directly to the distributor for a change in the consumer billing option or the consumer must provide written notice to the retailer authorizing the retailer to act on his behalf in order to arrange the change in billing option. Implicit with this request to change billing options is the need for the retailer to receive the information necessary to prepare the bill.
329. To enable a retailer to direct bill his customers, the distributor or other party needs to provide data that is either "bill ready" or "rate ready". Bill ready data allows the retailer to take the data and input the data into the appropriate fields of the retailer bill. Rate ready data cause the retailer to run the data through a preparation process where formulas are applied to the data in order to compute the component values to be placed on the bill. These data must be provided in a timely manner for each day of the billing cycle.
- Retailer Account Number
 - Retailer Name

- Customer Account Number
- Customer Account Name
- Service Address
- Special Mailing/Billing Address
- Payment Status/History
- Volumes Consumed
- Current Meter Reading (estimate or actual)
- Current Meter Read Date
- Previous Meter Reading (estimate or actual)
- Previous Meter Read Date
- Payment Due Notice Schedule
- Other information, that may become necessary in the future

6.2.3 Recommendation #6.2

330. The information process requirements outlined in the RSC should be adopted for natural gas.

6.2.4 Positions of Parties

331. **Supporting Recommendation #6.2:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, OESC.
332. **No Position:** IGUA, NRG, Six Nations, Union.

6.3 Billing for System Supply

333. **Issue:** What restrictions, if any, should there be in the Rule regarding the distributor's use of its bill for distributing information to consumers?
334. **Options:** The Rule could either limit the use of the bill for marketing purposes, or stay silent.

6.3.1 Discussion of Alternative A

335. As is reflected in the discussion on safety information, billing is an important means of providing information to consumers. The distributor's provision of the system supply bill therefore puts it in the position of controlling the flow of information to system customers, including marketing information. In the electricity context, the Board has determined that distributors should not use bills for SSS customers as a means of marketing for third parties. A similar provision should be provided in these Rules.

6.3.2 Recommendation #6.3A

336. Bills to system supply customers should only include the distributor's marketing information or promotional materials, and materials or information that the distributor is obligated to send as part of its regulated distribution function.

6.3.3 Discussion of Alternative B

337. The preceding interpretation of the electricity SSS Code is at odds with the OEB Decision with Reasons RP1999-0040. The SSS Code restriction "Bills to system supply customers shall only include the distributor's marketing information or promotional materials, and materials or information that the distributor is obligated to send as part of its regulated distribution function" is directed at the use of the SSS bill by third parties or affiliates who are providing SSS services. The intent is to preclude a third party or affiliate from promoting their own marketing activities under the guise of providing SSS on behalf of the distributor.
338. In sections 3.3.3 and 3.3.4 of the Decision, the Board noted that the confidentiality of information provisions "... are designed to ensure that SSS providers [affiliates, third parties] have no inherent market advantage by virtue of being SSS providers... and to minimize among consumers confusion as to which is supplying SSS and who is providing retail competitive offerings..." It is clear that this restriction applies to a third party or affiliate provider and not to the distributor. The preceding rationale is without foundation and consequently the recommendation to apply this restriction to the distributor is groundless.

6.3.4 Recommendation #6.3B

339. The Rule should not contain the above provision.

6.3.5 Positions of Parties

340. **Supporting Alternative #6.3A:** CEED, Collingwood, DEML, ECNG, OESC.
341. **Supporting Alternative #6.3B:** Enbridge, Kitchener, NRG, Six Nations, Union.
342. **No position:** IGUA.

7 CUSTOMER INFORMATION

7.1 Principles of Consumer Access to Consumer Historical Information

343. **Issue:** What are the principles of consumer access to information?

344. **Options:** The Task Force discussed the options of (i) providing for no right of access to historical information, leaving it to the distributor to determine what information would be available and at what price, and (ii) providing for mandatory access at no cost to the minimum historical data needed to estimate a customer's level of consumption.

7.1.1.1 BACKGROUND INFORMATION:

345. The Task Force discussions were based on the premise that consumers have a basic right to know what information the distributor maintains on the consumer and how the distributor may use such information. Consumers also have a right to know how their bill is calculated, details of their meter reads, consumption volume, record and application of payments. Consumers have a right to provide written instruction to the distributor to provide the same level of information to a third party or retailer as the distributor would have given directly to the consumer. Where such requests are with respect to a current bill, they can expect to receive such information in a timely fashion.
346. The members also were of the view that where requests for information beyond the current bill are made, the distributor may charge a nominal fee for the manual time necessary to provide the information. The distributor can argue that the consumer has been provided all the historical consumer related data in the form of the distributor's monthly bill. The consumer can access his own files to obtain the information being requested. An example of when a fee for information can be charged is a consumer request that entails a manual search of non-computerized archived records. Some distributors may keep 12 months or more historical consumer related data files in a computerized form. Other distributors may not have any computerized records or limited computerized records.

Electricity Retail Settlement Code ("RSC")

347. The Task Force members were cognizant of the relevant sections of the Retail Settlement Code
348. Section 10.2 specifies that a consumer's written authorization is not necessary where there is "a request to deliver historical consumer-specific information to a consumer's service or billing address".
349. Section 10.6.3 states: "Consumers have the right upon request to have historical usage information, information about their meter configuration and payment information sent to their service address or to any designated retailer or third party. The specific information that distributors must provide is described in section 11.3."
350. Section 11.3 states: "Upon written authorization by a consumer, in accordance with the provisions in section 10.6.3, a distributor shall provide to the consumer or to one or more retailers, usage data, meter data and payment information as defined below." This section goes on to describe the types of data, meter data and payment data.

7.1.1.2 DISCUSSION

351. For planning purposes, distributors maintain and use past consumption information as one factor in their algorithm to forecast future consumption. Provided the consumer has not made major renovations to their premises such as improved insulation, additional appliances and weather remains consistent with the previous year, historical information, especially in the context of a residential user, can be used fairly accurately to project future consumption for the next 12 month period.
352. During the first phase of deregulation under Buy/Sell arrangements, retailers offered consumers a discount to the distributor's Western Buy/Sell Reference Price or weighted average cost of gas at the Alberta border. This discount was provided to the consumers in the form of a rebate usually expressed as a percentage of the consumer's gas commodity costs in a year. The historical information allowed the retailers to use this information to process the rebates that were due the consumers. The Buy/Sell option is being phased out. Any multi-year agreements that were entered into will continue until its natural term expiry. While volumetric data are provided, the distributors provided differing levels of payment data because the billing function remained a distributor responsibility and they used different billing systems.
353. Under Buy/Sell service,
- the distributor provides historic volume data;
 - the distributor remits to the retailer an amount equal to the gas commodity consumed by the customer aggregated on the Buy/Sell agreement multiplied by the distributor's approved Buy/Sell rate net of the amount due from customers who are delinquent or in arrears to the distributor; and
 - the distributor manages volumetric imbalances of the Buy/Sell agreement.
354. Although the utilities deducted Buy/Sell consumer's delinquent obligations from the retailer remittances, they differed in their level of notification to the retailers of consumers in a delinquent position. Union identifies the customers who are in such delinquent position to the retailer with each monthly statement. No similar identification is provided by Enbridge Consumers.
355. In the second phase of deregulation under the Agent, Billing and Collection ("ABC") service scenario, consumers can accept a retailer's offer of a fixed price for a fixed term. Once accepted, the retailer's price for gas supply is reflected directly on the consumer's gas bill from the distributor. Gas consumers enjoy the benefit of knowing their gas costs are fixed for a term. While volumetric data are provided, the utilities provided differing levels of payment data was primary because the billing function remained a distributor responsibility. Historical volumetric information isn't necessary for calculation of a rebate to customers on ABC service, but is necessary if, for example, the customer is due a rate adjustment because of a clerical billing error or is being placed onto a DP whose rate is different from that which the customer agreed.
356. Under ABC service,
- the distributor provides historic volume data;

- the distributor guarantees payment for retailer's deliveries as part of the ABC fee charged to the retailer;
- annually, there is a monetary true-up to reconcile monies received from consumers for their consumed volumes versus delivered volumes and a volumetric true-up that reconciles consumed volumes versus monies paid out to retailer for their delivered volumes under each ABC agreement; and
- volumetric imbalances on the distributor system in terms of individual ABC service supply agreements becomes a retailer responsibility to manage within an annual tolerance-- historical information thus becomes additional data that a retailer may use to assist in the management of imbalances.

357. It is reasonable for consumers have a right to request details that the distributor keeps relating to the gas service to the consumer's service address. This includes personal details, billing details, payment details, bill calculation details. When the request for information is made verbally but is not readily available while the consumer waits, then this information must be sent to either the service or billing address on record for the consumer.
358. It is also reasonable that other persons or retailers may, after receiving written authorization from the consumer, make written requests for data. The retailer must state that it has the written authorization from the consumer to make such request. The distributor should act on such written request but could request that the retailer submit a copy of the consumer's written authorization to the distributor.

7.1.1.3 RECOMMENDATION #7.1

359. Consumers should be able to make a verbal request to the distributor for historical consumer specific information to be delivered to the consumer's service or billing address.
360. Consumers would be required to make a written request to the distributor for historical consumer specific information to be delivered to an address other than the service or billing address, a retailer or a third party.
361. When a retailer has obtained written authorization to request consumer information, the retailer would be permitted make a written request for historical consumer specific information to be delivered to the retailer and the distributor should provide such consumer information to the retailer. Consumer information that may be requested consists of usage date, meter data, payment information and meter configuration information.

7.1.1.4 POSITIONS OF PARTIES

362. **Supporting Recommendation #7.1:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

7.2 Use of Customer Information

363. **Issue:** What use should the distributor be permitted to make of consumer information?
364. Options: Two options were considered by the Task Force: using the Rule to limit the use of consumer information and relying on existing legislative limitations on the use of confidential information.
365. Some Task Force members observed that a distributor's access to consumer information is obtained through providing a regulated monopoly service. A distributor is not entitled to use that information for any purpose other than that specifically required to provide that service or comply with these rules. The Board has recognized this principle in the electricity context by ensuring in electrical distributors' licenses that inappropriate use of consumer information should be prevented. A similar provision should apply to gas distributors.
366. Other members were of the view that the Rule should not go beyond existing legislation in limiting the rights of distributors to make use of consumer data in their possession.
367. The Task Force divided the recommendation on this issue into two parts. Recommendation #7.2 is the portion that was not disputed. Recommendation #7.3 is a disputed aspect of the issue.

7.2.1.1 RECOMMENDATION #7.2

368. Confidential information specific to a consumer should not be released without the consent of the appropriate consumer. Confidential information specific to a marketer should not be released without the consent of the appropriate marketer.
369. In either of the above cases, consent would not be necessary where confidential information is required to be disclosed:
- (a) for billing or market operation purposes;
 - (b) for law enforcement purposes;
 - (c) for the purpose of complying with a legal requirement; or
370. for the processing of past due accounts of the consumer which have been passed to a debt collection agency.

7.2.1.2 POSITIONS OF PARTIES

371. **Supporting Recommendation #7.2:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

7.2.1.3 RECOMMENDATION #7.3A

372. A distributor should not be permitted to use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer.

7.2.1.4 RECOMMENDATION #7.3B

373. The distributor should only be required to abide by applicable legislation on the use of consumer information.

7.2.1.5 POSITIONS OF PARTIES

374. **Supporting Alternative #7.3A:** CEED, Collingwood, DEML, ECNG, IGUA, OESC.
375. **Supporting Alternative #7.3B:** Enbridge, Kitchener, NRG, Six Nations, Union.

7.3 Consumer Access to Meter Data

376. **Issue:** What is the extent of consumer access to gas consumption data read from a meter?
377. **Options:** Options considered by the Task Force with regard to the number of months of data to be provided by the distributor were:
- Consumers have access to their consumption data for a 12-month period or
 - Consumers have access to their consumption data for a 24-month period or
 - Consumers have access to their consumption data for greater than 24 months.
378. Options in relation to the number of data requests that could be made were:
- As often as requested by the consumer and at no charge or
 - Up to a defined number of times annually and at no charge to the consumer and/or
 - Exceeding a defined number of times annually and at a reasonable charge

7.3.1.1 BACKGROUND

379. The following discussion is restricted to the provision of metering information by distributors. The Task Force has been directed by Board Staff not to address the provision of physical meters. Meters are currently owned and the information managed by distributors. Meter ownership issues will be addressed in another proceeding.
380. Utilities currently have billing systems with live electronic data storage for consumption data for periods varying from one to two years.

- 381. It is useful for the consumer or their agent to have access to one to two years worth of consumption history when assessing the option of making supply arrangements different from those provided by the distributor through system gas.
- 382. Utilities provide consumption history to consumers today upon request and these requests may be for more than two years' data.
- 383. The Affiliate Relationships Code for Gas Utilities limits the provision of consumer consumption data to the distributors affiliates.
- 384. The Rule is expected to carry a similar limitation with respect to the provision of such information to anyone.
- 385. The Retail Settlements Code, applicable to electricity distributors, requires provision of 12 billing periods of data and, up to 24 billing periods if it is the distributors standard business practice to keep up to 24 billing periods of data. More than 24 billing periods of data may be provided at the distributors discretion.

7.3.1.2 DISCUSSION

- 386. Because all distributors might not keep live electronic consumption data in excess of twelve months, provision of 24 months of data may not be possible. Storing additional months of data may have cost implications for which the distributor would need to seek recovery. However, if the distributor does keep such data, the distributor should be required to provide such data upon request of the consumer or the consumer's agent.
- 387. There was debate about the appropriate number of months of data that should be accessible. Some members were of the view that distributors should be required to provide 24 months at a minimum, with those seeking to provide less having to request an exemption from the Board. Other members noted that the Retail Settlements Code, applicable to electricity distributors, requires provision of 12 billing periods of data and, up to 24 billing periods if it is the distributor's standard business practice to keep up to 24 billing periods of data. More than 24 billing periods of data may be provided at the distributor's discretion. It was noted that the RSC does not speak to the charging of a fee should the number of requests exceed a predefined number.
- 388. It was generally agreed that consumers should have the right to access their 12 month consumption data at least twice annually per year without charge and that additional requests may warrant an administrative charge. It was agreed that the provision of such information should be on a timely basis. Some retailers indicated that "timely" should be defined, e.g., within X days, in the Rule.
- 389. There was much discussion as to what specific request indicator should be monitored or tracked to determine when the "requests in excess of two annually" charge is to be applied. The indicator could be the "number of requests for a specific address" or "#number of requests by a retailer for a specific address" and/or "number of requests from a customer". Concerns were expressed about which indicator should be used.

Enbridge Consumers noted that its systems would not allow the tracking of the “number of requests by a retailer for a specific address” indicator. Retailers were concerned that “number of requests for a specific address” indicator could quickly and inequitably result in the application of a fee. For example, a potential customer could be interacting with more than 2 retailers concurrently or over a 3-6 month decision-making period as the customer thinks about with whom they should sign up.

390. The distributor should be able to charge a reasonable fee for providing more consumption data than is kept live electronically and/or 24 months. Even so, provision of more data than kept live electronically should be at the distributor’s discretion, provided the distributor treats all consumers on a non-discriminatory basis, applying its discretion consistently.
391. It was agreed that the consumers should always have access to the meter to obtain meter reads at their convenience for their own purposes.
392. The Retail Settlements Code, Section 11.2,⁷ provides for a right of the consumer to interrogate the meter, or assign this right to others, in accordance with any relevant technical specifications or codes. If a consumer can demonstrate that any interrogating device when attached to the custody transfer meter does not interfere with the accuracy and operation of that meter, or impair the safety of the distribution system, and that it does not contravene applicable technical standards or regulations, then the consumer should have the right to attach the device to the custody transfer meter. The consumer or the distributor may provide interrogating devices. When provided by the distributor, the distributor may charge a fee for the provision of the device. Attachment of consumer-owned interrogating devices should be made with the coordination of the distributor so that the safe condition of the distribution system can be maintained.

⁷ Consumers have a right to interrogate their meter, or to assign this right to others, in accordance with any relevant technical specifications and code. If a consumer desires regular access to their meter or meter information, a distributor shall provide access under the following conditions:

- The timing of consumer access to the meter is negotiable with the distributor.
- A distributor has priority when selecting access windows for the purpose of reading the meter.
- If a distributor’s access to the meter is hindered or a consumer’s access to the meter corrupts usage information, a distributor may suspend a consumer’s right to access until any outstanding problems are resolved.
- A consumer shall bear the cost of any software, hardware or other service required for a consumer to obtain direct access to meter information. This may include installation of a secondary meter access system.
- A customer shall bear any cost incurred by the distributor to correct problems caused by a consumer’s direct access to the meter.
- If a consumer assigns his right to direct meter access to a third party, the consumer shall remain responsible for the action of the assigned party.

7.3.1.3 RECOMMENDATION #7.4

- 393. Any consumer, either directly or through an authorized third-party, should have the right to read the meter measuring their consumption at any time.
- 394. Any consumer, either directly or through an authorized third-party, should have the right to receive, upon request, their 12-month consumption history at no fee for the request and on a timely basis to be set out in the services agreement.
- 395. A distributor would be able to provide, at its discretion, special request data in excess of 12 months and could charge a reasonable fee for the provision of such additional data.
- 396. Any consumer, either directly or through an authorized third-party, should have a right to interrogate the meter measuring their consumption, or to assign that right to others, in accordance with any relevant technical standards or codes and having demonstrated compliance thereof with the distributor's or Industry Canada's standards.

7.3.1.4 POSITIONS OF PARTIES

- 397. **Supporting Recommendation #7.4:** CEED, Collingwood, DEML, ECNG, Enbridge, IGUA, Kitchener, NRG, OESC, Six Nations, Union.

8 DISTRIBUTOR/RETAILER RELATIONS

8.1 Overall Distributor/Retailer Relations

- 398. **Issue:** Should there be Service Agreements between distributors and retailers and what should they cover?
- 399. **Options:** The Task Force discussed the options of replacing all existing agreements between distributors and retailers with new comprehensive Service Agreements and various options for effecting a transition to a Service Agreement regime that would cover numerous aspects of the relationship, as discussed throughout this Report. Two important options related to whether Service Agreements should be standardized or be retailer specific, with a requirement for non-discrimination.

8.1.1 Background

- 400. The RSC requires electricity distributors to enter into Service Agreements with any licensed retailer that intends to retail electricity within the distributor's franchise area and to utilize the distributor's settlement procedures.
- 401. The relations between gas distributors and REMs are currently set out in contracts, such as Gas Transportation Agreements ("GTAs") and Direct Purchase Agreements ("DPAs").

8.1.2 Discussion

402. Although GTAs and DPAs are framed as commercial arrangements, the services they cover include monopoly distribution, transmission and storage services provided by utilities. Their terms thus do not represent commercial terms freely entered into among parties with market alternatives.
403. Many of the provisions of these rules will require the development of a services agreement between distributors and REMs. For example, the timing requirements for processing STRs, the prudential requirements of distributors, and the requirements respecting the provision of customer information will all involve negotiation to finalize appropriate terms and conditions of service.

8.1.3 Recommendation #8.1

404. Distributors should be required to enter into a services agreement with persons retailing or intending to retail gas in their franchise area, upon request. The terms of the services agreement would be approved by the Board, and disputes in relation to the terms of the agreement, and the interpretation of the agreement, should be determined in accordance with the dispute settlement provisions of these Rules.

8.1.4 Positions of Parties

405. **Supporting Recommendation #8.1:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
406. **No Position:** IGUA.

8.2 Managing Account Number Changes

407. **Issue:** How should account number changes be handled?
408. **Options:** The Task Force considered two options: the status quo and procedures that would eliminate the concern that account number changes can result in the termination of direct purchase arrangements.

8.2.1 Background:

409. Retailers use the account numbers assigned by Enbridge Consumers Gas and Union Gas as one piece of data to identify a consumer at any specific service address. The distributor assigned account number, along with the service address and consumer name are captured on contracts between the retailer and consumer. In order for any service transfer request to be processed by the distributor, the correct account number and consumer name must be identified.

410. There are many reasons why the distributor may change ("refolio") an account number without the consumer actually moving away from the service address. Changes may be either distributor-initiated or consumer-initiated. The reasons may include:
- A change in the distributor's read date scheduling
 - A consumer name change with no move
411. Currently neither, Enbridge Consumers Gas nor Union Gas provides to the retailer a regular report detailing account number changes for the retailer's customers. On the current Union South system, details of any refolios are provided on the renewal of a direct purchase agreement. On the Union North system, there are not supposed to be any refolio of accounts. Enbridge Consumers Gas does provide a daily ABC billing detail file that contains account number, address, amount billed and consumption, however there is no indication as to which account numbers have been refolied.
412. A retailer could submit his complete Enbridge Consumers Gas or Union Gas customer list to the respective utility for a validation process that would result in the identification of any account number changes to the retailer's current customers.

8.2.2 Discussion

413. Under distributor consolidated billing, account numbers are assigned and maintained by the distributor. Whenever a retailer initiates a transfer request on behalf of the consumer or is responding to consumer inquiries, the primary information data given is the account number. Not advising the retailer of account number changes increases the potential for confusion and delays.
414. Any marketing material a retailer may send to the consumer may reference the consumer's account number and if this account number is not accurate then any actions or requests resulting from the consumer's response to the marketing material may be delayed or not acted upon because of the non-matching account number.
415. It is not clear under the scenario where the retailer is billing his customers (retailer consolidated billing and split billing) whether the distributors will track the retailer's assignment of an account number to the customer. If so, then the retailer is obligated to provide to the distributor any changes made to the account number the retailer may assign to the consumer. If tracking is to be based upon the distributor's assigned account number, then the distributor would be obligated to provide to the retailer changes made to the account number. Not providing such account number changes by either party under the above scenarios would create delays in resolving any matters relating to the consumer because of the lack of a common reference.

8.2.3 Recommendation #8.2

416. For distributor-initiated changes in account number, the distributor should be required to provide a report to the retailer showing the consumer's new account number, consumer's name, consumer's service address and the consumer's old account number.

8.2.4 Positions of Parties

417. **Supporting Recommendation #8.2:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.
418. **No Position:** IGUA.

9 COMPLIANCE AND DISPUTE RESOLUTION

9.1 Compliance

419. **Issue:** Should the Rule contain an interpretive provision and, if so, what should it be?
420. **Options:** The Task Force considered two options: that an interpretive provision would be included and that interpretation would not be addressed by the Rule.

9.1.1 Discussion of Alternative A

421. The marketers believe that the Rule will be a central tenet of the new regulatory structure over distributors. It is hoped that distributors and customers will rely upon these rules to govern their relations and not resort to rates cases to resolve their disputes. However, the additional reliance on industry solutions carries with it additional reliance on the willingness of distributors to meet both the letter and spirit of their obligations.

9.1.2 Recommendation #9.1A

422. The rules should contain an interpretive provision such as the following:

The purpose of the Rules is to govern the conduct of distributors as it relates to REMs generally, and as it relates to access to distribution by consumers and REMs. Although these rules contain procedures to address non-compliance, they will only be effective if they are followed in good faith by distributors. This good faith requirement means that distributors are to respect the principles as well as the letter of these Rules. Distributors shall not act in non-conformance with these Rules unless and until they are specifically authorized to do so in accordance with the procedures set out in these Rules.

9.1.3 Discussion of Alternative B

423. For others, the intent of rules and of a rule-making procedure is to change the role of the regulator from that of a baseball umpire to that of a tennis linesman. As with any rules, there will be differences in interpretation. The effect of the above provision would be to create a need for prior review of all distribution access transactions and of all relations with REMs. Such a provision would render the rules meaningless.

424. The idea that a distributor is prohibited from doing anything which is not specifically allowed for under the Rules would continually lead to the need to keep re-opening the Rules whenever any new issue arose, for example, vis-à-vis marketers.
425. There is no similar provision in any Code or Rule developed by the Board to apply to Gas Marketers or participants in the electricity market. It is unwarranted and offensive.

9.1.4 Recommendation #9.1B

426. Complaints regarding the distributor's compliance should be addressed by way of a dispute resolution process as outlined in the Rule.

9.1.5 Positions of Parties

427. **Supporting Alternative #9.1A:** CEED, Collingwood, ECNG, Kitchener.
428. **Supporting Alternative #9.1B:** DEML, Enbridge, NRG, OESC, Six Nations, Union.
429. **No position:** IGUA.

9.2 Dispute Resolution Notification

430. **Issue:** Because the DAR will provide for the possibility of exemptions, and because Board interpretations of the DAR will provide guidance on how the rules are applied, it is necessary for market participants to have notice of the current status of the applicability of the rules and their interpretation.
431. **Options:** The Task Force considered two options, either maintaining the status quo with respect to publishing complaints electronically or extending the scope of electronic notices under the Rule.

9.2.1 Discussion of Alternative #A

432. Under past practice, the Board tended to dispose of matters by way of formal oral (and on occasion, written) hearings. These formal hearings contained a procedural practice whereby parties to a previous hearing were provided notice of a current hearing. This practice was satisfactory because the persons interested in Board hearings were a fairly discrete group of interested parties.
433. Under the Rule, the parties who may be interested in a particular proceeding are not as easily identified. However, they will be directly impacted by the application of the Rule. For example, if the Board decides to exempt a distributor from a requirement of the Rule or determines a complaint raised under the Rule, parties who rely on the Rule will be affected by that exemption or complaint resolution. Furthermore, as energy markets develop, Board decisions may have an impact on persons who do not intervene in rates cases.

434. The result is that the past method of distributing notice of a proceeding will no longer be adequate to provide affected parties with notice of Board proceedings. This has an adverse impact on the transparency of the rules (as they are interpreted or exemptions are provided). Furthermore, in light of developments of in communications technology, as reflected in the Board's web site, there is no reason why parties who are interested in proceedings should not have easy access to the Board's files.
435. A ready solution to this problem is to require persons who apply for exemptions or who bring complaints under the Rule to provide the Board with an electronic copy of their application so that it may be posted on the Board's web site and reviewed by interested parties. The applications should provide sufficient information to allow parties to determine whether and how they may be impacted by the application, and the process for intervening. The Board's procedural orders and ultimate disposition relating to these applications should also be posted on the Board's web site.

9.2.2 Recommendation #9.2A

436. Persons who apply for exemptions or who bring complaints under the Rule should be required to provide the Board with an electronic copy of their application so that it may be posted on the Board's web site and reviewed by interested parties. The applications should provide sufficient information to allow parties to determine whether and how they may be impacted by the application, and the process for intervening. The Board's procedural orders and ultimate disposition relating to these applications should also be posted on the Board's web site. This recommendation would not preclude the Board from summarily disposing of frivolous or vexatious applications or complaints as is currently the practice or, in its discretion, ordering that specific complaints may be exempted from this requirement.

9.2.3 Discussion of Alternative B

437. Other codes/licences under OEB jurisdiction also deal with the question of complaints and how they should be handled. For example the Retail Settlements Code, Affiliate Relationships Code and the Gas Marketer Code of Conduct contain sections that specifically deal with complaints. None of these Codes directs the OEB and/or the third party handling the resolution process to automatically post the complaint on the OEB's Web page.
438. It is not apparent why the "activities" to which the Rule applies should be subject to very different complaint communication requirements while an electricity distributor or a gas marketer would not be. It seems unfair for a similar type of complaint to be publicly posted just because it came under the Distribution Access Rule rather than one of the other codes.
439. The nature, intensity, applicability, relevance and underlying motive of any given complaint are not entirely predictable. Complaints can vary from the vexatious, to the irrelevant to the substantive. The parties and entities affected would wish to see some judgment exercised once the complaint is referred. For example, it is reasonable to

want to avoid unwarranted commercial or marketing harm that could result from publicizing a complaint that was eventually found to be without merit.

- 440. The OEB Act section 44(1)5/6 allows that “A rule may provide for an exemption” and “An exemption may be made in whole or in part and may be subject to conditions or restrictions”. In the electricity related parts of the OEB Act similar provisions for code and licence exemptions appear. Similar to the aforementioned reasoning regarding “complaints”, the Rule should not prescribe its exemption process differently.
- 441. The Board has operated in the past with some discretion as to what procedures to follow in dealing with specific issues brought to its attention. There does not seem to be a pressing reason to change this for requests for Rule exemptions. Replacing discretion in all instances with obligatory public input process procedures will result in inordinate expenditures of time and money.
- 442. The OEB has a project underway regarding the electronic transfer of information between the OEB, applicants and interested parties. From a practical perspective it may be the wrong time for the Rule to specify such methodologies.

9.2.4 Recommendation #9.2B

- 443. The Rule should not preclude OEB discretion, within its practices and procedures, as to if and how it makes a specific complaint public. If the Rule is to preclude the Board’s discretion, i.e. the complaints must be posted on the OEB’s Web page, then the other codes/licences falling under the OEB jurisdiction ought to be amended to direct the same.
- 444. The Rule should not preclude OEB discretion, within its practices and procedures, as to how it proceeds to consider and grant an exemption. Upon granting an exemption, a posting on OEB’s Web page would be an acceptable means of communicating the exemption.

9.2.5 Positions of Parties

- 445. **Supporting Alternative #9.2A:** CEED, ECNG, Kitchener, OESC.
- 446. **Supporting Alternative #9.2B:** Collingwood, DEML, Enbridge, NRG, Six Nations, Union.
- 447. **No position:** IGUA.

9.3 Dispute Resolution Procedure

- 448. **Issue:** What should the process be for resolving complaints between the distributor and its distribution services customers?

449. **Options:** The Task Force identified three options:

1. Identify and select a comparable process already documented in a gas or electricity sector code or licence.
2. Select and materially modify, as appropriate, an already documented process
3. Develop a process from scratch.

9.3.1 Background

450. There are a number of dispute and/or complaint resolution processes already in place in existing rules and licences approved and adopted by the Ontario Energy Board. These are listed below and the relevant sections are attached.

- i. Affiliate Relationships Code for Gas Utilities
- ii. Gas Marketer Licence (and application)
- iii. Code of Conduct for Gas Marketers
- iv. Electricity Distribution (transitional) Licence
- v. Electricity Transmission (transitional) Licence
- vi. Electricity Retail Settlement Code
- vii. Electricity Retailer Licence (and application)
- viii. Electricity Retailers Code of Conduct

Note: In addition, the yet-to-be issued Board approved Electricity Transmission Code and Electricity Distribution Code will likely also contain sections on the dispute resolution process.

9.3.2 Discussion

451. As a going forward principle, the committee agreed that any consideration of a Gas Distribution complaints resolution process regarding services described in and provided under the terms of the Rule should consider the negative practicalities of having differing processes in place within the energy sector regulated by the Ontario Energy Board.

452. A concern was also raised that the complaints and resolution process may result in outcomes which cause a material differentiation in the operating circumstances of Union Gas and, say, Enbridge Consumers. It was felt that this was inappropriate and the process should be structured to avoid such outcomes.

453. In general, the committee believed that a dispute resolution process should meet certain basic principles and these were:

- i. separate out vexatious requests;
- ii. be impartial, non-discriminatory, and non-preferential;
- iii. provide invariant procedures;
- iv. result in impartial decisions;
- v. include an appeal mechanism/process;
- vi. be transparent; and

- vii. be cognizant of administrative burden which can result from multiple complaint resolution procedures and the need for efficiency.
454. Of the aforementioned codes and licences, the Electricity Retail Settlement Code, the Electricity Distribution Licence, and to a lesser extent the Affiliate Relationship Code, likely would have the most in common with the intent of the Rule. The relevant quotes from these Codes that describe the dispute resolution procedures requirements appear below. For comparative purposes, a relevant quote from the Code of Conduct for Gas Marketers is included.

Electricity Retail Settlement Code

Section 9 Settlement Dispute Procedures

Any disputes between retailers or consumers and distributors concerning the implementation of a distributor's responsibilities under this Code shall be settled according to the dispute mechanism specified by the Board in a distributor's licence. Disputes concerning the settlement amount billed or owed by a distributor to a retailer do not relieve either party from obligations to make payment in full at the time payment is due. Any deviations between the amount paid at the time due and the amount determined through the dispute resolution process shall be subject to a payment of interest. The interest rate shall equate shall equal the prime rate charged by the distributor's bank

Section 12 Retailer/Distributor Relationship

A distributor shall enter into a Service Agreement with each retailer licenced by the Board who wishes to provide electricity services to consumers connected to the distributor's distribution system and who wishes to utilize retail settlement services offered by the distributor. The Service Agreement shall be in the form approved by the Board....

Electricity Distribution Licence

Section 23 Customer Complaint and Dispute Resolution

The Licencee shall:

- a. *establish proper administrative procedures for resolving complaints by consumers and other market participants' complaints regarding services provided under the terms of this Licence;*
- b. *publish information which will facilitate its customers accessing its complaints resolution process;*
- c. *refer unresolved complaints and subscribe to an independent third party complaints resolution agency which has been approved by the Board;*
- d. *make a copy of the complaints resolution procedure available for inspection by members of the public at each of the Licensee's premises during normal business hours;*
- e. *give or send free of charge a copy of the procedure to any person who reasonably requests it ;and*

- f. *keep a record of all complaints whether resolved or not including the name of the complainant, the nature of the complaint, the date resolved or referred and the result of the dispute resolution*

Code of Conduct for Gas Marketers

Section 2.9 Independent Arms-Length Consumer Complaints Resolution Process

- 2.9.1 *A gas marketer is required to attempt to resolve all consumer complaints and inquiries before referring a customer complaint or inquiry to any independent, arms-length consumer complaints resolution process specified as a condition of the gas marketer's licence.*
- 2.9.2 *A gas marketer shall inform its prospective consumers in all written offers and contracts about the independent, arms-length consumer complaints resolution process selected by the Board for that gas marketer.*
- 2.9.3 *A gas marketer shall inform existing customers about the independent, arms-length consumer complaints resolution process specified by the Board at the time of renewal of any contract and at the time a complaint is received by the gas marketer.*
- 2.9.4 *Should any consumer complain that a gas marketer or its salespersons have engaged in any improper course of conduct while marketing, the gas marketer shall investigate the complaint and take all appropriate and necessary steps consistent with the independent, arms-length consumer complaints resolution process specified by the Board*

Affiliate Relationships Code for Gas Utilities

Section 2.9 Complaint Process

- 1.1.1 *The utility shall designate an employee (Designated Employee) for the purposes of dealing with complaints and this person shall be identified as such to the Board.*
- 1.1.2 *Complaints respecting the application of this Code shall be submitted to the utility. All complaints shall be in writing.*
- 1.1.3 *The Designated Employee shall acknowledge all complaints in writing within five working days, unless the complainant states that written acknowledgement is not required.*
- 1.1.4 *The Designated Employee shall respond to the complainant within 21 days of its receipt. The response shall include a description of the complaint and the response of the utility to all issues of contention identified in the complaint.*
- 1.1.5 *A record of all complaints and responses of the utility shall be kept for a period of three years and shall be made available for inspection by the Board.*
- 1.1.6 *If a complaint has not been resolved the complainant may refer the complaint to the Board. Any referral to the Board must be made in writing and shall include the response of the utility to the complaint as made under section 2.9.4*

9.3.3 Discussion

455. Considerations in favour of identifying and selecting a comparable process already documented in a gas or electricity sector code or licence (option 1) are that:
- i. there is likely to be less confusion for all energy market participants with similar processes;
 - ii. it should reinforce the level playing field and regulatory symmetry between sectors;
 - iii. it would be the most time efficient approach.
456. A drawback is that it does not reflect potential material differences between gas versus electricity.
457. Considerations in favour of selecting and materially modifying, as appropriate, an already documented process (option 2) are that there:
- i. tends to be less confusion for all energy market participants with somewhat similar processes;
 - ii. contributes to level playing field and regulatory symmetry between sectors; and
 - iii. somewhat less time efficient approach; upon conclusion it may generate similar process.
458. The primary considerations in favour of developing a new process from scratch (option 3) are that it would allow all parties the opportunity to contribute to the development of a potentially ideal complaint process.
459. The potential drawbacks are that:
- i. it would be very time consuming; and
 - ii. despite the time investment, the resulting complaints process may be very similar to an existing one.

9.3.4 Implementation Issues

460. Some Task Force members think that parameters as to what comprises a “complaint” (that would be handled by the process and appropriate for third party/OEB resolution) need to be identified to provide guidance as the complaint process is implemented. Without such parameters, legal and administrative costs necessary to handle and address non-Rule related complaints could be onerous and duplicative.
- The complaint must identify what specific section of the Rule the complainant believes is being violated. This is to ensure that the complaints process is specific to the Rule so that the complaints process for the Rule is not viewed and treated as a mechanism to handle complaints in general. For example, easement or rights of way issues would not be considered an acceptable complaint.
 - The independent third party (or the Board) should not get involved in pure legal disputes. For example, the legal justification in shutting off a customer should be a matter of the courts to decide.

- The complaints process should not be used to re-hear issues which were already the subject of a hearing.
- The complaints process should not intentionally duplicate already existing mechanisms such as the TSSA, Consumer and Commercial Relations and the federal government Competition Bureau.
- There should be some guidance as to how to handle/filter out vexatious complaints.

9.3.5 Recommendation #9.3

461. The Electricity Distribution Licence process includes the process set out in s.75 of the *OEB Act, 1998*, which authorizes the Board to order the licenced distributor to comply with the terms of its licence. A similar power should be included in this Rule.

462. A comparable process would read as follows:

The distributor shall:

- a. establish proper administrative procedures for resolving complaints by consumers and other market participants' regarding services described in and provided under the terms of the Distribution Access Rule;
- b. publish information which will facilitate its customers accessing its complaints resolution process;
- c. refer unresolved complaints and subscribe to an independent third party complaints resolution agency which has been approved by the Board;
- d. make a copy of the complaints resolution procedure available for inspection by members of the public at each of the distributor's premises during normal business hours;
- e. give or send free of charge a copy of the procedure to any person who reasonably requests it; and
- f. keep a record of all complaints whether resolved or not including the name of the complaint, the nature of the complaint, the date resolved or referred and the result of the dispute resolution.

9.3.5.1 POSITIONS OF PARTIES

463. **Supporting Recommendation #9.3:** CEED, Collingwood, DEML, ECNG, Enbridge, Kitchener, NRG, OESC, Six Nations, Union.

464. No Position: IGUA

10 EMERGENCY SUPPLY PLANNING

465. **Issue:** What may distributors do during emergencies on the Ontario natural gas system to maintain service to end use consumers taking firm service?

466. **Options:** Four options were identified by the Task Force.

1. Distributors actions are limited by existing contractual and tariff provisions.
2. Proclaiming Part VIII of the OEB Act.
3. Seeking a legislative amendment similar to section 30 of the Electricity Act.
4. Allowing distributors to take actions beyond existing contractual and tariff provisions through provisions in the Rule.

10.1 Background

467. When distributors sold system gas to all consumers, they had custody and title to all gas moved on their systems. In the event of emergencies, the distributors could allocate that gas by curtailing those firm service consumers who would not face health or safety concerns due to gas consumption curtailment or shut down. Currently, distributors have title to gas for system supply consumers but only have custody of the gas delivered on behalf of retailers or transportation customers. This change may limit what a distributor can do in an emergency to ensure that essential firm consumers do not lose gas supply service and to ensure the integrity and safety of the system.
468. Part VIII of the revised *OEB Act* contains provisions for dealing with an “existing or impending shortage of gas” (s. 113) not emergencies. This part of the Act has not been proclaimed.
469. Section 30 of the *Electricity Act* provides electricity distributors with the power to allocate electrical supply in event of shortage.
470. Section 21 of the *Energy Act* reads as follows:
- 21(1) Despite anything in this or any other Act, or in any contract for the supply of natural gas made between a distributor and a consumer, where the supply of natural gas to a distributor is interrupted or curtailed, the Minister [of Commercial and Consumer Relations] may order a distributor to halt or reduce the supply of natural gas to a consumer or a class or classes of consumers if he or she considers it advisable in the circumstances.*
471. The Ontario distributors currently have an agreement among themselves, TCPL and Gaz Metropolitan to offer mutual assistance in event of an emergency. This voluntary agreement is known as Eastern Canadian Mutual Assistance Plan (“ECMAP”).
472. Some committee members noted that the likelihood of an emergency as envisioned herein is remote.

10.2 Discussion

473. The alternatives for dealing with emergencies that were discussed and assessed included:
474. Option #1: Proclaim Part VIII of the *OEB Act*. Proclaiming Part VIII of the *OEB Act* was considered unworkable because REMs would be distributors as defined in that section,

making coordination in event of an emergency difficult. Also, Part VIII is based on the preparation, and approval by the OEB, of plans to allocate pre-specified quantities of scarce gas. Such plans cannot be formulated in advance of an emergency of a highly uncertain nature. It is a practical impossibility to specify in advance the specific circumstances of an emergency.

475. Option #2: Seek a legislative amendment similar to section 30 of the *Electricity Act*. Section 30 reads:

“30. (1) If the supply of electricity to a distributor is interrupted or reduced as a result of an emergency or a breakdown, repair or extension of a transmission or distribution system, the distributor may allocate the available electricity among the consumers in its service area.

(2) An allocation of electricity under sub-section (1) shall be deemed not to be a breach of any contract.”

476. The likelihood of getting amendments to the OEB Act, after the recent revision of 1998, was considered remote. In any event, this power was considered by some members to be too broad because it went beyond emergencies to include breakdowns, repair or extensions of the transmission and distribution system. It was noted, however, that the existing legislative framework does not put the gas and electricity industries on a level playing field in this regard. Any amendment should also make reference to the ‘storage’ system (in addition to the distribution and transmission system).
477. Option #3: Allowing for actions through provisions in the DAR.
478. For the Rule to deal with emergencies, the following need to be specified: definition of an emergency, identification of who has authority to call an emergency, and the specific actions that may be taken need to be specified.
479. Option #4: Making no changes from the existing provisions by which distributors have entered into voluntary support arrangements (ECMAP) that call for other transmitters and distributors to aid a distributor experiencing an emergency.
480. In the view of some members of the Task Force, leaving the existing arrangements in place is not satisfactory because it does not provide the distributors with clear authority to deal with emergencies. Others are of the view that the Premier’s authority under the Emergency Plans Act and the Minister’s (MCCR) powers under section 21(1) of the Energy Act provide sufficient authority to deal with emergencies.
481. There was considerable debate over what should be considered an emergency for the purposes of the Distribution Access Rule.
482. One view was that an emergency should be defined as an event in which supply to all consumers taking firm service in Ontario cannot reasonably be assured.
483. Another view defined an emergency as a situation whereby it becomes necessary to curtail firm service end users in Ontario, in order to maintain firm service to essential

firm service end users. In such an event, the firm service end user's access may be limited.

484. Much of the difference of opinion centred on the use of the word "reasonably". For some, the need for a qualifier like "reasonably" in the definition was thought to be necessary because it cannot be known for certain what changes in consumer demand will occur after the onset of a condition that gives rise to an emergency. Recognition needs to be given to the fact that distributors must act with imperfect information, and distributors need some protection from liability if they are to be expected to act to minimize health and safety risks during an emergency. Others disagreed with using any term such as "reasonably". The concern was that a distributor could use this discretion to curtail firm service consumers for economic advantage.
485. Some members were of the view that the distributor is the only one in the position to identify that an emergency has occurred and that the time necessary to communicate that condition and verify it to a third party would make a requirement for someone other than a distributor to call an emergency unworkable.
486. It was noted that the Premier is the only one that can declare an Emergency as defined in the Emergency Plans Act. Such an emergency has never been declared.
487. Similarly, the minister's (MCCR) powers under section 21(1) of the *Energy Act* could possibly be invoked in a dire emergency. However, the section has never been used and its potential usefulness is uncertain. Additionally, while this power overrides contracts for supply between consumers and distributors, it does not address the situation where the distributor has contracted to deliver the gas, but not provide the supply.
488. Some members were opposed to allowing the distributor to call an emergency on their own initiative without having to obtain authority from a third party. This concern could be addressed by having the actions taken by the distributor during an emergency reviewed by the OEB to ensure that an emergency condition had occurred and that the distributor's actions were reasonable in the circumstances.
489. In the context of the DAR, the OEB is likely the only party other than a distributor that can legally be charged with calling an emergency. However, requiring the OEB to declare an emergency could have some logistical difficulties in getting a declaration on time.
490. The Rule could specify that in event of an emergency the distributor may re-allocate gas, in accordance with the priorities as currently set out in ECMAP, that it has custody of and shall be deemed to have purchased that gas at a specified index price. This would address the difficulty with distributors no longer having title to all gas moving on their systems.
491. While this would address an immediate need, for emergencies extending beyond 12 hours, this may not be sufficient, although such a time frame should enable contact to be made with an authorizing third party if this approach is chosen. With significant

volumes of gas now transported for others by the distributor, the transportation consumers that were curtailed may re-nominate their volumes, diverting the gas so that it never reaches the distributor's system. In that event, the distributor would not have any gas to re-allocate. Some discussion occurred around the fact that renominations need the approval of the distributor, and the distributor could decline to accept the renomination.

492. In the view of some parties, the OEB could adopt a rule that as a condition of access to the distribution system, the distributor is conferred similar power as contained in section 30 of the Electricity Act. This would address leveling the playing field and address concerns that section 30 may be too broad, the rule could leave out the phrase "or a breakdown, repair or extension of a transmission or distribution system". This way an appropriate definition of an emergency could be adopted for the purposes of the Rule, and the emergency provisions of the Rule would be limited to those situations. However, the OEB may not be able to do this, as it appears to be extending the jurisdiction of the Board.
493. The consumers that would be most affected by the declaration of an emergency are industrial consumers. In the view of these industrials, any adoption of a modified section 30 of the Electricity Act, conferring authority on the distributor to declare an emergency, without third party approval, would be unacceptable. The distributor should not be permitted to call an emergency without the authorization of a third party such as the OEB.
494. There are differing recommendations regarding as to how to best address the issue.

10.3 Recommendation #10.1A

495. The *OEB Act* should be amended to provide the Board with the necessary jurisdiction to include in the Rule the condition that access to distribution service is subject to the following.
- An emergency is a situation whereby it becomes necessary to curtail firm service end users in Ontario, in order to maintain firm service to essential firm service end users.
 - If the supply of natural gas to a distributor is interrupted or reduced as a result of an emergency, as defined in this rule, the distributor may allocate the available gas among the consumers in its service area. In such an event, the firm service end user's access to distribution may be limited.
 - The distributor will be deemed to have purchased any gas to which it has custody but not title, at a price that will not realise a gain or loss to the end user on the transaction and shall be subject to review and approval by the OEB.
 - An allocation of gas as described above shall be deemed not to have been a breach of contract.

- Only the OEB is authorized to declare an emergency as described in the DAR. The OEB will establish a process for the expedited approval of an emergency situation.

10.4 Recommendation #10.1B

496. The *OEB Act* should be amended to include provisions similar to those in section 30 of the *Electricity Act, 1998* so that:

- an emergency is a situation whereby it becomes necessary to curtail firm service end users in Ontario, in order to maintain firm service to essential firm service end users;
- if the supply of natural gas to a distributor is interrupted or reduced as a result of an emergency, as defined in this rule, the distributor may allocate the available gas among the consumers in its service area. In such an event, the firm service end user's access to distribution may be limited;
- the distributor will be deemed to have purchased any gas to which it has custody but not title, at a price that the end-user can demonstrate as its landed (commodity and upstream transportation) price. Such price will not realise a gain or loss to the end user on the transaction and may be subject to review and approval by the OEB;
- an allocation of gas as described above shall be deemed not to have been a breach of contract.

10.5 Positions of Parties

497. **Supporting Alternative #10.1A:** Collingwood, IGUA.

498. **Supporting Alternative #10.1B:** ECNG, Enbridge, Kitchener, NRG, Six Nations, Union.

499. **No position:** CEED, DEML, OESC.

APPENDICES:

Appendix A: Letter from the Director of Licensing, December 6, 1999

Appendix B: Draft Table of Contents of Board Staff

Appendix C: List of Task Force Members

Appendix D: Alberta Energy and Utilities Board Decision

Appendix E: Definitions

Appendix F: Extract from Energy Act, Revised Statutes of Ontario

Appendix G: Summary of Issues and Recommendations

Appendix A

Letter from
the Director of Licensing

December 6, 1999

**Ontario Energy
Board**

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December 6, 1999

To All Interested Parties:

Re: Development of Gas Utility Access Rule

The Ontario Energy Board Act, 1998 provides the Board with the authority to establish rules with respect to a number matters related to the natural gas markets. Specifically, sections 44(1)(b) and 44(1)(d) provide the Board with the authority to make rules related to the conduct of a gas distributor as such conduct relates to marketers and to establish conditions of access to distribution services provided by a gas distributor .

The Board has determined that it is appropriate to commence development of rules with respect to the matters under sections 44(1)(b) and (d) of the Act. The Board has instructed staff to undertake a consultation process to develop a draft Gas Utility Access Rule for the Board's consideration. Staff intends to undertake the development of the draft Rule by way of a task force approach. The task force will be asked to work with staff in the identification and development of technical requirements. Following completion of the work of the task force, staff would issue the draft Rule for broad stakeholder consultation. The draft Rule, along with comments from parties, would be presented to the Board for its review and approval.

Staff have prepared the attached draft table of contents for the Rule in order to assist parties in determining their interest in the task force. The Rule will deal with matters such as customer transfers, mobility, obligations of distributors to provide access to customer information, billing and metering service requirements. The Rule would also establish principles and policy direction regarding the unbundling of utility services. Individual service matters and costs, charges and fees for services would be the subject of each utility's rates proceeding. The starting point for the work of the task force will be the Market Design Task Force's Final Report, which can be found on the Board's website at www.oeb.gov.on.ca. At this time, it is contemplated that access to distribution services will be addressed and that access to transmission and storage services will be addressed in the future.

Given the importance of the Rule to establishing the terms of access to the regulated monopoly systems, staff would like to proceed immediately to establish the task force. Staff are requesting that parties identify their interest in serving on the task force. Task force members should represent the broad categories of the affected customer groups, marketers, and the utilities. In order to bring the draft Rule to a timely conclusion it is expected that the task force will meet approximately two days a month. It is also

anticipated that there will be sub-groups formed around specific issues in order to improve the efficiency of the process.

If you or your organization is interested in being a member of the task force please contact Shyrose Virani at 416-440-8114, facsimile at 416-440-7656 or by e-mail at viranish@oeb.gov.on.ca no later than December 15, 1999. Staff may limit the task force to no more than 10 parties in order to encourage efficient meetings. If you have any questions about the foregoing please contact Brian Hewson at 416-440-7628.

Sincerely,

Anne Powell
Director of Licensing

attachment

Appendix B

Draft Table of Contents
of Board Staff

Distributor Access Rule

Draft Table of Contents

1. Purpose of the Rule

The Gas Utility Access Rule (the ARule®) is made under the authority of the Board and in particular sections 44(1)(b) and 44(1)(d) of the *Ontario Energy Board Act, 1998*. The Gas Utility Access Rule establishes the conditions for access to distribution services of the Ontario gas utilities. The Rule also establishes certain standards of business practice for utilities as they relate to the marketers and customers.

2. Definitions

3. Consumer Access to Suppliers

1. Standard Service Offer (SSO) and Default Mechanism from Distributors
 1. Consumer rights and obligations
 2. Distributor obligations
2. Consumer transfer to and from SSO
 1. Service transfer requests (STR)
 2. Processing of STRs
 3. Customer rights and obligations
3. Transfer between retailers
 1. Distributor obligations
 2. Customer rights and obligations
 3. Processing of STRs
4. STR charges

4. Transmission and Storage Services Access

To be developed at a later date

5. Distribution Services

1. Principles of access
2. Service eligibility
3. Access conditions
4. Required services

6. Settlement and Prudential Requirements

1. Settlement methodology
2. Settlement process
3. Billing options
4. Billing requirements
5. Prudential requirements
6. Metering data

7. Electronic business transactions
7. **Provision of Consumer Information**
 1. Consumer access to information
 2. Provision of consumer usage data
 3. Access to historical information
 4. Provision of distribution system physical operation information
 5. Maintenance and protection of consumer information
8. **Emergency Supply Planning**
 1. Utility Responsibilities
 1. Emergency supply preparation
 2. Access to information
 3. Declaration of emergency
 4. Termination of emergency
 5. Supply compensation and cost recovery
 2. Marketer Responsibilities
 1. Provision of information
 2. Provision of access to supply and storage
 3. Consumer responsibilities
 4. Ontario Energy Board Responsibilities
9. **Distributor/Retailer Relations**
 1. Non-preferential direction
 2. Shared marketing efforts
 3. Contracting practices and standards
 1. Distributors
 2. Retailers
10. **Compliance and Dispute Resolution**
 1. Compliance requirements
 2. Dispute Resolution
11. **Distribution Connection**
 1. System planning information
 2. System load profile and demand
 3. Facilities planning process
 4. System design standards
 5. Economic feasibility criteria
 6. Cost recovery
 7. Customer contribution principles

Appendix C: List of Task Force Members

The following list names the member organizations of the Distributor Access Rule Task Force and identifies the lead representative:

Organization	Lead Representative
Automated Network Solutions	Ron Sewell
Coalition for Efficient Energy Distribution (CEED)	George Vegh
Coalition of Eastern Natural Gas Sellers and Aggregators (CENGAS)	Gerry Villaneuva
Collingwood PUC	Erik Goldsilver
ECNG	Peter Scully
Enbridge Consumers Gas	Judy Allan
Enron Canada*	Aleck Dadson
Industrial Gas Users Association (IGUA)	Brian Howell
City of Kitchener	Dwayne Quinn
Natural Resource Gas Limited	William Blake
Six Nations Natural Gas	Nick Petruzella
TransCanada Transmission	Mark Stauf
Union Gas Limited	Richard Battista
OESC (Ontario Energy Savings Corporation)	Jack Schoenmakers

* resigned from DAR Task Force February 2000

CEED membership:

CanEnerco Energy Marketing Limited
Dynegy Canada Inc.
PanCanadian Petroleum Limited
Sunoco Inc.
TransCanada Gas Services

CENGAS membership:

Direct Energy Marketing Limited
Apollo Gas

Appendix D: Alberta Energy and Utilities Board Decision

Appendix E: Definitions

- 500. "Act" means the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B.
- 501. "affiliate" with respect to a corporation, has the same meaning as in the Business Corporations Act.
- 502. "Affiliate Relationships Code" means the code, approved by the Board and in effect at the relevant time, which among other things, establishes the standards and conditions for the interaction among electricity distributors or transmitters and their respective affiliates.
- 503. "ancillary services" means services necessary to maintain system operations and operating integrity including pressure control
- 504. "Board" means the Ontario Energy Board.
- 505. "building" means a building, portion of a building, structure or facility.
- 506. "competitive natural gas supply" means gas provided through freely negotiated commercial arrangements with a REM.
- 507. "competitive retailer" is a person who retails natural gas to consumers who do not take SSO.
- 508. "custody transfer meter" means a metering site which monitors the volume of gas which is conveyed to a customer for, among other things, system operations and contract compliance and not necessarily for billing purposes
- 509. "consumer" means a person who uses natural gas for the person's own consumption.
- 510. "customer" means a party to a commercial arrangement or agreement to acquire or convey natural gas for the purposes of economic gain which is not necessarily derived from the consumption of the natural gas and may be derived from the conveyance of natural gas.
- 511. "distribution services" means services related to the distribution of natural gas and the services the Board has required distributors to carry out, for which a charge or rate can be approved by the Board.
- 512. "distribution system" means an array of pipelines and ancillary equipment put in place to convey natural gas from one site to another and to which consumers are directly attached.
- 513. "distributor" means a person who owns or operates a distribution system.
- 514. "Electronic Business Transaction System" or "EBT System" means the authorized computer-based transaction mechanism for transmitting common format data among market participants.

515. "embedded distributor" means a distributor that is provided natural gas by a host distributor.
516. "host distributor" means the distributor who provides electricity to an embedded distributor.
517. "lock-box arrangement" means an arrangement where a financial institution (typically a bank or some other financial institution) is designated by the parties to accept payment from consumers on behalf of the parties and to distribute the collected revenue to the parties according to prescribed rules.
518. "meter installation" means the meter and, if so equipped, the instrument transformers, wiring, test links, fuses, lamps, loss of potential alarms, meters, data recorders, telecommunication equipment and spin-off data facilities installed to measure natural gas volumes flowing past a meter point,.
519. "non-competitive natural gas costs" means costs for services that are not deemed by the Board to be competitive natural gas services plus costs for distribution services, other than SSO.
520. "non-competitive natural gas services" means those services that are not deemed to be competitive natural gas services, plus certain distribution services, other than SSO.
521. "rate" means any rate, charge or other consideration and includes a penalty for late payment.
522. "Rate Handbook" means the document approved by the Board that outlines the regulatory mechanisms that will be applied in the setting of distribution rates.
523. "retail" with respect to natural gas means:
- (a) to sell or offer to sell electricity to a consumer,
 - (b) to act as 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.
524. "Retail Energy Marketer" means a person who retails natural gas to either a large volume consumer or by virtue of the Board granting a license and that license being valid to small volume consumers.
525. "Retail Settlement Code" means this code approved by the Board and in effect at the relevant time, which, among other things, establishes a distributor's obligations and responsibilities associated with financial settlement among retailers and consumers and provides for tracking and facilitating consumer transfers among competitive retailers.
526. "retailer" means a person who retails natural gas .

- 527. "Service Level Agreement" or "SLA" means the agreement that sets out the relationship between a REM and a distributor.
- 528. "service transaction request" or ("STR") means a written authorisation, unless otherwise provided for in the Code, that initiates a change from current service provision to alternative service provision.
- 529. "Standard Supply Offering " ("SSO") means the service approved by the Board and in effect at the relevant time, which, among other things, establishes the minimum conditions that a distributor must meet in carrying out its obligations to sell natural gas to a small volume end use consumer of natural gas not supplied by a freely negotiated supply of natural gas .
- 530. "transmission system" means a system for transmitting natural gas and includes any structures, equipment or other things used for that purpose and is a physical system of equipment for conveying natural gas which an end use consumer cannot attach to directly
- 531. "transmitter" means a person who owns or operates a transmission system.
- 532. "unbilled and unaccounted for gas" means gas lost by a party and not available for consumption or use by any.
- 533. "wholesale consumer" means a person that purchases natural gas or ancillary services in the open market other than an embedded retail generator.
- 534. markets or directly to another person, other than a consumer.
- 535. "written authorisation" includes authorisation given by electronic mail or any other similar technology, but does not include authorisation given verbally.

Appendix F: Extract from Energy Act, Revised Statutes Of Ontario**Section 15**

1. *No person shall initially activate an appliance that is to be supplied with a hydrocarbon by pipeline without first giving notice in writing to the distributor of the address of the premises at which the installation was made or is to be made and the type of appliance supplied or to be supplied.*
2. *Where premises are connected to a supply of hydro carbon by pipeline for the first time, no person shall initially activate an appliance in the premises that is connected to the pipeline until the distributor of the hydro carbon has examined the installation and use as being in compliance with this Act and the regulation. R.S.O. 1990 c E. 16, s.15.*

Section 18

1. *No person shall dig, bore, trench, grade, excavate or break ground with mechanical equipment or explosives without first ascertaining the location of any pipeline that may be interfered with.*
2. *Where the owner of a pipeline is requested by any person about to dig, bore, trench, grade, excavate or break ground with mechanical equipment or explosives to give the location of a pipeline for the purpose of subsection (1), the owner shall within a reasonable time of receipt of the request and having regard to all the circumstances of the case, furnish reasonable information as to the location of the pipeline. R.S.O. 1990 c. E. 16, s.18*

Appendix G: Summary of Issues and Recommendations**Summary of Issues and Recommendation (Draft #14: June 2, 2000)**

Issue #1.1: Should the Rule include a statement of principles and, if so, what should they be?

Recommendation #1.1A

The Rule should include a provision which states that distribution services be provided in accordance with the following principles:

- Non-discriminatory treatment towards gas producers, suppliers, REMs, embedded distributors, and standard supply and direct purchase customers;
- Maintaining reasonable system integrity;
- Minimizing unnecessary transaction costs; and
- Facilitating competition in gas sales services.

Recommendation #1.1B

If the Board believes that principles of access beyond the principle of non-discrimination are required, it should ask specifically for submissions on this matter in the upcoming consultation process.

Issue #2.1: What are the conditions of access to emergency gas leak response and who provides it?

Recommendation #2.1

Distributors should continue to be obligated to provide access to emergency gas leak response for all of its customers, regardless of who supplies the commodity or other services.

Issue #2.2: What are the conditions of access to line locates and who provides them?

Recommendation #2.2

Distributors should continue to be obligated to provide line location information on distributor-owned underground pipe to an excavator who provides the appropriate notice. The distributor will provide the information through its records and field visits.

Issue #2.3: What are the conditions of access to appliance inspection and record keeping and who provides this?

Recommendation #2.3

Distributors should continue to be obligated to provide all customers and installers an installation inspection of all initial appliance(s) where the premises are supplied by gas for the first time.

Issue #2.4: What are the conditions of access to safety information?

Recommendation #2.4

In the event of retailer consolidated billing, distributors and REMs should be required to produce a protocol by which REMs provide safety notification and emergency response information to their consumers for whom the REM provides retailer consolidated billing.

Issue #2.5: What conditions of access to distribution connections are applicable to persons requesting service at premises lying along the line of a distributor's distribution pipeline?

Recommendation #2.5

Any person, acting directly or through an agent, requesting connection to a premise, of which they are in charge, lying along the line of a distributor's existing distribution pipeline should be entitled to connection to the distribution system. Connections of premises lying along the line of a distributor's existing distribution pipelines shall be provided upon request provided the connection will not impair the safety or reliability of the system, and the customer has made acceptable arrangements for payment of contributions, if required by the distributor. The distributor should be obligated to apply its contribution policy in a non-discriminatory manner.

Issue #2.6: What conditions of access to distribution connection are applicable to persons requesting service at premises that do not lie along the line of a distributor's distribution pipeline?

Recommendation #2.6

The Rule should not create a right to connection for persons not on main, but would address the rights of persons located on a distribution main and the rights of persons to distribution service once attached.

Issue #2.7: What conditions should apply to the right to access distribution service, by connected consumers, from a delivery point to the consumer meter?

Recommendation #2.7

A connected consumer's right to access distribution service should be limited by:

- a requirement to meet tariff eligibility criteria approved by the appropriate rate making authority,
- a requirement to meet appropriate credit/prudential requirements applied in a consistent manner between consumers of similar credit risk,
- the ability of the distributor to safely provide service and operate the distribution system in accordance with applicable acts and standards.
- the provision or expansion of distribution service allowing for the expectation of an appropriate return on and recovery of the investment in facilities made to serve the consumer.

Issue #2.8: What access rights should be available for distribution customers that are not consumers?

Recommendation #2.8

Distribution customers that are not consumers should have rights to access to distribution services in accordance with the tariffs approved by the appropriate authority from time to time.

Issue#3.1: Should the sale of gas by a distributor to a customer be addressed in the Distribution Access Rule?

Recommendation #3.1

The Task Force requests the Board to initiate a process to review as soon as practicable the terms and conditions of a standard service offering for natural gas sales.

Issue #4.1: How should in-franchise customer changes be handled?**Recommendation #4.1**

When the distributor is advised that a consumer is moving within a distributor's service area, the distributor should process an authorized REM or consumer's verbal or written request to transfer its current retailer supply arrangement.

The distributor would communicate a consumer's request to the retailer , as long as the retailer has the consumer's written authorization for the release of confidential information.

Where the distributor has been advised by the retailer that the consumer will be requesting distribution service elsewhere in the distributor's franchise area, the distributor would communicate a retailer's request to the consumer and would provide the retailer with a report on a timely basis that identifies the old account number, the new account number and the new service address, subject to the appropriate written authorization. The timing of these reports will be addressed in the services agreements discussed in section 8.1.

Where the distributor has not been advised that the consumer will be requesting distribution service elsewhere in the distributor's franchise are, the distributor will provide the retailer with a report that identifies the old account number.

Issue #4.2: What form of authorization is required for a service transfer request ("STR")?**Recommendation #4.2**

A distributor should comply with service requests of a customer and those provided by REMs that are in accordance with the rules set out in section 2.1.4 of the Code of Conduct for Gas Marketers. It should be mandatory that these requirements be adhered to whether or not the marketer is licensed.

Issue #4.3: What information must be transmitted by the REM to the distributor when submitting a service transaction request.

Recommendation #4.3A

The current submission process should remain as is but include the service address as one of the data requirement to process requests. The distributors must process requests if the account number and either the customer name or service address is confirmed with the information contained in the distributors information system, assuming no other fatal errors are contained in the service transfer request.

The following information should be provided when a service transfer request is submitted:

- Distributor account number (or numbers), and the customer name or service address for which the change in service is requested.
- Type of DP arrangement (e.g. ABC-T, Western-T, Ontario-T).
- The earliest date after which transfer is acceptable to the retailer and/or customer.

The following information may be provided when a service transfer request is submitted:

- The requesting retailer's customer-account number.
- Identification of any customer-specific data information desired (e.g., usage history, credit information).
- Customer mailing address.
- Identification of the preferred billing option (e.g., consolidated billing from the retailer, consolidated billing from the distributor, split billing).

Recommendation #4.3B

Same as Recommendation #4.3A with the exception that distributors must process requests if any two of the account number, the customer name and the service address are provided.

Issue #4.4: What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from one competitive retailer to another?

Recommendation #4.4A

The Rule should adopt the Service Transfer Request provisions set out in s. 10.5.4 of the Retail Settlements Code with 2 modifications. These modifications are:

- The addition of the proviso that a specific written authorisation from a consumer to terminate the transfer must be dated no earlier than the date that the current REM is informed of the transfer request; and
- The removal of the requirement that when there is an existing retailer for the distributor to notify the consumer that the transfer request is on hold, pending clarification as to which retailer will supply the consumer.

The Rule should specify when this recommendation comes into effect, which should be no later than April 1, 2001.

Recommendation #4.4B

The present transfer policies employed by the distributors should be incorporated into the Rule.

Recommendation #4.4C

Allow grandfathering, with recommendation #4.4B being adopted for all contracts in place as of the date the Rule comes into force, and recommendation #4.4A for all contracts entered into after the date the Rule comes into force.

Issue #4.5: What procedure should be used for confirming to the REM the start date and arrangements of STRs?

Recommendations #4.5

The timing respecting the processing of STRs should be addressed in a services agreement. The goal of that agreement should be to establish an expeditious time frame required to process STRs. Ideally, STRs received prior to a reasonable cut-off date would take effect on the 1st day of the month following the completion of the STR notification period. That agreement would also acknowledge that the meter read for the 1st of the month may be an estimate at the time of processing.

Issue #4.6: What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from system supply (or the standard service offering) to a competitive retailer?

Recommendation #4.6

The Rule should adopt the Service Transfer Request provisions set out in s. 10.5.3 of the Retail Settlements Code.

Issue #4.7: What rules should the natural gas utilities follow in order to proceed with consumer service transfer requests from a competitive retailer to system supply (or the standard service offering)?

Recommendation #4.7A

It is recommended that these rules adopt the Service Transfer Request provisions set out in s. 10.5.5 of the Retail Settlements Code with one modification.

- The addition of the proviso that a specific written authorisation from a consumer to terminate the transfer must be dated no earlier than the date that the current REM is informed of the transfer request.

The Rule should specify when this recommendation comes into effect, which should be no later than April 1, 2001.

Recommendation #4.7B

The present transfer policies employed by the natural gas utilities should be incorporated into the Rule.

Recommendation #4.7C

Allow grandfathering, with recommendation #4.7B being adopted for all contracts in place as of the date the Rule comes into force, and recommendation #4.7A for all contracts entered into after the date the Rule comes into force.

Issue #5.1: What is the allowable security that a distributor may require of a retailer and a consumer?

Recommendation #5.1

Distributors should be permitted to require security from retailers as a protection against payment default by the retailer.

Distributors should only be permitted to apply security requirements according to a published policy. The policy would have to be applied in a non-discriminatory manner such that retailers of comparable credit risk will be subject to similar security requirements.

Distributors, at the discretion of the retailer, should accept the required security in the form of an irrevocable letter of credit, surety bond, cash deposit or lock box arrangement. If a lock box arrangement is selected, the distributor and the retailer shall agree on the financial institution to be used.

Distributors, at their discretion, should be able to accept bond ratings or credit ratings in lieu of specific security, provided that retailers with similar ratings are treated in a similar manner.

If security is provided in the form of a cash deposit, the distributor should pay interest at the lesser of, the interest paid on consumer deposits, or the prime rate charged by the distributor's bank. A retailer should be able to require that cash deposits be held in specified low-risk interest bearing accounts; however the distributor shall have exclusive access to the funds posted for security.

The maximum security required should not be more than the amounts set out below:

- Distributor consolidated billing: The maximum security should be the maximum anticipated exposure under the BGA(s) in accordance with the provisions of the relevant approved rate schedules.
- Split billing: The estimated charges for storage and transportation contracted directly by the retailer from the distributor for the month during which the bill is expected to be the highest, multiplied by 2.5.
- Retailer consolidated billing: (i) the sum of the amounts for delivery service only, calculated for each consumer class, of the number of consumers in the class served by the retailer, multiplied by the estimated average delivery charges for the class for the billing period forecast to be the highest for the year, multiplied by a billing period weighting factor. The bill period weighting factor shall be 2.5 for monthly billings, 1.75 for bi-monthly billings, or 1.5 for quarterly billings plus (ii) the estimated charges for storage and transportation contracted directly by the retailer from the distributor for the month during which the bill is expected to be the highest, multiplied by 2.5.

A distributor should be permitted to update periodically the calculation of the security required under the above options. A retailer should be able to require a distributor to update periodically the calculation of the security requirement. If the required security has increased by more than 10 percent over the amount currently in place, the retailer shall meet the new requirement within 20 business days. If the maximum amount has fallen below the amount of security in place by more than 10%, the distributor shall notify the retailer immediately, and the retailer may modify its security arrangement in light of the lower requirement. If security is by way of a cash deposit, the distributor shall, if requested by the retailer, return any excess security held to the retailer within 20 business days of the date on which the new estimate was determined.

In the event of default by the retailer, a distributor should not access the funds available through the relevant security provision before a period of five business days has elapsed from the date payment was due. The distributor should notify the retailer, the day after a payment was due, but not received, that the payment was not received and work to remedy the situation with the retailer. If the account remains unpaid after 10 business days, and the parties have not agreed on a remedy, the distributor may notify the retailer's consumers that they will be returned to system gas supply according to a schedule specified by the distributor unless those consumers elect to be served by an alternative retailer. If the distributor receives an STR that identifies an alternative retailer prior to switching the consumer to system gas supply, the distributor should switch the consumer to the new retailer rather than to system gas supply.

- During a default period, a distributor should not retain any revenues collected by the distributor on behalf of the retailer as a security unless the magnitude of the security accessible is insufficient to cover the amount of the default.
- A distributor should be permitted to charge a retailer interest on any overdue amounts at a rate equal to the prime rate charged by the distributor's bank plus 2 percent per annum.

Distributors should be permitted to require security from consumers as a protection against payment default by the consumers. Distributors should only apply security requirements according to the distributor's policy.

Issue #6.1: What should be the billing options?**Recommendation #6.1A**

The Rule should require a distributor to accommodate three billing options:

- Retailer-consolidated billing;
- Distributor-consolidated billing (rate ready and bill ready); and
- Split billing

The selection of a billing option should be determined by the consumer and the retailer. The retailer should notify the distributor of the desired option in accordance with these rules.

Recommendation #6.1B

The Rule should not specify billing options.

Issue #6.2: What information process requirements are needed to accommodate Retailer Consolidated Billing?**Recommendation #6.2**

The information process requirements outlined in the RSC should be adopted for natural gas.

Issue #6.3: What restrictions, if any, should there be in the Rule regarding the distributor's use of its bill for distributing information to consumers?**Recommendation #6.3A**

Bills to system supply customers should only include the distributor's marketing information or promotional materials, and materials or information that the distributor is obligated to send as part of its regulated distribution function.

Recommendation #6.3B

The Rule should not contain the above provision.

Issue #7.1: What are the principles of consumer access to information?

Recommendation #7.1

Consumers should be able to make a verbal request to the distributor for historical consumer specific information to be delivered to the consumer's service or billing address.

Consumers would be required to make a written request to the distributor for historical consumer specific information to be delivered to an address other than the service or billing address, a retailer or a third party.

When a retailer has obtained written authorization to request consumer information, the retailer would be permitted make a written request for historical consumer specific information to be delivered to the retailer and the distributor should provide such consumer information to the retailer. Consumer information that may be requested consists of usage date, meter data, payment information and meter configuration information.

Issue #7.2/7.3: What use should the distributor be permitted to make of consumer information?

Recommendation #7.2

Confidential information specific to a consumer should not be released without the consent of the appropriate consumer. Confidential information specific to a marketer should not be released without the consent of the appropriate marketer.

In either of the above cases, consent would not be necessary where confidential information is required to be disclosed:

- for billing or market operation purposes;
- for law enforcement purposes;
- for the purpose of complying with a legal requirement; or
- for the processing of past due accounts of the consumer which have been passed to a debt collection agency.

Recommendation #7.3A

A distributor should not be permitted to use consumer information obtained for one purpose from a consumer for any other purpose without the consent of the consumer.

Recommendation #7.3B

The distributor should only be required to abide by applicable legislation on the use of consumer information.

Issue #7.4: What is the extent of consumer access to gas consumption data read from a meter?

Recommendation #7.4

Any consumer, either directly or through an authorized third-party, should have the right to read the meter measuring their consumption at any time.

Any consumer, either directly or through an authorized third-party, should have the right to receive, upon request, their 12-month consumption history at no fee for the request and on a timely basis to be set out in the services agreement.

A distributor would be able to provide, at its discretion, special request data in excess of 12 months and could charge a reasonable fee for the provision of such additional data.

Any consumer, either directly or through an authorized third-party, should have a right to interrogate the meter measuring their consumption, or to assign that right to others, in accordance with any relevant technical standards or codes and having demonstrated compliance thereof with the distributor's or Industry Canada's standards.

Issue #8.1: Should there be Service Agreements between distributors and retailers and what should they cover?

Recommendation #8.1

Distributors should be required to enter into a services agreement with persons retailing or intending to retail gas in their franchise area, upon request. The terms of the services agreement would be approved by the Board, and disputes in relation to the terms of the agreement, and the interpretation of the agreement, should be determined in accordance with the dispute settlement provisions of these Rules.

Issue #8.2: How should account number changes be handled?

Recommendation #8.2

For distributor-initiated changes in account number, the distributor should be required to provide a report to the retailer showing the consumer's new account number, consumer's name, consumer's service address and the consumer's old account number.

Issue #9.1: Should the Rule contain an interpretive provision and, if so, what should it be?

Recommendation 9.1A

The rules should contain an interpretive provision such as the following:

The purpose of the Rules is to govern the conduct of distributors as it relates to REMs generally, and as it relates to access to distribution by consumers and REMs. Although these rules contain procedures to address non-compliance, they will only be effective if they are followed in good faith by distributors. This good faith requirement means that distributors are to respect the principles as well as the letter of these Rules. Distributors shall not act in non-conformance with these Rules unless and until they are specifically authorized to do so in accordance with the procedures set out in these Rules.

Recommendation 9.1B

Complaints regarding the distributor's compliance should be addressed by way of a dispute resolution process as outlined in the Rule.

Issue #9.2: Because the DAR will provide for the possibility of exemptions, and because Board interpretations of the DAR will provide guidance on how the rules are applied, it is necessary for market participants to have notice of the current status of the applicability of the rules and their interpretation.

Recommendation #9.2A

Persons who apply for exemptions or who bring complaints under the Rule should be required to provide the Board with an electronic copy of their application so that it may be posted on the Board's web site and reviewed by interested parties. The applications should provide sufficient information to allow parties to determine whether and how they may be impacted by the application, and the process for intervening. The Board's procedural orders and ultimate disposition relating to these applications should also be posted on the Board's web site. This recommendation would not preclude the Board from summarily disposing of frivolous or vexatious applications or complaints as is currently the practice or, in its discretion, ordering that specific complaints may be exempted from this requirement.

Recommendation #9.2B

The Rule should not preclude OEB discretion, within its practices and procedures, as to if and how it makes a specific complaint public. If the Rule is to preclude the Board's discretion, i.e. the complaints must be posted on the OEB's Web page, then the other codes/licences falling under the OEB jurisdiction ought to be amended to direct the same.

The Rule should not preclude OEB discretion, within its practices and procedures, as to how it proceeds to consider and grant an exemption. Upon granting an exemption, a posting on OEB's Web page would be an acceptable means of communicating the exemption.

Issue #9.3: What should the process be for resolving complaints between the distributor and its distribution services customers?

Recommendation #9.3

The Electricity Distribution Licence process includes the process set out in s.75 of the *OEB Act, 1998*, which authorizes the Board to order the licenced distributor to comply with the terms of its licence. A similar power should be included in this Rule.

A comparable process would read as follows:

The distributor shall:

- establish proper administrative procedures for resolving complaints by consumers and other market participants' regarding services described in and provided under the terms of the Distribution Access Rule;
- publish information which will facilitate its customers accessing its complaints resolution process;
- refer unresolved complaints and subscribe to an independent third party complaints resolution agency which has been approved by the Board;
- make a copy of the complaints resolution procedure available for inspection by members of the public at each of the distributor's premises during normal business hours;
- give or send free of charge a copy of the procedure to any person who reasonably requests it; and
- keep a record of all complaints whether resolved or not including the name of the complaint, the nature of the complaint, the date resolved or referred and the result of the dispute resolution.

Issue #10.1: What may distributors do during emergencies on the Ontario natural gas system to maintain service to end use consumers taking firm service?

Recommendation #10.1A

The *OEB Act* should be amended to provide the Board with the necessary jurisdiction to include in the Rule the condition that access to distribution service is subject to the following.

- An emergency is a situation whereby it becomes necessary to curtail firm service end users in Ontario, in order to maintain firm service to essential firm service end users.
- If the supply of natural gas to a distributor is interrupted or reduced as a result of an emergency, as defined in this rule, the distributor may allocate the available gas among the consumers in its service area. . In such an event, the firm service end user's access to distribution may be limited.
- The distributor will be deemed to have purchased any gas to which it has custody but not title, at a price that will not realise a gain or loss to the end user on the transaction and shall be subject to review and approval by the OEB. .
- An allocation of gas as described above shall be deemed not to have been a breach of contract.
- Only the OEB is authorized to declare an emergency as described in the DAR. The OEB will establish a process for the expedited approval of an emergency situation.

Recommendation #10.1B

- The *OEB Act* should be amended to include provisions similar to those in section 30 of the Act so that: an emergency is a situation whereby it becomes necessary to curtail firm service end users in Ontario, in order to maintain firm service to essential firm service end users;
- if the supply of natural gas to a distributor is interrupted or reduced as a result of an emergency, as defined in this rule, the distributor may allocate the available gas among the consumers in its service area. In such an event, the firm service end user's access to distribution may be limited;
- the distributor will be deemed to have purchased any gas to which it has custody but not title, at a price that the end-user can demonstrate as its landed (commodity and upstream transportation) price. Such price will not realise a gain or loss to the end user on the transaction and may be subject to review and approval by the OEB;
- an allocation of gas as described above shall be deemed not to have been a breach of contract.