

GAS DISTRIBUTION ACCESS RULE

Submissions of the Consumers' Association of Canada

June 27, 2001

1. OVERVIEW

1. Introduction

These are the submissions of the Consumers' Association of Canada (CAC) regarding the Ontario Energy Board's (Board) proposed Gas Distribution Access Rule (Rule). CAC has reviewed the draft Rule dated February 6, 2001, and the submissions filed by other stakeholders in the October and February rounds of consultation. CAC is presenting its views on the proposed Rule focussing primarily, as directed by the Board, on the issues of customer mobility and billing options.

CAC wants to be clear that it does support the further development of retail competition in the natural gas industry in Ontario. A fully functioning competitive market ultimately benefits end-use consumers. From CAC's perspective a competitive natural gas market should have the following characteristics: a sufficient number of competing suppliers, price transparency, customer mobility, and the availability of adequate information to allow customers to make choices. In addition, CAC is of the view that these conditions need to be coupled with effective regulatory oversight over those aspects of the industry that are subject to regulation.

2. Current Direct Purchase Market - Customer Concerns

Although a significant number of residential consumers are currently being supplied by gas vendors (or retailers) CAC is not of the view that the market, as it now stands, is truly competitive. The direct purchase market has suffered from a lack of education and of consumer understanding about how the market works and what elements are subject to competition. There also continues to be considerable confusion about the distinction between the role of gas

vendors and the local distribution companies (LDCs). In addition, many of the contracts currently in place between end-use customers and gas vendors are incredibly complicated and contain unreasonable provisions, the implications of which most customers are unaware of. Many customers have also unknowingly locked into these contracts for long periods of time.

The market is also characterized by the dominant position of one marketer in both the Union Gas Limited (Union) and Enbridge Consumers Gas (ECG) franchise territories. Clearly, the conditions necessary for effective competition are not present in the Ontario retail market.

Although the Board has the ability to oversee the marketing activities of gas vendors inappropriate marketing activities continue to occur. Misleading advertising and inappropriate representation at the door continue to plague the industry. This is occurring despite the Board's enhanced ability to oversee the activities of retailers through its licensing powers and its ability to establish codes of conduct.

CAC recognizes that one of the primary purposes in development of the Rule is "to facilitate competition in the sale of gas" (Section 1.1.1). CAC supports the Board's effort to facilitate competition. CAC urges the Board in its development of the Rule to carefully consider the characteristics of the existing marketplace. Existing market conditions, need to be recognized and provide context in the development of the Rule.

CAC also believes that the conditions of access to distribution services that Board is mandating through the Rule will need to be enhanced through other initiatives if further competition is to be achieved. Establishing requirements for the LDCs in isolation will not necessarily achieve competition in the gas commodity market. That limitation must be recognized. Having regard to the existing market characteristics the Board must consider significant changes to the way in which gas retailer activities are regulated. In particular, a more effective way to govern the conduct of retailers either through the imposition of penalties or fines should be adopted by the Board. In addition, as set out below, the Board must also promote and mandate consumer education initiatives.

3. Need for Customer Education

The direct purchase market to date has suffered considerably from the lack of education undertaken by both the utilities and the Government. Although a large number of residential consumers are purchasing their supply from retailers customer confusion continues to be a significant problem. The provisions in the Draft Rule call for changes in both billing arrangements and mobility provisions. Although some of the proposed changes may act to facilitate competition, without significantly stepping up consumer education efforts even further confusion will ensue. CAC urges the Board to consider the importance of promoting comprehensive communication efforts to deal with existing gaps in consumer information and to accompany the proposed changes in the areas of billing options and customer transfer policies.

4. Symmetry with Electricity Initiatives

The Draft Rule has been developed to ensure consistency with the retail electricity market. Although consistency is important, to the extent possible, the Board should have regard to the fact that the electricity rules are to date untested. In addition, the Board should recognize the differences where appropriate and not force symmetry if there are valid reasons to make a distinction.

5. Process

Many of the issues being addressed through the Draft Rule have been the subject of industry consultation for many years, dating back to 1996 with the Board's Ten Year Market Review Process. Despite industry efforts to resolve these issues through various committees and task forces they remain unresolved. CAC submits that the failure of industry stakeholders to resolve these issues demonstrates that divergent stakeholder interests are at play. A stakeholder process cannot work. The practical result is that there will not be an effective resolution of these issues without a transparent process. Parties must have an opportunity to present evidence and have that evidence tested in a public forum. CAC considers it an appropriate time for the Board to evaluate the various stakeholder perspectives and to make binding decisions on the set of issues under consideration. CAC agrees with the LDCs that the only way to do this is through a public hearing process.

CAC has, in its earlier correspondence with the Board indicated that the Rule development process to date has been inadequate. The issues addressed through the Rule are important to all of the affected stakeholders and it is incumbent upon the Board to ensure that all of those views have been carefully considered. The task force process effectively precluded the participation of small volume end-use customers permitting the perspectives of retailer and LDCs to dominate the process.

This current process does allow for the small volume perspective to be presented, but not on the same terms as other stakeholders. The limited funding available has restricted the ability of CAC to undertake a comprehensive analysis of the task force deliberations, the submissions of other parties in the earlier rounds of consultation and has restricted our ability to consider the legal and jurisdictional concerns raised by other parties and relevant to the consumer perspective. As we have noted before it is ironic that the LDCs are permitted to recover from ratepayers the costs of their participation in these types of processes, but the participation by ratepayer groups is limited.

The issues addressed through the Rule represent important issues for natural gas consumers in Ontario. What has been submitted to date has not been factual evidence that can be tested through a hearing process. Instead, we have had assertions by stakeholders that are often conflicting and not necessarily based on fact. For example, the LDCs have undertaken customer research, the results of which support their positions regarding billing. Some of the retailers have also submitted research results which are contrary to the research presented by the LDCs. A full hearing process would give the Board and other parties the ability test the conflicting evidence and weigh it accordingly.

What also concerns the CAC about the process is that there has been no evidence submitted or tested as to the cost implications for the LDCs, and ultimately their ratepayers, of complying with the provisions in the Rule. The LDCs have raised issues about the direct administrative costs of compliance with the Rule, the potential on their ability to raise capital, the impacts of revised prudential requirements for retailers, and the inefficiencies of multiple billing systems. In addition, issues such as potential stranded costs related to billing and the recovery of those

stranded costs have not been put forward.

A full examination of the cost impacts may ultimately affect the reasonableness of the various proposals. Without this input the Board's ability to make decisions on these matters is significantly compromised. CAC also notes that the Board has accepted billing options as an issue in the Union unbundling proceeding. Some clarification is needed as to how what the Board may decide in that case may affect the outcome of the Board's decision regarding the Rule.

6. Implementation Timing

The Draft Rule has not set out proposed timing as to when the Rule may come into effect. As noted throughout this submission CAC does consider it inappropriate for the Board to impose the obligations contained in the Rule on the distributors without a further consideration of the implications on distributors and their ratepayers. In addition, it is imperative from CAC's perspective to precede the introduction of gas vendor consolidated billing with a comprehensive consumer education campaign.

2. CUSTOMER MOBILITY ISSUES

A. Customer Choice

CAC advocates customer choice as a fundamental principle which should guide the Board's consideration of these issues. CAC believes that without customer choice and reasonable mobility provisions there is little point to retail competition in the Ontario natural gas market. Customers should be permitted to switch suppliers. One would hope that in a competitive market consumers would be able to choose their gas supplier on the basis of what pricing option and contractual terms and conditions best served their needs.

In Section 6 of the draft Rule a process is proposed by which customer can switch suppliers. Currently LDCs will not process customer transfers if the customer is already signed up with a marketer. CAC agrees that this is an inappropriate position for the LDC to be in. The

proposals in the Rule are seeking to change this requirement. CAC supports the proposal for the LDCs to facilitate customer transfers at the request of the customer. If the customer has a contractual dispute with his or her marketer that should not be a matter for those parties to resolve. The LDC should not continue to be an arbiter of retail contract disputes.

The current market has not been characterized by customer mobility. Many customers have unknowingly signed up for long-term contracts. Many of those contracts have provisions that favour automatic renewal. In addition, the LDCs have been required to refuse transfers for customers already under contract. The proposed Rule may go some distance in enhancing mobility, but the prevalence of long-term contracts and information gaps may continue to inhibit competition.

If the Board wishes to facilitate further competition it may be necessary to make changes impacting customer mobility over and above those proposed in the draft Rule. CAC urges the Board to consider promoting mobility through changes to the Gas Retailer Code of Conduct.

1. Proposed Procedures

CAC generally supports the proposed procedures for service transaction requests as set out in the draft Rule. The procedures are, however, potentially complex and to the extent there may be ways to more easily facilitate transfers the Board should allow, once some experience has been gained, for improvements to be made. With experience the practical effect of the proposals can be assessed.

2. Administrative Complexity and Cost

As noted above this process is incomplete in that it does not allow for a consideration of the potential cost impacts of the changes mandated by the Rule. ECG has expressed concern about the potential administrative cost increases that may arise if these procedures are mandated. CAC believes that before the Board approve these procedures the utilities provide estimates of the cost impacts. To the extent they are significant it may be appropriate to consider alternative procedures. To implement the procedures without an estimate of the cost

impacts would be inappropriate.

3. BILLING ISSUES

A. Customer Choice

Section 8.1 of the Draft Rule proposes that with respect to billing options the distributor should take direction from the customer or the gas vendor. Although existing contracts allow the gas vendor to act on behalf of the customer through agency agreements CAC does not support the proposal to allow gas vendors to choose the billing arrangement on behalf of the customer. It is essential to allow the customer, not the retailer to choose the billing option they prefer.

As noted by ECG and Union in their earlier submissions many of the existing contracts were marketed on the basis that the customer would continue to be billed by the utility. In effect, they were promised that nothing would change. If the Board is advocating customer choice CAC is of the view that there must be an obligation imposed by the Board, through either the Rule or through the Gas Retailer Code of Conduct, that permits customers to choose their preferred billing option. This is necessary even if existing contracts permit the agent to act on the customer's behalf. CAC has significant concerns about the fact that few customers actually understood what future rights they were surrendering when signing these contracts.

If customers are not given an explicit choice about who how they are billed CAC expects a considerable consumer backlash once a bill, not of their choosing arrives in the mail. This could seriously impact customer perception of the industry as a whole.

CAC submits that to the extent that the LDCs are required to offer the three billing options as set out in the draft Rule the customer must be able to choose which billing option he or she prefers. The LDCs should be required to take direction directly from the customer and not through the agent on the customer's behalf.

2. Three Options

Section 8.3.1 of the Draft Rule mandates that gas vendors must offer distributor consolidated billing, gas vendor consolidated billing and split billing.

Mandating the three options arguably facilitates customer choice as to how they will be billed and retailer choices about how to operate their businesses. In addition, the introduction of gas vendor consolidated billing could allow for a single entity to bill for a number of services including gas and electricity on a single bill. This is an attractive proposition from the customer's perspective. The transaction costs associated with split billing may also make consolidated bills more attractive. Although CAC believes that from a customer perspective allowing gas vendor consolidated billing is an important step in facilitating competition the Board does not have sufficient evidence before it to mandate, at this time, the three proposed billing options.

The LDCs and others have raised a number of significant issues regarding the introduction of gas vendor consolidated billing. Until those issues are resolved through a public hearing process to impose the obligation on distributors at this time would be premature. A number important issues need to be resolved:

1. Does the Board have the jurisdiction to impose the obligation to provide three billing options on the LDC?
2. What do options do ratepayers want to be made available?
3. How does the Board resolve conflicting market research regarding customer preference for billing options?
4. What are the overall costs of implementing three options? Is there sufficient demand for three billing options to justify the cost?
5. How can the Board ensure that regulated distribution charges will not be marked up by retailers?
6. How can the Board ensure that retailers adequately provide safety information to the LDCs distribution customers?
7. How can the Board ensure that retailers will provide sufficient information regarding distribution charges to its customers?
8. Does gas vendor consolidated billing increase the LDCs credit risk? If so, by how much and who should bear the increased cost associated with that risk?

9. Is imposing the obligation on the LDCs to provide gas vendor billing required in order to facilitate retail competition?
10. What would be the financial impact on LDC shareholders and ratepayers if the customer/distributor relationship is effectively severed?
11. What level of customer education is required prior to the introduction of gas vendor consolidated billing? Who should be responsible for that education? What will be the cost of that education?
12. How will any cost impacts arising from compliance with the Rule be treated within the context of a PBR regime?

Ultimately from a customer perspective allowing gas vendor consolidated billing is a desired end-state. However, introducing the obligation for LDCs to provide it at this time would be both inappropriate and premature. CAC believes that it is incumbent upon the Board to resolve the issues raised above before imposing the obligation on distributors and potentially imposing the costs of making it available on utility customers.

3. Customer Education

As noted above the importance of increased consumer education in the retail gas market should not be underestimated. Customer confusion is still prevalent among system customers and direct purchase customers. Assuming the Board may impose the obligation to provide the three billing options on the LDCs in the near future, there must be a plan to educate customers about the changes and inform them as to their choices.

4. CUSTOMER INFORMATION

As a matter of principle CAC is of the view that individual customer information belongs to the customer. That information should not be released except with written permission from the customer. CAC's reading of the customer information provisions in the draft Rule is that the provisions are consistent with this principle and are therefore appropriate.

5. SECURITY ARRANGEMENTS

CAC supports the security arrangements set out in the draft Rule. In Section 9.1 the LDC is required to file with the Board any updates, revisions or changes to its security policy. CAC submits that to the extent the LDC does revise its security policy there should be public notice of those changes. In addition, stakeholders should be given an opportunity to make submissions on the proposed changes. This will ensure that the Board can consider the views of the stakeholders, not simply the LDCs in its review of the proposed policies.

6. EXPANSION AND CONNECTION

With respect to system expansion and connection policies the proposed Rule sets out filing requirements and procedures the LDCs are required to follow. CAC acknowledges that the procedures rely on the guidelines established through the E.B.O. 188 Report. CAC supports those guidelines and the proposal to mandate through the Rule a requirement to undertake system expansion in accordance with those guidelines.

7. OTHER ISSUES

1. Emergency Supply Planning

CAC was not a party to the Task Force deliberations regarding emergency supply planning. As such we are not in a position to comment on the adequacy of the specific procedures proposed. CAC does support the fact that development of an emergency supply plan is essential. To the extent the Board accepts the Task Force conclusion that the plan cannot be mandated through the Rule the Board should act promptly to put an appropriate plan in place under whatever authority is required.

2. Exemptions

Although the draft Rule does allow for exemptions CAC agrees with several of the stakeholders that the exemption process should be public and allow for stakeholder input. This will ensure that the Board receives balance input from those potentially

affected by the exemption.