June 27, 2001

RP 2000-0001

Presentation on Proposed Gas Distribution Access Rule
Vulnerable Energy Consumers' Coalition (VECC)

Introduction

The Vulnerable Energy Consumers Coalition (VECC) strives to represent the interests of low volume residential natural gas customers, who by reason of income or other condition, may be differentially affected by changes in rates or policies for the sale and delivery of natural gas. The overwhelming majority of VECC's constituency is system gas users who are likely to remain so. VECC appreciates the opportunity to give an oral presentation on the proposed Gas Distribution Access Rule (GDAR).

VECC would note that our previous comments in the GDAR consultation process were primarily directed to two themes. These were: the necessity to maintain congruence with the Electricity Distribution Access Code and the absence of funding to address consumer issues in the GDAR.

With respect to our first theme, we would submit that having a 'level playing field' for the two main energy industries in Ontario, gas and electricity, allows competitive suppliers in both industries, and their customers, to be subject to similar rules. This may reduce the potential for preference for either energy form due to structural factors and allows pure price to be the key factor. In the service area, it may also help promote further convergence that may lead to economies of scale for suppliers and consumers.

Having made this point, it is recognized that there are significant differences in the structures of the two industries and that these differences may, on occasion, drive a divergence in the rules established for the two industries. Key among these differences is the market settlement process. Upon market opening, settlement for the electricity commodity will involve the Independent

Market Operator. In the gas industry, the retailers typically take title to the gas they sell to consumers. In addition, the retail gas industry and retail gas markets are relatively mature, while the electricity market is still waiting for a market opening date.

Our second initial theme concerned the lack of customer participation and input into the development of the proposed GDAR. While distributors and marketers involved in task force discussions may have put forth customer issues, we can assume that their primary focus was the protection of their commercial interests. We believe that this funded oral consultation provides a partial remedy to the asymmetrical abilities of stakeholders to participate due to resource concerns.

VECC also believes that GDAR should be comprehensible for the ordinary residential customer. The sections of the Rule that address the working relationship between the distributor and gas marketers are reasonably clear and, given the relative sophistication of the parties, there is unlikely to be significant confusion. However, the Rule was not written with the small volume customer in mind. This document should be the primary source for resolving customer account and billing difficulties. Therefore, we suggest that in the final version a customer " Bill of Rights" written in plain language be included as an appendix to, and as a useful summary of, the residential customer provisions of the GDAR. In any event, consumer education upon implementation of the Rule will be necessary and should go beyond simply mandating bill inserts.

We have reviewed the submissions of other parties to this process to date and we will discuss their comments pursuant to our review of pertinent sections of the GDAR. There are several overarching issues that we would wish to address at the outset, prior to our review of specific sections. These are: (1) costs (2) retroactivity (3) jurisdiction, and (4) enforcement.

(1) Costs

Sprinkled throughout the previous comments of the LDC stakeholders are ominous references to increased costs associated with the adoption of the GDAR. While we note that these references

are generally meant to provide a chilling effect to reformist plans in the GDAR opposed by the LDCs, we are concerned that VECC's constituencies may ultimately be visited with an as yet un-ascertained quantum of costs associated with implementing the GDAR. The costs appear to fall in three categories: (i) compliance costs (ii) return to system costs, and (iii) bad debt losses and potential stranded utility assets costs, such as, investment in, or, contracts for billing and customer information system functions associated with vendor consolidated billing of distribution services.

VECC is alarmed by the prospect of the implementation of the GDAR without the quantification of costs pursuant to the afore mentioned categories (i) and (ii), as well as the evolution of cost recovery mechanisms that ensure that system gas users who stay with system gas are not visited with such costs in their rates. The Board should not be appeased by the elusive prediction of system wide benefits associated with the enabling of choice, and thus promulgate rules without cost quantification as well as allocation models for those costs. In that instance, we are likely to swiftly find that the pocketbooks of system gas users are used to provide the lubricant to enable customer choice that is not desired or perhaps needed.

While consideration of the final cost category would, at best, be a highly speculative exercise, in VECC's view any costs associated with the provision of vendor-consolidated billing should not be placed on non-participating consumers. Rather, these costs should be borne by the vendors and the participating consumers.

(2) Retroactivity

Several parties, in particular, Direct Energy and OESC, have contended strongly for the application of the GDAR customer mobility provisions in Section 6.5 prospectively to new contracts only. This contention is supported by allegations that these GDAR provisions amount to regulatory interference with contractual relations and/or legislating with improper retroactive effect. We would note with respect to the latter contention that the proposed GDAR does not seek to alter the arrangements or the effect of the arrangements that prevailed prior to the

promulgation of the new rules. In other words, the previous reliance by the contracting parties on the circumstances up to the date of the GDAR is not undermined. What is changed is the removal of the distributor as an enforcer of the arrangements between a gas customer and the vendor. The distributor processes the customer request: the distributor does not amend the contract to supply and the obligation to pay. The situation is analogous to the local telephone company when there is a change of long distance providers the switch is made, and whatever contractual problems are left are for the parties to resolve.

More importantly, where the Board is pursuing an important public policy goal of customer mobility in support of its statutory objective of facilitating competition in the sale of gas, it cannot be restrained from so doing because of the assumptions of some commercial stakeholders concerning future access to the distribution system. Similarly, the Board cannot be constrained from providing rules in support of its statutory objectives to ensure safety or energy efficiency, even though such rules may affect contractual obligations of existing stakeholders.

While it may be legitimate (although incorrect, in our assessment) to contend for the current distributor enforcement of existing gas supply contracts to promote a competitive market in the sale of gas by maintaining confidence of the gas vendors, it is our submission that the contractual activities of the marketers to date should not act as a firewall for competitive reforms to enhance customer mobility a prime indicia of a competitive market.

(3) Jurisdiction

There are a number of jurisdictional impediments that have been cited to the Board's promulgation of the proposed GDAR. The principal jurisdictional objections have emanated from the LDCs. These objections roughly fall into two categories:

i) The GDAR proposes to regulate terms of access to distribution services that are not distribution services within the meaning of the *OEB Act*. These objections apply to the Rule's inclusion of the sale of system gas as well as provision of services under section 2.2.2 of the GDAR.

ii) Section 8 of the GDAR involving gas vendor consolidated billing provides for the creation of a wholesale distribution service by gas vendors that is ultra vires of the Board.

It must be conceded that the *Act* is rather unhappily worded to allow the Board full flexibility in the achievement of the statutory objectives of competition, efficiency and fairness. It is reasonable from an administrative and public interest standpoint to evolve an easily understandable code involving access to the range of customer services provided through the distributor. As well, the Board, in the past, has acknowledged that its role goes beyond a set of pigeonholed duties. In the HVAC complaint proceeding, RP-1999-0058 the Board articulated its important role in deterring anti-competitive conduct:

> 3.1.14 Section 2 of the Act states that the Board is to be "guided" by the listed objectives. It is clear that the Board must consider these objectives in carrying out its statutory duties; however, the objectives set out in section 2 are not an exhaustive list of all of the goals that the Board may consider. The Board has a broad public policy mandate to regulate the conduct of monopoly utilities in the public interest.
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> 3.1.15 A role of the Board in enhancing the competitive energy services marketplace is to ensure that the utility does not use its dominant position in the storage, transmission, and distribution of gas to frustrate the development of a competitive market in other non-regulated energy services.

However, we concur with the opinions expressed with respect to the ambit of the rulemaking powers of the Board under Section 44(1) of the *Act* in that the Board must exercise its authority over the impugned areas either by use of Section 36 of the *Act* or Section 42(3) of the *Act*, in accordance with the procedures so provided.

With respect to the jurisdictional complaint under the afore-mentioned category (ii), a more creative legal argument has been extended to attempt to prevent the interpolation of marketers

into the customer billing process. The complainants analyse the framework of Section 8 of the GDAR with a view to suggesting that the choice of billing mechanisms is an invidious and ultra vires attempt to replace the LDC with the gas marketer as the distributor. The argument further, and rather fancifully, purports to elevate the mechanical billing for distribution services to a fundamental element of the contractual relationship with the customer and a necessary element of utilities ability to earn its rate of return.

With respect, these submissions confuse the mechanisms associated with fulfillment of the contractual obligations of the parties with the obligations themselves. Communication and advances in the technology of communication have, generation by generation, altered the method of fulfillment of contractual obligations. In this case, a change in billing format is not sufficient to rearrange the status of the contracting parties.

Similarly, the argument that the substitution of the billing of the distributor with a vendor's billing function is a fundamental erosion of the utility's assets as a distributor is, in VECC's view, yet another gloss on the old chestnut of regulatory confiscation. The distributor's franchise is clearly subject to the legitimate pursuit of the objectives of the *Act* through policy making by the Board. In this case, the encouragement of competition and its role in preserving the public interest in relation to monopoly services is more than adequate justification for altering the status quo with respect to billing.

However, while the jurisdictional complaints of the LDCs are not compelling with respect to competitive billing, their practical assertions of effect may have foundation. It has been noted that the direct purchase market is not workably competitive and that there exists considerable ambivalence and perhaps hostility by customers to the provision of billing by parties other than the LDC. There is concern expressed whether customers will receive what they expect to receive at an appropriate price.

First of all, we would submit that the choice of billing options should be entirely within the purview of the customer not the gas vendor. VECC understands that the purpose of the introduction of competition in billing services is to induce efficiencies, by having informed

consumers shop for the best service. Having the gas vendor mandate the selection of billing hardly accomplishes that purpose.

We are concerned that the current GDAR treats the billing issue too much as a prize in a turf war between commercial stakeholders rather than a potential market for choice and savings by customers. It is our submission that customer billing should be ruled (following a properly convened proceeding) a distribution service of the gas distributor subject to rules that give the customer the option of choice of billing systems where the distributor does not supply the commodity. Additional provision could be made for the disclosure of the costs of such service by the distributor and the gas vendor willing to compete for this service. The Board must ensure an informed market of customers who are able to make this choice on the basis of the offerings of the distributor or competitive gas vendor.

(4) Enforcement

VECC shares the previously expressed concerns of CEED with respect to the enforcement of the GDAR. The Complaint Procedures are not sufficient to ensure the compliance of stakeholders without an effective enforcement mechanism. From experience it is clear that a market player may gain an advantage from misconduct in the marketplace, if there are not sanctions for such misconduct that can be swiftly and fairly applied. We fully support the necessity to provide a third party complaints resolution procedure with appropriate penalties, in addition to Board ordered compliance for distributors where warranted. If Bill 57 becomes law, the Board will have the legal authority to apply levers in instances of licence non-compliance and it should use this authority effectively. The presence of significant transparency in the process for resolution and disposition of complaints is also essential.

VECC wishes to address some individual sections of the GDAR as well as the relevant comments of stakeholders with respect to the same.

Section 5 –Distributor-Gas Vendor Relations

Union Gas points out that while the Standard Level Agreement is defined as an agreement that establishes relationships between a distributor and either a customer or a gas vendor, section 5.3 deals only with the relationship between a distributor and gas vendor and not between a distributor and a customer. Union Gas suggests revising the definition of SLA to be applicable to distributors and vendors so that it does not inadvertently capture the distributor's relationships with consumers and customers. VECC agrees that the definition of the SLA should be revised to be applicable only to gas vendors and distributors. However, given that the SLA pertains to customers' conditions of access to the competitive market, and that without the customer there would not be the necessity for a SLA, section 5.3 should have a provision for customer access to the SLA.

Section 6 - Service Transaction Requests

Sections 6.3.3.1 and 6.3.3.2 of the proposed Rule state that upon STR time period expiration, the distributor must cease processing of the STR. CEED comments that prior to ceasing the process, vendors should be informed of the deficiency, preventing the unnecessary resubmission of the STR in its entirety and making the STR process more efficient. CEED's suggestion is a practical solution to a process that can become onerous for all involved, including the customer, when they need to start the STR process all over again. This frustration may discourage a customer from participating in the competitive market. CEED's suggestion also allows the distributors and vendors to become familiar with the STR requirements, minimizing future errors over time. Therefore, the recommended addition of wording on exercising due diligence, "including contacting the gas vendor in a timely manner to obtain additional or accurate information" is appropriate.

With regard to the 14-day time limit for STRs, we agree with CEED's suggestion that the time limit should be binding and that penalties should apply if the time limit is not met as a service quality performance measure in a PBR scheme. This will provide increased certainty that the time limit will be met and lessens potential frustration with the transfer process.

Section 6.5.2 states that during the initial STR waiting period, the vendor should notify the current gas vendor that it has submitted an STR to become the customer's supplier of Gas. CEED believes that the customer should be copied on this notification, as they say, "to create transparency for all parties involved in customer transfers, especially the customers who are being transferred, by removing the possibility of confusion and unauthorized transfer." In addition to the awareness by the customer of action in response to an authorized transfer, in our opinion, CEED's suggestion would also serve as a deterrent to unauthorized transfers. Copying the customer on the notification would preclude the need for a distributor to ask for a copy of written authorization from the gas vendor, a clause that Union Gas finds inconsistent with increased customer mobility provided by the Rule. It is important to recognize that the customer notification process should be designed in a way to reduce "slamming". A distributor might not be motivated to provide enhanced customer protection by asking for a copy of written authorization. Enhanced customer protection might better be provided by having the distributor send a copy of the STR notification to the customer. Direct Energy also recommends an amendment that requires the distributor rather than the new vendor to notify the existing retailer of a STR. While, as Direct Energy points out, this provides consistency with the Retail Settlement Code, it will also protect customers from potential inappropriate opportunities the process may present to the new vendor. Beyond this point, it would be the customers' responsibility to react when it receives a copy of an unauthorized STR.

Making the distributors responsible for notifying the existing vendor would also address, to some extent, the Ontario Energy Savings Corporation's (OESC) concern with breach of tri-party contracts between distributor, customer and agent. Where the distributor is party to a tri-party contract it would want to make sure that it is not in breach of contract by stranding the existing supply agent. By looking after its own concern with regard to tri-party agreements, the distributor, depending on the agreement, may also be saving the customer from breach of contract.

Section 6.2.2 includes credit information on the list of information included in a STR. Union Gas points out that credit information would include credit reports purchased from credit

agencies and that payment history rather than credit information is more appropriate. Union has made a critical point in that payment history is the information relevant to the customer as a gas customer. Credit information that includes credit reports purchased from credit agencies is not relevant to the customer as a gas customer. It should not be assumed that customers with poor credit reports, do not give priority to paying utility bills over other bills, given that utility services are generally considered essential services. Therefore, a customer could have a poor credit report and a good payment history.

Union's suggestion on changing the final sentence of section 6.7.1, a vendor default clause that requires a 10 day period between the date on which payment was due from the gas vendor, to reflect default in failure to deliver gas, brings up the question of the responsibility for supply during those 10 days. While system supply during the 10-day grace period may be implicit in the Rule, to ensure customer protection, the provision needs to be stated explicitly.

Section 7 – Customer Information

CEED's recommendation is to amend clause 7.1.1 by adding "only" on limitation to collection of customer data. VECC supports the amendment since the information in this section was made available only for gas distribution purposes. For this same reason, Union Gas' suggestion that section 7.1.1 needs to be broadened to allow Union Gas to use information obtained from customers to conduct any business that Union Gas is authorized by the Board to conduct, is not appropriate. These provisions could be enhanced by the insertion of a purpose clause limiting the release of individual customer data to purposes of gas service requested by a customer.

With respect to Section 7.1.2, VECC understands that the term "data" refers to personally identifiable data and perhaps the wording should so specify. VECC further notes that any purpose set out in the Service Level Agreement for which individual customer information is required should be concurred with by the customer.

With regard to section 7.4, Union Gas suggests that this section should be removed to make clear that the Rule in no way allows supplanting the distributor's custody of meters. While Union

Gas' position of distributor's having custody of the meter is definitely to the customers' benefit given the importance of the meter and metering data, customers need to have access to the meter and metering data in case of disputes. In this case qualified staff of the distributor and Measurement Canada would handle the meter and metering data, avoiding the opportunity of meter mishandling by unqualified customers. Therefore, section 7.4.1 could be removed, but 7.4.2 should remain.

Section 8 – Billing

In the event that the Board elects to proceed by way of the proposed GDAR VECC concurs with Union Gas' submission as to the information disclosed on bills. Union suggests that the Board needs to consider related rules on information disclosure that would apply to gas vendors through the marketing code. Union Gas states that in "the absence of such requirement in the Marketing Code, gas vendors will be able to bundle and unbundled charges as they see fit, and be able to charge any price for distribution service regardless of the distributors regulated rate". Further, Union Gas maintains, that section 8.4.1 would expose consumers to "significantly more risk, confusion and no assurance regulated distribution services will be provided and charged at rates regulated by the Board." Union's position is well stated and points to the need for consistent rules between the presentation of regulated distribution services whether on distribution or vendor-consolidated bills to avoid customer confusion and misleading bill item presentations. In addition, the distribution services rates on the vendor's bill must be a pass through of Board approved rates and should be the rates and charges as presented on the distributors' approved rate schedules. VECC notes that the provision of competitor billing as per its submissions earlier in this presentation might serve as a better template to incorporate consumer protection issues.

With regard to the second bullet in section 8.5.1, CEED's understanding of this point is that it is meant to prevent distributors from providing different promotional material to different system gas customers and that as drafted it may be interpreted as an exception to the general prohibition. In CEED's view the wording of section 2.7.3 of the Standard Service Supply Code for electricity is much more definitive and that the Board should follow this model in the Rule. Section 2.7.3 of the SSS Code states that bills for SSS customers "shall only include the distributor's

marketing information or promotional materials, and any materials or information that the distributor is obligated to send as part of its regulated distribution function". CEED's suggestion of modeling section 8.5.1 bullet two on the SSS will result in clarification of the Rule and will help keep distribution versus commodity marketing unbundled in the customer's mind.

CEED's reference to Section 2.7.3 of the SSS draws attention to how customers on vendor consolidated billing will receive the information, beyond relevant safety information, that a distributor is obligated to send as part of its regulated distribution function. An example might be impending increases in distribution rates.

In summary, VECC submits that there needs to be a level playing field for the two main energy industries in Ontario to the extent feasible to allow for a pure pricing signal and enhanced efficiency through convergence. As the primary document for resolving customer account and billing difficulties, the Rule should include a customer "Bill of Rights" and a summary written in plain language. In addition, consumer education beyond bill inserts should be conducted upon implementation of the Rule. The Board should not implement the Rule without some cost quantification of benefits associated with the enabling of choice. Neither should it allow contractual activities of the marketers to date to act as a firewall for competitive reforms to enhance customer mobility a prime indicia of a competitive market. VECC does not find the jurisdiction complaints of the distributors with respect to competitive billing compelling and submits that the choice of billing options should be entirely within the purview of the customer and not the gas vendor with the understanding that the purpose of the introduction of competition in billing services is to induce efficiencies, by having informed consumers shop for the best services. Further, VECC believes that any direct or indirect costs associated with vendor-consolidated billing should be borne by the vendor and the participating consumer. And finally, the Board must use any legal authority it may have to enforce the Gas Distribution Access Rule.

All of which is respectfully submitted this 27th day of June, 2001.

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