

Appendix A

Detailed Analysis of GDAR Provisions

1 GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 Purpose of this Rule

- In EGD’s view, the subject matters covered by subsections 44(1)(b) and 44(1)(d) of the OEB Act are unrelated, and should be addressed in separate rules. That is, the conduct of a gas distributor in relation to a Vendor (which relates to gas supply) is unrelated to establishing conditions of access to gas distribution services (i.e. gas delivery services).
- Although the Board is not legally confined to making a separate rule for each of the separate rule-making powers under section 44 of the OEB Act, it is illogical and impractical to combine unrelated subject matters within a single rule. Accordingly, EGD recommends that the provisions of the Proposed Rule that pertain to 44(1)(b) be contained in a rule separate from the provisions of the Proposed Rule that pertain to 44(1)(d), and that the resulting rules be renamed to reflect their contents. For example, a rule under subsection 44(1)(b) may be called the Distributors-Vendors Relationships Code of Conduct (“DVRC”), whereas a rule under subsection 44(1)(d) may bear the title of the Proposed Rule, i.e. the Gas Distribution Access Rule (“GDAR”).
- The following submissions clarify EGD’s characterization of the specific provisions.

1.2 Definitions

- EGD recommends that the definitions section be amended to accord with EGD’s submissions respecting the individual provisions. The result of this exercise would be that some of the definitions would be deleted entirely, in accordance with EGD’s submissions that the provisions containing the terms be deleted. The definitions that remain would be divided between two rules in which the subject matter is consistent. The respective rules are referred to by their acronyms, ascribed above, in brackets after the relevant definition. The bracketed comments also reference EGD’s suggested amendments to the subject definitions.
- Finally, EGD makes recommendations as to how the definition for “gas distribution services” ought to be amended in its submissions under section 2 of the Proposed Rule, below.

1.2.1 In this Rule:

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B; **(DVRC and GDAR)**

"consumer information" means the data and/or information collected and maintained by a gas distributor pursuant to section 5.1 of this Rule; **(DVRC)**

"consumer" means a person who uses gas for that person's own consumption;
(DVRC)

"E.B.O. 188 Report" means the *Report of the Board, January 30, 1998 in the Matter of a Hearing to Inquire into, Hear and Determine Matters Relating to Natural Gas System Expansion for The Consumers' Gas Company Ltd., Union Gas Limited and Centra Gas Ontario Inc.*; **(GDAR – add “as amended” at end of the definition)**

"franchise area" means the area of the Province of Ontario either, for which a gas distributor holds a Certificate of Public Convenience and Necessity granted by the Board, or in which a gas distributor was supplying gas on April 1, 1933; **(delete)**

"gas distribution system" means the system used to provide gas distribution services;
(delete)

"gas distribution services" means the services related to the delivery of gas to a consumer, including related safety functions such as emergency leak response, line locates, inspection, and provision of safety information; **(replace with: “gas distribution services” means the delivery of gas by a gas distributor to a consumer)**

"gas distributor" means a person who delivers gas to a consumer;
(delete - term is defined in the OEB Act)

"gas distributor-consolidated billing" means a method of billing whereby a gas distributor issues a single bill to a consumer setting out the charges for gas distribution services and the charges for the gas commodity; **(delete)**

"gas vendor information" means data and/or information provided by a gas vendor to a gas distributor concerning that gas vendor; **(DVRC)**

"gas vendor" means a person who,

- sells or offers to sell gas to a consumer,
- acts as the agent or broker for a seller of gas to a consumer, or
- acts or offers to act as the agent or broker of a consumer in the purchase of gas;

(DVRC)

"gas vendor-consolidated billing" means a method of billing whereby a gas vendor issues a single bill to a consumer setting out the charges for gas distribution services and the charges for the gas commodity; **(delete)**

"meter" means a device owned or controlled by a gas distributor and used to measure the units of gas consumption which form the basis for billing the consumer; **(delete)**

"rate-regulated gas distributor" means a gas distributor whose rates are approved by the Board pursuant to section 36 of the Act; **(GDAR)**

"Rule" means this rule entitled the "Gas Distribution Access Rule";
(GDAR)

"Service Agreement" means the agreement more specifically described in section 3.2 of this Rule that sets out certain aspects of the relationship between a gas distributor and a gas vendor; **(DVRC)**

"Service Transaction Request" or "STR" means a direction to a gas distributor more specifically described in chapter 4 of this Rule; **(DVRC)**

"split billing" means a method of billing whereby the gas distributor issues a bill to a consumer setting out the charges for gas distribution services, and the gas vendor issues a bill to a consumer setting out the charges for the gas commodity; and **(delete)**

"System gas" means gas which is sold or available to be sold by a gas distributor to a consumer. **(DVRC – should be a lower case “s” for system)**

2 ACCESS TO GAS DISTRIBUTION SERVICES

- In general, EGD notes that these provisions fall within the ambit of section 44(1)(d) of the OEB Act. Accordingly, this section is appropriate to include in a GDAR, but not in a DVRC.

Definition of “Gas Distribution Services”

- The definition of “gas distribution services” is invalid because it is inconsistent with the OEB Act. Subordinate legislation cannot amend or conflict with the parent statute, or with any other legislation, absent explicit authority to do so. Subordinate legislation that conflicts with statute law is invalid. The OEB Act uses the phrase “gas distribution services”, particularly in subsection 42(2), to mean gas delivery services only (see references and related reasoning below). Related ancillary functions such as emergency leak response, line locates, inspection, and provision of safety information are incidental to, and not separate from, gas distribution services, and are performed by the distributor as a result of its statutory and common law obligations to do so. EGD does not object to performing these ancillary functions, but objects to mention or inclusion of these functions in the Proposed Rule.

- The term “gas distributor” is defined in the OEB Act as follows:

“gas distributor” means a person who delivers gas to a consumer and “distribute” and “distribution” have corresponding meanings;

- The term “gas distribution services” is not defined in the OEB Act. The only instances in which the term “gas distribution services” is used in the OEB Act are:

42.(2) 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.

(3) 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 to provide any gas sale service.

44.(1)(d) 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; [emphasis added]

- According to subsection 42(2) of the OEB Act, “gas distribution services” are services that a gas distributor is capable of providing to adjacent buildings upon written request. The only services that a gas distributor can provide in this context is delivery services, or the delivery of gas to the building in question. A gas distributor does not perform emergency leak response and inspections, and provide line locates and safety information as services separate and distinct from gas distribution (i.e., the delivery of gas to a consumer). These functions are simply an adjunct of and incidental to gas distribution, or gas delivery, services. If this were not the case, a person could conceivably request a gas distributor to provide emergency leak response, etc. as separate services, pursuant to subsection 42(2). Clearly, this is not the legislative intent.
- Furthermore, the governance of a gas distributor’s obligations to perform emergency leak response and inspections, and provide line locates and safety information is under the umbrella of the Ministry of Consumer and Business Services, which is responsible for administration of the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16 (proclaimed in force June 27, 2001, replacing the *Energy Act*) (“TSSA”). The Board has no legislative mandate to oversee such functions; rather, that mandate is delegated to whatever authority is appointed pursuant to the TSSA. Subsection 42(2) of the OEB Act incorporates by reference these obligations of a gas distributor by stating that the section is subject to the *Public Utilities Act* and the *Energy Act*, so the Board need not be worried that there is any legislative gap or doubt with respect to a gas distributor’s obligations in this regard.
- Apparent duplication of legislated duties is of no benefit to the affected parties, including gas distributors and their customers. On the contrary, it is the source of confusion, and an unnecessary waste of time and expense debating the differences. For instance, the definition of “gas distribution services” refers to “inspections” as one such service. What are “inspections” intended to mean in this instance? Several of the provisions of the Oil and Gas Pipeline Systems Regulations (O. Reg. 210/01) made under the TSSA contain a reference to an inspection-like function, such as:

7.(1) Where premises are connected to a supply of gas for the first time, no person shall put into use for the first time an appliance on the premises that is connected to the pipeline until the distributor has examined the installation of the appliance and is satisfied that the installation and use of the appliance are in compliance with this Regulation.

12.(1) This section applies only to the testing of an appliance, equipment, a component or an accessory that is carried out at a place other than the place where the appliance, equipment, component or accessory is installed for its intended use.

13.(1) This section applies only to the testing of an appliance, equipment, a component, or an accessory that is carried out at the place where the appliance, equipment, component or accessory is installed for its intended use.

- What kind of “inspection” is the Board intending to reference in the definition of “gas distribution services”? If the term is not in reference to one of the above functions, is the Board creating a new obligation on gas distributors? If the regulations under the TSSA are amended, does the Board intend that the definition of “gas distribution services” be similarly amended? All of these questions could be avoided by simply changing the definition of “gas distribution services” to confine it to its actual meaning, i.e. the delivery of gas to a consumer.
- EGD therefore recommends that the definition of “gas distribution services” be amended to mean “the delivery of gas by a gas distributor to a consumer”.

2.1 Gas Distributor Provided Services

- In EGD’s view, section 2.1.1 is a codification of a utility’s common law obligation, and is therefore redundant and unnecessary. EGD therefore recommends that section 2.1.1 be deleted.
- The invalidity of the definition of “gas distribution services” as it is currently defined in the Proposed Rule is highlighted in reference to section 2.1.1. That is, in a gas distributor’s performance of its emergency leak response function, it would be appropriate, and expected, that the gas distributor be discriminate in choosing how and where to best allocate its (finite) resources. Accordingly, EGD maintains that the definition of gas distribution services includes gas delivery services only, also for the reasons given above.
- EGD accepts the inclusion of section 2.1.2 in a GDAR.

2.2.1 Connection to and Expansion of a Gas Distribution System

- Section 2.2.1 attempts to re-state subsection 42(2) of the OEB Act, but misstates it in that it fails to recognize that the obligation to connect a building upon written request is subject to the *Public Utilities Act* (“PUA”) and the *Energy Act* (superseded by the TSSA). The section therefore purports to create an obligation to connect absent the corresponding rights and obligations contained in the PUA (e.g., to collect security [s. 50(4)]; obligation to obtain a municipal franchise [s. 58]) and the TSSA¹, and consequently is inconsistent with its parent legislation. The section is redundant, invalid, and unnecessary, and should therefore be deleted.
- Section 2.2.2 attempts to codify the E.B.O. 188 Report guidelines. Whether or not this section is included in the Proposed Rule or in another rule developed by the Board under subsection

¹ As noted above in respect of the definition of “gas distribution services”, the Board cannot remedy the exclusion of the *Energy Act* reference in section 2.2.1 of the Proposed Rule by attempting to import its provisions through an improper expansion of the “gas distribution services” definition.

44(1)(d) of the OEB Act, EGD intends to continue recognizing the E.B.O. 188 Report guidelines. In any event, the Board must continue to exercise its discretion in respect of leave to construct applications on a case-by-case basis, and not fetter its discretion by treating the guidelines prescriptively, as a rule would be treated. Therefore, in EGD's view, it is more appropriate that section 2.2.2 also be deleted and the *status quo* practice for leave to construct applications and requests for delivery services continue. At the very least, EGD recommends that the definition for "E.B.O. 188 Report" be expanded to include the phrase "as amended" at the end of the definition. This will preclude the need to update the Proposed Rule whenever the guidelines are amended.

2.3 Gas Distributor Record Keeping Responsibilities

- Section 2.3 is unnecessary and should be deleted. In EGD's view, as noted above in relation to the definition of "gas distribution services", related ancillary functions such as emergency leak response, line locates, inspection, and provision of safety information are incidental to, and not separate from, gas distribution services, and are performed by the distributor as a result of its statutory (under the TSSA) and common law obligations to do so. These functions are therefore outside of the Board's jurisdiction to govern.
- It may be argued that records relating to system configuration and system operating limitations are incidental to access to distribution services. Gas distributors file, as a matter of course, such evidence to support leave to construct applications. These records are also available at the request of the Energy Returns Officer. As such, it is unnecessary to provide for the keeping of these records in a rule. In any event, the categories of records as described in section 2.3 are far too broad and too vague to give any certainty to the gas distributor what types of records the Board would be expecting the distributor to keep. If the Board determines that some form of section 2.3 ought to remain in the Proposed Rule, or another similar rule, EGD requests that the Board clarify its intention of what types of records a gas distributor should keep.

3 GAS DISTRIBUTOR-GAS VENDOR RELATIONS

3.1 General

- EGD accepts section 3.1, but notes that this section belongs in a DVRC, not a GDAR.

3.2 Service Agreement

- In general, EGD accepts section 3.2 and the concept of the Service Agreement. However, EGD requests that the Board clarify the several ambiguities in the Proposed Rule that EGD notes in its main submissions. In general, EGD requires better direction from the Board regarding the market/contract model the Board is attempting to prescribe by the Proposed Rule in order to know what provisions such contracts must contain.
- As noted in its main submissions, EGD believes that the Board lacks jurisdiction to mandate Vendor Billing. As such, the terms of the notional Service Agreement that

pertain to this billing option should be deleted from the Proposed Rule, as indicated by the bracketed comments following each bullet point. EGD accepts the remaining bullet points, with the exceptions noted.

- EGD will require a minimum of 18 months to develop the requisite form of Service Agreement, and to change its internal processes to accommodate this change. This timing assumes Vendor Billing would not be included. If the Board decides to mandate Vendor Billing, by virtue of some form of judicial or legislative acknowledgement of the Board's jurisdiction on this matter, EGD would require at least an additional 12 months (i.e., 2 ½ years in total) to develop a Service Agreement, and modify its processes. These predictions are not precise, and will in large part depend upon the ability of the involved parties to reach an agreement on the issues covered in the Service Agreement. In any event, EGD will seek compensation for the funds spent to facilitate compliance in the relevant rates case.²

3.2.1 The Service Agreement shall, at a minimum, include the following matters:

- the processing of STRs, as required in chapter 4 of this Rule; **(see comments under section 4)**
- any right of a gas distributor to use consumer information in addition to those circumstances set out in section 5.2 of this Rule; **(the provision should be deleted for the reasons set out under section 5.2.)**
- any purposes for which the gas distributor may use gas vendor information, as provided for in subsection 3.3.1 of this Rule; **(see comments under section 3.3)**
- the specific financial security arrangements between the gas distributor and the gas vendor, in accordance with the requirements of the security arrangements as described in section 3.4 of this Rule; **(see comments under section 3.4)**
- terms and conditions of billing arrangements, including payment, interest on overdue accounts, and account finalization procedures; **(delete)**
- events of default, and procedures in the event of default; the procedures for finalizing changes in gas supply or billing option, including determination of effective dates; **(see comments under sections 4 and 6)**
- a dispute resolution process; and **(ok)**
- the obligation to include any safety information and any other information required by the Board in bills to consumers. **(delete)**

3.3 Gas Vendor Information

- Section 3.3 is inconsistent with ARC, the operative provisions of which read:

2.6.2 A utility shall not disclose confidential information to an affiliate without the consent in writing of the consumer, marketer or other utility service customer, as the case may be, except where confidential information is required to be disclosed:

² EGD will not be including information on this matter in its fiscal 2003 rates case filing, as the Proposed Rule is still in draft form.

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

2.6.3 Confidential information may be disclosed where the information has been sufficiently aggregated such that any individual consumer, marketer or other utility service customer's information cannot reasonably be identified. If such information is aggregated it must be disclosed on a non-discriminatory basis to any party requesting the information.

- Specifically, the exception of being able to disclose confidential information to an affiliate without the consent in writing of the consumer "for billing or market operation purposes" is not permitted by section 3.3 of the Proposed Rule. Further, the effect of this provision would place EGD in breach of the Proposed Rule as a result of its outsourcing of the billing and customer support functions to Customer Works, and of the gas control function to Enbridge Operational Services Inc., unless EGD were to obtain the written consent of Vendors for these outsourcing arrangements.
- The consequence of requiring written consent from Vendors for these outsourcing arrangements would be to place Vendors in the role of determining what outsourcing EGD can and cannot do, simply by allowing them to withhold their consent. In EGD's view, supported by the fact that ARC allows such disclosure, this refusal to withhold consent would not contribute to achieving the objectives of the OEB Act, in particular to "facilitate competition in the sale of gas to users", and would only serve to frustrate the legitimate business operations of the gas distributor. Moreover, EGD would expect to be compensated for any costs incurred for having to reverse otherwise lawful outsourcing arrangements.
- EGD therefore recommends that section 3.3 be amended to permit a gas distributor to use/disclose Vendor information for the purpose of performing any of the gas distributor's authorized business activities. EGD would also accept, if the Board were to include, a stipulation, similar to the data access protocols required by section 2.2.2 of ARC, that the gas distributor ensure that its contractor is contractually obligated to use the information only to provide the contracted services.

3.4 Financial Security Arrangements With Gas Vendors

- Section 3.4 should be deleted to the extent security is required in order to effect Vendor Billing, as EGD does not accept the Board's jurisdiction to mandate same. To the extent that a gas distributor may require security from a Vendor in respect of other matters covered by the Service Agreement, as properly prescribed by the Proposed Rule, EGD accepts section 3.4 (noting that the reference to Vendor Billing should be deleted therefrom).

4 SERVICE TRANSACTION REQUESTS

4.1 General

- EGD supports the less prescriptive form of the Proposed Rule in respect of STRs, and in general, accepts the provisions dealing with STRs, with the noted exceptions. The main exception is that EGD believes that the Board lacks jurisdiction to mandate Vendor Billing. As such, the following comments are made with the understanding that an STR for a change in billing option would only refer to the options of distributor-consolidated, and split billing, or that reference to a change in billing option would be deleted entirely (EGD prefers the latter).
- EGD does not object to section 4.1.1, but notes that a request for the recovery of the costs related to meeting the reasonableness standard as required by this section will be included in EGD's relevant rates case proposal. EGD further suggests that the Board amend the *Code of Conduct for Gas Marketers* by adding a similar provision respecting a Vendor's obligations to ensure that all information that it is required to maintain in order to effect the Proposed Rule is accurate and up-to-date. EGD will have to further ensure that the conduct of the Vendor in this regard is addressed in the Service Agreement.
- EGD makes the same comments with respect to timing for implementation, and recovery of associated costs, as made above in respect of section 3.2 of the Proposed Rule.
- EGD assumes the form of STRs will be a matter dictated by the gas distributor, or negotiated with Vendors as part of the Service Agreement.

4.3 Processing and Verification

- The *Reliable Energy and Consumer Protection Act, 2002*, -- known as Bill 58 -- became law on June 27, 2002 (i.e., after the Proposed Rule was issued). The government policy giving rise to Bill 58 espouses the importance of consumer protection measures by giving the consumer the express ability to re-affirm in writing what contractual arrangements it has agreed to *vis-à-vis* Vendors. In EGD's view, section 4.3.2 is contrary to Bill 58, and to consumer protection principles in general, because it requires the gas distributor to accept an STR from a Vendor in lieu of an STR from a consumer in certain instances. It would be more consistent with Bill 58 if gas distributors were required to act upon STRs from consumers, whether or not these STRs are inconsistent with same-subject STRs from Vendors.
- EGD therefore recommends that section 4.3.2.1 be amended to state that a gas distributor shall accept an STR from a consumer for any of the purposes listed in section 4.1.2 (excepting a change in billing option, which reference EGD submits should be deleted); in the absence of an STR from a consumer, a gas distributor shall accept an STR from a Vendor for the items already listed in section 4.3.2.1.

4.3.5 Processing a Change from System Gas to a Gas Vendor

- EGD generally accepts the “Insufficient Security” provisions of sections 4.3.5, 4.3.6, and 4.3.8, but qualifies its acceptance with the comments it makes on security under section 3.4, above.
- With respect to the “Consumer Default” provisions of section 4.3.5, EGD assumes that the gas distributor will have the discretion to determine when the consumer is “in default”. That is, EGD will require the consumer to settle all outstanding amounts with EGD before processing an STR that switches the consumer’s gas supplier.

4.8 Transfer of Consumers to System Gas when a Gas Distributor Terminates a Service Agreement

- Section 4.8 has the effect of obligating the gas distributor to provide sales service (referred to as “system gas” in the Proposed Rule). Although EGD does not object, in principle, to providing this service, this interpretation is contrary to the Board’s past decisions in respect of EGD’s Undertakings applications. In its (most recent) letter to EGD dated August 17, 2000, respecting EGD’s application for approval to carry on the business activity of “the merchant function”, the Board stated that “prior approval for EGD to carry on providing gas sales service... is not required.”

5 CONSUMER INFORMATION

- In respect of sections 5.2 and 5.3, EGD seeks clarification from the Board on whether these sections would preclude EGD from using consumer information for purposes such as conducting customer surveys, to effect natural gas marketing and demand-side management programs, and to conduct non-utility businesses such as ABC service. If precluding these activities is the intended effect, EGD considers the sections to be unduly restrictive.
- EGD also requests clarification on whether sections 5.2 and 5.3 are intended to preclude EGD from permitting a third party to use consumer information to provide services back to EGD. In that regard, it would appear that both sections would preclude certain of EGD’s outsourcing arrangements, for example, with Customer Works for billing and customer support services. This would be inconsistent with sections 2.6.2 and 2.6.3 of ARC, cited above in relation to section 3.3 of the Proposed Rule.
- Specifically, the exception of being able to disclose confidential information to an affiliate without the consent in writing of the consumer “for billing or market operation purposes” is not permitted by the Proposed Rule. The effect of this interpretation would place EGD immediately in breach of the Proposed Rule as a result of its outsourcing of the billing function to Customer Works unless EGD were to

obtain the written consent of consumers for these outsourcing arrangements. This would be unworkable in practice.

- The Board appears to be attempting to ensure consumer protection through this section. There is an inconsistency with this objective in the way sections 3.2.2 and 5.2.1 are currently drafted. That is, the Service Agreement is presumably between the gas distributor and the Vendor as principal (although EGD has asked the Board to clarify this matter in its main submissions and in comments made above). Section 3.2.2 of the Proposed Rule states that the Service Agreement shall include “any right of a gas distributor to use consumer information in addition to those circumstances set out in section 5.2 of this Rule”, and section 5.2.1 states that a gas distributor shall only use information, *inter alia*, “for purposes expressly set out in the Service Agreement”. This drafting implies that the consumer is obligated to contract with a Vendor as agent with respect to use of that consumer’s information, whether or not such use is related to gas supply. This result is inconsistent with Bill 58 in that Bill 58 would suggest that the decision of whether to give consent on particular matters ought to remain with the consumer. EGD believes that it is naïve for the Board to think that consumers have an intimate enough understanding of their gas supply agency arrangements that they would realize they are giving Vendors the authority to allow or disallow use of consumer information.
- EGD recommends that sections 5.2 and 5.3 be amended to permit a gas distributor to use/disclose consumer information only for the purpose of performing any of the gas distributor’s authorized business activities. As with the use and disclosure of Vendor information, EGD would accept a further stipulation that the gas distributor ensure that its contractor is contractually obligated to use the information only to provide the contracted services.

5.6 Access to the Meter

- In principle, it may be desirable to permit a consumer to have “unfettered access” to the meter in order to be able to interrogate it for the consumer’s own purposes, (including provision of that information to a Vendor). As the “keeper of the meters”, EGD submits that “unfettered access” to the meter, as contemplated by section 5.6 of the Proposed Rule, may be a very costly and time consuming exercise, depending upon the extent to which it would be required by consumers. EGD does not willingly accept the risk that it appears the Board is placing upon gas distributors pursuant to section 5.6, and will insist, at a minimum, that it receive full cost recovery for all costs incurred in complying with this part of the Proposed Rule.
- Today, EGD accommodates consumer requests, or the requests of the consumers’ authorized representatives, to read their own meter. The consumer can also receive upon request their 12-month consumption history and, in some cases, additional consumption data (usually at no fee) from EGD. EGD submits that this should satisfy any requirement the low-volume consumer may have for access to consumption data. For large volume consumers, EGD currently negotiates with the individual consumer on a case-by-case basis in order to provide them with interrogation access to their

meters, and requires that consumer to reimburse EGD for any costs it may incur in order to accommodate the consumer's request.

- Also, EGD is accredited by Industry Canada to perform the sealing of its meters on behalf of the federal government. It is Industry Canada's standards that EGD must satisfy in its meter maintenance and operation, and EGD is reluctant to jeopardize its responsibility for meeting these standards by allowing "unfettered access" to its meters. In order to ensure that interrogating devices attached to meters also comply with Industry Canada's standards, either EGD or Industry Canada would have to send an inspector/technician to each device installation site as the need arose. It is notable in this regard that it is currently outside of the scope of EGD's accreditation to seal meters with electronic devices (which section 5.6 would likely require). Industry Canada would therefore have to accommodate the meter sealing requests itself. Industry Canada's workload may also be increased by the need to be involved in facilitating any disputes that may arise from non-simultaneous meter reading by gas distributors and consumers (or a consumer's authorized representative). EGD cannot comment on whether the federal government would have the resources to meet the Board's expectations in this regard. Therefore, EGD submits that Industry Canada ought to be at least consulted before any form of section 5.6 is promulgated, as it is clearly an affected party.
- When the issue of access to the meter was discussed in the DAR Task Force forum in early 2000, the Task Force made the following recommendations (at p. 64 of its June 2000 Final Report to Board Staff):
 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 though 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.
- EGD believes that its current practice, described above, is consistent with these recommendations. EGD stresses, however, that the consumer's right to access to their meter is not currently unfettered. Rather, it is premised upon the understanding that the serving gas distributor has a corresponding right, pursuant to section 50(2) of the

PUA, to recover the costs associated with providing that access. Without an assurance that these costs will be recovered, EGD submits that the consumer's right to access the meter is abrogated.

- EGD notes that section 11.2 of the *Retail Settlement Code*, entitled "Provision of Current Usage Data to Consumers", was referenced in the Task Force Report, and that provision does not provide for "unfettered access" to the meter. On the contrary, that section states several conditions that must be satisfied before a consumer may have access to their meter. The section provides:
 - 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 pay the reasonable cost of any software, hardware, or other services required for a consumer to obtain direct access to meter information. This may include installation of a secondary meter access system;
 - a consumer shall bear any cost incurred by a distributor to correct problems caused by a consumer's direct access to the meter; and
 - if a consumer assigns his or her right to direct meter access to a retailer or third party, the consumer shall remain responsible for the action of the assigned party.
- None of the above assurances are similarly prescribed under section 5.6, and EGD submits that, at the very least, they ought to be.
- Accordingly, EGD recommends that section 5.6 be deleted from the Proposed Rule because EGD's current practice accommodates the principles stated therein. In the event that the Board decides to promulgate section 5.6 in a rule, EGD recommends that the Board amend the section by deleting the word "unfettered" and by allowing the consumer access to the meter only on conditions similar to those prescribed under section 11.2 of the *Retail Settlement Code*.

6 BILLING

- For the reasons set out in the main submissions, EGD submits that the entirety of section 6 should be deleted from the Proposed Rule.