Advocacy Centre for Tenants Ontario
Oral Presentation to Ontario Energy Board Proceeding
on proposed amendments to Distribution System Code
(Unpaid Electricity Charges – RP-2002-0166)

Good afternoon.

My name is Mary Todorow. I am a policy analyst with the Advocacy Centre for Tenants Ontario (ACTO). Joining me today for this presentation are Theresa McClenaghan, counsel with the Canadian Environmental Law Association (CELA), and Judy Simon, President ~~Chair~~ of the CELA Board of Directors. Judy is also Vice-President of IndEco Strategic Consulting Inc. which prepared the report on ***Low income energy conservation and assistance*** that was submitted to Board members for their information and review in advance of this proceeding.

The Advocacy Centre for Tenants Ontario is a specialty legal clinic with a province-wide mandate, funded by Legal Aid Ontario to engage in test case litigation and law reform advocacy to better the housing situation of low-income residents (including tenants, co-op members and homeless persons) across Ontario. We also exercise this mandate on behalf of Ontario's 79 community legal clinics in respect of their work representing the interests of low-income residents.

The Canadian Environment Law Association is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate environmental law reforms. It is also a free legal advisory clinic for the public, and will act at hearings and in courts on behalf of citizens' groups who are otherwise unable to afford legal assistance. Like ACTO, CELA is a specialty clinic funded by Legal Aid Ontario.

ACTO and CELA are founding members of the Low-Income Energy Network (LIEN), a group of advocates and environmentalists who joined together in early 2004 to highlight the need for the provincial government to take the lead in safeguarding low-income consumers as it moves forward on its plan to reorganize Ontario's electricity sector with Bill 100. LIEN has asked the government to including the following provisions in its energy plan:

1. Direct energy assistance for low-income households unable to absorb the higher cost of power or those in emergency circumstances.
2. A conservation program to make energy-efficiency upgrades accessible to low-income households, in line with recommendations made by the Ontario Energy Board in its report on Demand-Side Management and Demand Side Response in the Ontario electricity sector.

We appreciate this opportunity to speak directly to Board members about the main concerns ACTO expressed in our written submissions regarding the OEB's proposed changes to the Distribution System Code. We will focus, again, on the proposed amendments related to enforcement of security deposit policies and their impact on low-income residential consumers. We also want to provide some context to our recommendations with respect to recent developments in electricity industry restructuring and the urgent need for a comprehensive strategy and programs to ensure low-income households are able to access electricity affordably and in an environmentally sustainable way.

Disproportionate energy burden on low-income residential consumers

As you know, ACTO and community legal clinics support, and have recommended to the Board, that there should be an explicit, system-wide mandatory exemption or waiver for low-income residential customers from LDCs' consumer security deposit requirements in their Conditions of Service. We believe that security deposit policies can have a disproportionate adverse impact on, and even exclude, low-income households from accessing electricity services.

Our recommendation was conveyed in a November 21, 2002 letter to the OEB Chair and the Minister of Energy, as well as in our July 10, 2003 submission to the Board's written hearing on Consumer Security Deposit Policies.

ACTO and community legal clinics are proposing that low-income residential consumers, for the purpose of this exemption from security deposit requirements, be defined as those persons and families with household income levels at or below the Low-Income Cut-offs (LICOs) published by Statistics Canada, using pre-tax, post-transfer household income.

The pre-tax, post-transfer LICOs vary according to family size and size of community. Persons and families living at or below these income levels are widely considered to be living in straitened circumstances. Both the Canadian Council on Social Development (CCSC) and the National Council of Welfare (NCW) have adopted the Statistics Canada pre-tax, post-transfer LICOs as poverty lines.

In our written submission to the current proceeding on Unpaid Electricity Charges, we highlighted that low-income consumers in Ontario face a higher energy burden than average and high-income consumers, and that they are also more likely to rely on electric heating and to have older, less efficient appliances.

Low-income households are particularly vulnerable to increases in shelter and utility costs – increases which are difficult to absorb and which could put their housing in jeopardy. According to a Statistics Canada study released in 2002, the typical low-income family had only a $300 "cushion" to buffer income interruptions or deal with unexpected expenditures.[1]

[1] René Morisette, "On the edge: financially vulnerable families", *Canadian Social Trends*, Winter 2002, page 16. Statistics Canada – Catalogue No. 11-008.

Statistics Canada's *Survey of Household Spending in 2002*[2] shows that Ontario households in the highest income quintile spent 13% of their pre-tax income on shelter, including utilities. In comparison, those in the lowest quintile spent 44% of their pre-tax income on shelter - more than triple the proportion as those in the top quintile.

The same survey also indicates that, on electricity alone, Ontario households in the lowest quintile spent 5.7% of their pre-tax income, five times more than households in the top quintile that spent 1.04% of their income on electricity.

As we noted in our written submission, the increase in electricity rates in Ontario on April 1st has increased the energy burden for low-income households, and will push up the maximum security deposit amount that LDCs can require a customer to pay under section 2.4.12 of the Distribution System Code.

There have been encouraging signs that the disproportionate impact of energy costs on low-income consumers is being acknowledged. For example, the Board has specifically asked for input into this proceeding on the implications of various strategies for low-income consumers. The provincial government announced on March 29, 2004 that it was providing a one-time allocation of $2 million for an Energy Emergency Fund, and would be monitoring the direct impact of rate increases. Low-income households can access one-time assistance from the fund to deal with payment of energy utility arrears, security deposits and reconnection fees.

The Energy Minister has specifically referred to programs and initiatives targeted to low-income and other hard-to-reach consumers in his letter to local distribution companies that advised which conservation proposals should be supported by the OEB with respect to cost recovery. Minister Duncan also requested CELA to develop recommendations on actions the government could take to help low-households cope with the rise in electricity prices immediately. In response to this request, the Toronto Environment Alliance, working with CELA, commissioned a report on developing a low-income energy conservation and assistance strategy for Ontario. This is the IndEco report (which you have copies of) that was submitted to Minister Duncan and to the Minister of Community and Social Services.

Enforcement of security deposit policies

The OEB is proposing to amend section 3.1.1 of the Distribution System Code to allow distributors to refuse to connect a customer, or to continue to connect a customer, for non-payment of a security deposit. In addition, the Board is proposing to amend section 4.2.6 to allow distributors to disconnect a customer if the person owes money for a security deposit.

In view of the disproportionate energy burden faced by low-income households, ACTO has recommended that the OEB should not adopt these proposed amendments as they

[2] Statistics Canada: Survey of Household Spending in 2002; detailed average household expenditure by household income quintile, Ontario. 62F0032.

would apply to low-income residential consumers. Disconnection and load limiters should not be used as enforcement methods by LDCs in cases where a low-income residential consumer has not paid a security deposit and is not in arrears in paying electricity bills. The OEB is also proposing to add a new section 4.2.5.2 which would allow a distributor to recover reasonable costs associated with disconnection from the customer responsible for the disconnection. If a low-income consumer is disconnected for non-payment of a security deposit and is not in arrears in paying electricity bills, this additional fee would only make it more difficult to restore service.

While the Board is proposing amendments that present an additional burden on low-income consumers, the government and LDCs are promoting and developing initiatives to assist these same consumers. It just doesn't make policy or economic sense to be working at cross-purposes. If the OEB exempts low-income consumers from security deposit requirements as we have proposed, this will free up monies available through the Energy Emergency Fund to help more of those in need.

At this time, we would like to additionally recommend that the OEB – in line with its consumer protection mandate – should revisit and reconsider all the consumer security deposit provisions in the Distribution System Code as they apply to low-income consumers. We believe this reconsideration is necessary in light of the provincial government's restructuring of the electricity industry (to be put into place through Bill 100), the move to prices that reflect the true cost of electricity, the new emphasis on promoting a culture of conservation, and the importance the Minister of Energy has placed on helping low-income residential consumers.

Rather than reactive interventions in cost-of-energy crises and short-term, ad hoc initiatives to address the disproportionate energy burden of low-income consumers, we believe all stakeholders – including the OEB and LDCs - should instead focus on helping these vulnerable households reduce their consumption and costs on a long-term basis with corresponding environmental benefits. The ultimate goal is to target resources to primary programs which prevent the crises that lead to disconnection and possible homelessness. Consumer security deposit policies should be consistent with this approach.

The ***Low income energy conservation and assistance*** report prepared by IndEco provides recommendations for an overall model for low income energy programs in Ontario, including recommendations on:

- Principles for low income strategy design;
- Program development approach;
- Consumer protection policies;
- An energy rebate program, and
- A comprehensive set of energy efficiency programs.

We hope this report will be a useful resource for the Ontario Energy Board's reconsideration of consumer security deposit policies and would be pleased to answer your questions.