



**Report to the Minister of Justice
and Attorney General
Public Fatality Inquiry
WITH APPENDICES 1 to 4**

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the _____ Provincial Court of Alberta

in the _____ City _____ of _____ Calgary _____, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)

on the 20-21-22-23-24 day of _____ APRIL _____ 2009, (and by adjournment
year

on the 8th day of _____ July _____, 2009 and January 5, 2010
year

before _____ Bruce A. Millar _____, a Provincial Court Judge,

into the death of _____ John Frederick Davis _____ 58
(Name in Full) (Age)

of _____ Calgary _____ and the following findings were made:
(Residence)

Date and Time of Death: _____ November 24, 2006 _____

Place: _____ Calgary, Alberta _____

Medical Cause of Death:

("cause of death" means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization – The Fatality Inquiries Act, Section 1(d)).

Environmental Cold Exposure (Hypothermia)

Manner of Death:

("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental, unclassifiable or undeterminable – The Fatality Inquiries Act, Section 1(h)).

Accidental

The Parties and Their Relationship

1. John Frederick Davis (Mr. Davis), aged 58, deceased November 24, 2006. A natural gas customer.
2. Doreen Davis (Mrs. Davis), mother of Mr. Davis, and resident of Edmonton, Alberta.
3. Atco Gas, the gas distributor, responsible for the delivery of natural gas purchased by a retailer.
4. Direct Energy Regulated Services (Direct Energy) is a retailer, selling gas to its customers such as Mr. Davis. Direct Energy may request of the gas distributor (Atco Gas) that service be disconnected to any of its customers after reasonable efforts have been made to collect arrears.
5. Atco I-Tek, a separate corporate entity, contractually provides call centre and billing for Atco Gas and customer care and billing services for Direct Energy. It is Atco I-Tek that issues the directives to Atco Gas to disconnect or reconnect gas service to a property on behalf of their client Direct Energy.
6. The Alberta Utilities Commission's (AUC) role and responsibility is set out in legislation. They deal with approval for construction and operation of gas utility pipelines and setting rates a gas utility may charge its customers. Part of setting the rate for gas service is the approval of the terms and conditions of service that utilities (Atco Gas, Direct Energy) must comply with.

In addition the Commission will accept calls from utility customers to determine if the utility is in compliance with legislation and approved terms and conditions of service.

7. The Utility Consumer Advocate (UCA) provides information and assistance to Alberta utility customers that are dissatisfied with their interaction with utility providers (Atco Gas, Direct Energy). In cases where disconnection of a utility service is imminent or has occurred, the UCA attempts to make arrangements for services to be maintained or restored. If the utility customer is unable to pay their arrears and other charges, the UCA will refer them to other government services for emergency funding.
8. Dr. Edward A. Silver, Sc.D., P.Eng., Professor Emeritus and Faculty Professor of Operations Management, Haskayne School of Business, The University of Calgary, appeared as an expert in Business Process Management, to assist the Court and make recommendations on all relevant issues (See Appendix 1 for Resume).

Circumstances under which Death occurred:

1. On November 24, 2006 John Frederick Davis (58 years of age), was found by Calgary Police Service, deceased in his home in Calgary. Calgary Police Service were responding to a “check on welfare” request, initiated by the deceased’s mother, Mrs. Doreen Davis.
2. According to Dr. Sam Andrews, Assistant Chief Medical Examiner, the deceased died in his home from “Environmental Cold Exposure” (hypothermia).
3. The Autopsy Report by Dr. S. Andrews found the deceased suffered from chronic alcohol abuse and other health issues. Dr. S. Andrews found these to be significant conditions contributing to death but not the immediate cause of death.
4. Post mortem toxicology reports found no alcohol or drugs in the deceased’s body.
5. The medical history reviewed by Dr. S. Andrews, which was dated, indicated Mr. Davis had some mental health functioning problems.
6. Mr. Davis lived alone in his single family dwelling that his mother said he had owned for 30 years.
7. Mrs. Davis visited her son for 2 – 3 weeks, commencing around September 6, 2006. At that time the deceased had no gas supply to his home. He did have electricity and a land line telephone. He was not employed but lived on a disability income of \$900 per month. The deceased had fallen into arrears on the natural gas account with Direct Energy. His gas supply had been disconnected on June 8, 2006.
8. On September 6, 2006 Mr. Davis called Atco I-Tek about having the gas turned on. He was advised that a payment of \$654.74 (balance outstanding plus reconnect fee and security deposit) was required with confirmation to have the service restored.
9. On that same day Mrs. Davis went to her bank and paid the outstanding natural gas account arrears, plus a reconnect fee and security deposit. Once she paid the bill at her bank she returned to her son’s residence and phoned to have the gas reconnected. It is unclear whom she actually phoned. Her memory was vague on this matter. She stated she phoned the number on the bill. As pointed out by Mr. Gallagher, Q.C., counsel for Atco Gas and Atco I-Tek, there were several numbers on the bill. Mrs. Davis stated she was told that the gas would be turned on.
10. Atco I-Tek found no record of Mrs. Davis having contacted them on September 6, 2006, to have the gas turned on.

11. On September 7, 2006 the payment was posted to Mr. Davis' account with Direct Energy, clearing the arrears and showing a credit for \$81.50 (the reconnect fee and security deposit).
12. Atco I-Tek will not instruct Atco Gas to turn on the gas after payment of arrears unless they are requested by the customer.
13. On September 18, 2006 with no request to restore the gas service, an automatic refund of the reconnection fee and security deposit was sent back to Mr. Davis.
14. On October 16, 2006, Mr. Davis deposited to his bank account the refund cheque.
15. On October 19, October 20 and November 1, 2006 Mr. Davis called Atco I-Tek to have the gas reconnected and was advised to pay the reconnect fee and security deposit and to call back and confirm payment and then the gas would be reconnected.
16. On November 13, 2006, Mrs. Davis called to have her son's gas reconnected. Mrs. Davis advised that she had been trying for two months to have her son's gas service restored. Mrs. Davis was advised by Atco I-Tek to have Mr. Davis, the account holder, call because according to policy they cannot discuss the account with Mrs. Davis.
17. Mrs. Davis said in her testimony she did not know of the need to make an appointment to permit access to have the gas service restored, nor was she aware of the refund cheque being cashed by her son on October 16, 2006, hence the need for a new payment of the security deposit and reconnection fee.
18. On November 13, 2006, Mr. Davis called Atco I-Tek to request reconnection and received the same response about payment of the reconnect fee and security deposit and to call thereafter to confirm he wanted his gas service turned on.
19. Environment Canada report that starting on October 24, 2006 and continuing throughout November, 2006, the minimum temperature for each day did not exceed 0°C. For November 24, 2006 the minimum temperature was minus 20.5°C.
20. It is fair to say that the actions and responses of Atco Gas, Atco I-Tek and Direct Energy were in accordance with their policies, procedures and contractual agreements at the time.
21. Mr. Davis had a history of credit problems with Direct Energy, since the time they took over his supply of natural gas in 2004, and had his gas service disconnected on a prior occasion in May of 2005 and reconnected shortly thereafter.

Recommendations for the prevention of similar deaths:

Dr. Edward A. Silver provided the Inquiry with a thorough and valuable expert report.

I have included as Appendix 2, the Expert Report of Dr. Edward A. Silver to this Inquiry.

At Appendix 3 are the recommendations of Mr. Allan McLean, representative of the Utilities Consumer Advocate.

At Appendix 4 you will find the response by Atco Gas, Atco I-Tek and Direct Energy to the recommendations of Dr. Edward A. Silver and the Utilities Consumer Advocate.

I am satisfied that the proactive steps taken by Atco Gas, Atco I-Tek and Direct Energy, prior to my Report, are meaningful and address in a reasonable manner the difficulties faced with disconnecting and reconnecting a customer's gas service during the entire year and especially the Winter heating period. They have incorporated some of the recommendations of this Inquiry's expert, Dr. Edward A. Silver.

I am also impressed and heartened by how these major corporations responded to this tragedy and I am confident that for so long as they have a corporate memory for this sad loss of life, that they will do everything reasonable to prevent such an occurrence in the future.

My recommendations are these:

1. There is a fundamental problem when The Alberta Utilities Commission is not even aware of this fatality, in this highly regulated industry, until contacted by legal counsel for this Inquiry (Letter, May 22, 2009, AUC General Counsel). While this Inquiry and all its participants did excellent work, much time was spent educating the Court in the roles and responsibilities of the parties and an independent expert consultant was retained at the direction of presiding Judge B. A. Millar. This Inquiry did not commence until two and one half years after the death of Mr. Davis. The AUC already has the expertise and the mandate to review this matter. The AUC should be in a position to initiate a review, make changes if needed, and communicate with Albertans within a timeframe which is more responsive to an accident such as this.

I recommend the Alberta Utilities Commission should review this Report and, among other things, but not limited to: Develop or review their process whereby incidents such as a death, serious personal injury, or property damage are self reported by the utilities to the Commission for review, to determine compliance with governing legislation, regulation and policies and order changes where deemed necessary. If legislative or regulatory changes are required, the Minister of Energy should undertake legislative or regulatory amendments to further this process.

2. It was the specific recommendation of Mrs. Davis, Dr. Edward A. Silver and the UCA that the Winter Moratorium on disconnects be reviewed, with a date commencing November 1, as opposed to December 1 of each year. This will require the approval of the Alberta Utilities Commission.

Dated this 13th day of APRIL, 2011
At Calgary, Alberta

Bruce A. Millar,
A Judge of the Provincial Court of Alberta.

RESUME OF
EDWARD A. SILVER, Sc.D., P.Eng.

CURRENT POSITIONS

Professor Emeritus and Faculty Professor of Operations Management
Haskayne School of Business
The University of Calgary
2500 University Drive N.W.
Calgary, Alberta, Canada T2N 1N4
Telephone: (403) 220-6996
Email: edward.silver@haskayne.ucalgary.ca

Independent Unincorporated Consultant
Dr. Edward A. Silver Consulting Services
220 Sierra Morena Green S.W.
Calgary, Alberta T3H 3E5

EDUCATION

| Institution | Major | Degree | Year |
|---------------------------------------|---------------------|---------------------------|-------------|
| Massachusetts Institute of Technology | Operations Research | Sc.D. (Science Doctorate) | 1963 |
| McGill University | Civil Engineering | B. Eng. | 1959 |

CONSULTING EXPERIENCE**a. Full Time Experience with Consulting Organization (1963 – 1967)**

Operations Research Group
Arthur D. Little, Inc.
35 Acorn Park
Cambridge, Massachusetts
U.S.A. 02140

Professional member of the Operations Research Group - involved in several fundamental investigations of complex inventory control and production scheduling problems. Other work included the development and implementation of practical production and/or inventory systems in such diverse organizations as a large brewery, a major North American manufacturer and distributor, a wholesale drug firm, an international welfare organization, and a textile mill. Also participated in extensive research in the application of mathematical models in the areas of marketing and advertising.

b. Other Part Time Consulting Activities

Private consultant to numerous industrial and government organizations in the general areas of Operations Management and the use of quantitative modeling to aid in managerial decision making. Clients have included Accenture, Alberta and Southern Gas Co. Ltd., American Optical, Arthur D. Little Inc., The Athlete's Foot, Bell Canada, Bombardier Regional Aircraft Division, Calgary Laboratory Services, Canada Centre for Remote Sensing, Canadian General Tower, DCF Systems, Department of National Defence, Defence Research Board, EnCana, Fletcher Challenge (New Zealand), National Energy Board, NOVA (An Alberta Corporation), PanCanadian Petroleum Ltd., Peat Marwick Livingston & Co., Petro-Canada, Standard Oil of Indiana, Tron Systems Group, Uni-royal Ltd., and the U.S. Army Inventory Research Office. In this work, particular emphasis has been placed on seeking reasonable solutions to complex practical problems in the management of operations. Areas of application include inventory management, production planning, process improvement/innovation, purchasing, supply management, logistics, maintenance management, workforce scheduling, etc. Most of the studies have included audits of existing or proposed systems, as well as supporting technical development work. Recent emphasis has been on the application of a continuous improvement philosophy.

c. Executive Development Short Courses and Seminars

Have instructed in a number of courses and seminars, including:

- i.) "Business Process Improvement", three-hour seminar, CGA Alberta Conference, October 2004.
- ii.) "Business Process Improvement", two-hour workshop offered to the Finance Leadership Team and Human Resources Representatives, Petro-Canada, January, 2004.
- iii.) "Business Process Improvement", three-hour course, Public Practitioners and Controllers Conference, CGA Alberta, June 2002.
- iv.) "Business Process Improvement", three-hour course, Professional Development Program, APEGGA Annual General Conference, April 2001, April 2002.
- v.) "Inventory Management/Control for Improved Business Performance", three-hour workshop offered to General Fasteners Ltd., March 2002.
- vi.) "Strategies for Improving Supply Chain Performance", two-day course, Business School Executive Programmes, University of Auckland, April 2000.
- vii.) "Business Process Improvement", two-day course, Business School Executive Programmes, University of Auckland, March 2000.
- viii.) "Supply Chain Management Fundamentals", two-day course offered to Canadian Freightways Ltd. through the Van Horne Institute, August 1999.
- ix.) "Process Improvement and Creative Problem Solving", part of the Agricore Management Leadership Program, July 1999.
- x.) "Inventory Management/Control for Improved Business Performance", seminar (sponsored by Merck Frosst Canada Inc.) presented to the Caremart Group of Independent Pharmacists, February 1997.
- xi.) Banff School of Advanced Management, Fall 1983, Spring 1984, Spring 1995.

- xii.) The Executive Development Program of the Faculty of Management, The University of Calgary, April to June in each of 1983-1994.
- xiii.) "Preventive Maintenance Management," part of the PanCanadian Petroleum Executive Program, November 1993.
- xiv.) "Inventory Management" seminar presented to the Annual Conference of the Certified General Accountants Association of Alberta, October 1993.
- xv.) "Some Key Issues in Project Management," part of an in-house workshop for Canadian Marine Drilling Limited, November 1990, February 1991.
- xvi.) "Quantitative Methods to Aid Managerial Decision Making," an in-house, three-day seminar for Petro-Canada Resources, December 1989.
- xvii.) "Decision Making Under Risk," a workshop presented to the Owner / Managers Alumni of the Center for New Venture Development, University of Calgary, April 1989.
- xviii.) "Risk and Decision Making," an in-house seminar for the Oil and Gas Division, BP Canada Limited, November 1987.
- xix.) "Inventory Management and Control," a two-day workshop for Novacor Chemicals Ltd., November 1986.
- xx.) A special executive development course for Bata Ltd., June 1976, September 1978, June 1979, May 1980, June 1981, and June 1982.
- xxi.) A 9-hour seminar on Inventory Planning developed for the London and District Chapter of CAPIC to help prepare members for the Inventory Management Module of the APICS Certification Examination, May 1980.
- xxii.) "Operations Research and the Management Sciences," College of Engineering, University of Michigan, August 1978, 1979 and 1980.
- xxiii.) A special two-day seminar on Inventory Management for employees of Canadian National Railways, December 1978.

- xxiv.) "Effective Inventory Management," Canadian School of Management, September 1978.
- xxv.) "Effective Inventory Control – the Modern Way," Centre for Continuing Management Education, University of Waterloo, June 1973, December 1973 and May 1974.

PREVIOUS ACADEMIC POSITIONS

- a. University of Calgary, Calgary, Alberta (1981-2002). Professor of Operations Management and holder of the Carma Chair (1991-2002).
- b. Ecole Polytechnique Fédérale de Lausanne, Lausanne, Switzerland (2001). Visiting Professor during sabbatical leave from The University of Calgary.
- c. University of Auckland, Auckland, New Zealand (2000). Auckland Foundation Visitor and Visiting Professor, Department of Management Science & Information Systems.
- d. University of Canterbury, Christchurch, New Zealand (1998). Visiting Erskine Fellow, Department of Management.
- e. Ecole Polytechnique Fédérale de Lausanne, Lausanne, Switzerland (1992-93). Visiting Professor during sabbatical leave from The University of Calgary.
- f. Institute for Advanced Studies, Vienna, Austria (1990) Visiting International Professor offering a course entitled, "Production/Operations Management - Applications of Quantitative Modelling."
- g. Ecole Polytechnique Fédérale de Lausanne, Switzerland (1990) Visiting Research Professor, Département de Mathématiques.
- h. Xi'an Jiaotong University, Xi'an, China (1987) Visiting Professor teaching a graduate course as part of a program sponsored by the Canadian International Development Agency.
- i. Stanford University (1986) Visiting Professor during the Winter Quarter as part of a sabbatical leave from The University of Calgary.
- j. University of Waterloo (1969-1981) Professor and Associate Chairman, Department of Management Sciences, Faculty of Engineering.

- k. Ecole Polytechnique Fédérale de Lausanne, Switzerland (1976-77) Visiting Professor during sabbatical leave from the University of Waterloo.
- l. Boston University (1967-69) Associate Professor, College of Business Administration.
- m. Massachusetts Institute of Technology (1963-65) Special Part-Time Industry Lecturer, Department of Electrical Engineering.

LANGUAGE SKILLS

Fluent in English and French

PUBLICATIONS

Co-author (with D. Pyke and R. Peterson) of the book, Inventory Management and Production Planning and Scheduling, John Wiley and Sons, New York, First Edition in 1979, Second Edition in 1985, Third Edition in 1998.

Co-editor (with S. Axsäter and Ch. Schneeweiss) of Multi-Stage Production Planning and Inventory Control, Lecture Notes in Economics and Mathematical Systems 266, Springer-Verlag, Berlin, 1986.

Author of over 160 refereed articles in journals such as Engineering Costs and Production Economics, IIE Transactions, INFOR, INTERFACES, International Journal of Production Research, International Journal of Production Economics, Journal of the Operational Research Society, Journal of Operations Management, Management Science, Naval Research Logistics, Operations Research, Production and Inventory Management.

Author of two chapters in books and four case studies, the latest dealing with maintenance management in the oil and gas industry.

PAPERS, TALKS, SEMINARS

Have presented over 170 papers, talks and seminars at:

- i.) National and international meetings of professional organizations such as the American Production and Inventory Control Society, the Canadian Operational Research Society, the Operations Research Society of America and the Institute of Management Sciences.

- ii.) Well-known North American universities including M.I.T., University of Pennsylvania (the Wharton School), University of Montreal and Queen's University, as well as at several European educational institutions.

GRANTING AGENCY ACTIVITIES

Member (1978-1980) and Chairman (1980-81) of the Industrial Engineering Grants Selection Committee of the Natural Sciences and Engineering Research Council (NSERC) of Canada. This committee is responsible for the allocation of all grant support provided by the Council for research in the Industrial Engineering area in universities in Canada. Appointed Member (1984-86) of the NSERC Advisory Committee on Engineering (this committee dealt with policy issues for all of the academic research funding in Engineering in Canada).

PROFESSIONAL AFFILIATIONS

Full member of:

1. Association of Professional Engineers, Geologists and Geophysicists of Alberta (Examiner for Certification Examinations in Industrial Engineering).
2. Canadian Operational Research Society (1969-1971), Vice President of Kitchener-Waterloo Section; 1971-72 President of Section; 1969-1972, 1975-76, 1979-1982 National Council Member; 1971-72 Member of Special National Policy Committee; 1980-81 President of the Society; 1979-1983 Representative to the International Federation of Operational Research Societies; 1991-92 Co-Chairman of the Award of Merit Committee).
3. The Institute of Industrial Engineering (Senior Fellow) and the Canadian Society for Industrial Engineers.
4. The Institute for Operations Research and Management Sciences (Fellow of the Manufacturing and Services Operations Management Society).
5. International Society for Inventory Research (Fellow; 1986-1990 Member of the Executive Committee and Section Chairman; 1990-92 Vice-President; 1992-94 President-Elect; 1994-96 President).
6. Operational Research Society (United Kingdom).
7. Production and Operations Management Society (Member of the Board of Directors).

PROFESSIONAL RECOGNITION

Selected in 2007 as the recipient of the Harold Larnder Memorial Prize by the Canadian Operational Research Society. The prize honours individuals for distinguished international achievement in Operational Research.

Became an Emeritus member of the Canadian Operational Research Society, designation bestowed upon those retired CORS members who have received both the CORS Service Award and the CORS Award of Merit.

Selected in 2003 as a Fellow of the Institute for Operations Research and the Management Sciences.

Awarded a Visiting Research Fellowship by the Japan Society for the Promotion of Science for research activities at the Tokyo Institute of Technology and Kyoto University (October, 2002).

Selected in 2002 as the winner of the President's Circle Award for Research and Creative Activity Excellence, University of Calgary.

Selected in 2001 as the recipient of the Dean's Award for Outstanding Leadership in Teaching & Learning in the Faculty of Management, University of Calgary.

Awarded the Gold Prize for the Best Paper at the First Cyber Conference, Korean Institute of Industrial Engineers, November 2000, for a paper co-authored with I. Moon and S. Choi.

Elected Fellow of the International Society for Inventory Research in 2000. The citation included "...for the great contribution you have made to the development of our research field and also of ISIR".

Appointed as a 2000 University of Auckland Foundation Visitor in the Department of Management Science & Information Systems, University of Auckland, New Zealand (February-May 2000).

Selected in 2000 as one of the three inaugural Fellows of the Manufacturing and Services Operations Management Society. The citation included "In recognition of his outstanding research and leadership in the field of Operations Management".

Selected in 2000 as the recipient of the Dean's Award for Outstanding Research Leadership in the Faculty of Management, University of Calgary.

Selected in 1999 as the recipient of the Dean's Award for Outstanding Research Achievement (during the previous 5-year period) in the Faculty of Management, University of Calgary.

Selected in 1999 as the recipient of the Dean's Award for Research Excellence (performance in previous year) in the Faculty of Management, University of Calgary.

Selected in 1998 to receive the Service Award of the International Society for Inventory Research. The citation included "This award is to recognize the outstanding service to the International Society for Inventory Research and its members provided by Edward A. Silver."

Selected as the 1998 Lecturer of the Operational Research Society of New Zealand. This involved presenting a seminar to the sections of the Society in each of Auckland, Christchurch, and Wellington.

Awarded a Visiting Erskine Fellowship in the Department of Management, University of Canterbury, Christchurch, New Zealand (March-April 1998).

Selected in 1997 as the co-recipient (with T.R. Rohleder) of the Management Advisory Committee's Award for Managerial Relevance, Faculty of Management, University of Calgary, as a result of the publication of the article "A Tutorial on Business Process Improvement".

Professionally recognized by the holding of the Edward A. Silver Mini-Conference in Banff, Alberta in August 1997.

Selected as a recipient of the Fellow Award of the Institute of Industrial Engineers in 1995.

Selected in 1994 as the recipient of the Dean's Award for Outstanding Research Achievement (during the previous 5-year period) in the Faculty of Management, University of Calgary.

Appointed in 1991 (and renewed in 1996 for a second 5-year term) to the Carma Chair in Operations Management at The University of Calgary.

Selected as the recipient of the 1990 Award of Merit of the Canadian Operational Research Society. The citation included, "Co-author of the book, Decision Systems for Inventory Management and Production Planning, which had a major impact through its organization and clarification of the state-of-the-art in the field. An outstanding teacher of the theory and applications of Operational Research at The University of Waterloo and The University of Calgary. Made major research contributions in the area of Inventory and Production, in particular through the development of reasonable and implementable solutions to difficult practical problems (e.g., the Silver-Meal heuristic), thus contributing to improved practice in many organizations."

Selected as the recipient of the 1986 Operations Research Division Award from the Institute of Industrial Engineers. The citation included "This award recognizes your long history of research contributions to the operations research and industrial engineering professions."

Received a Service Award of the Canadian Operational Research Society in 1986. The citation included "... to recognize individuals who have given distinguished service to the Canadian Operational Research Society over a period of several years."

Awarded a Sabbatical Leave Fellowship by the Social Sciences and Humanities Research Council of Canada (1985-86) for a research project entitled, "Procurement and Logistics Decision Making in Large Scale Projects in the Oil and Gas Industry."

Awarded Killam Resident Fellowship at The University of Calgary (September-December 1983) to complete the second edition of the text, Decision Systems for Inventory Management and Production Planning.

Selected for inclusion in:

1. 2000 Outstanding Scholars of the 21st Century
2. American Men and Women of Science
3. Canadian Who's Who
4. Dictionary of International Biography
5. Five Hundred Leaders of Influence
6. International Directory of Business and Management Scholars and Research
7. International Directory of Distinguished Leadership
8. International Who's Who in Education
9. International Who's Who in Engineering
10. Marquis Who's Who Biographies of Living Notables
11. Who's Who in Alberta
12. Who's Who in Canadian Business
13. Who's Who in Canadian Engineering
14. Who's Who in Engineering
15. Who's Who in the West

Report Prepared For Judge Bruce A. Millar as Part of the
Public Inquiry Resulting from the
Fatality of John Frederick Davis

Dr. Edward A. Silver

Calgary, Alberta

May 13, 2009

-1-

1. Introduction

A public inquiry was ordered as a consequence of the November, 2006 fatality of John Frederick Davis. The issues to be explored in the inquiry included i). the specific circumstances involving the case of Mr. Davis; ii). the policies and procedures regarding the cessation and re-energization of gas services; iii). whether there are appropriate systems in place to ensure that when utilities, such as gas provision, are turned off that no harm should come to a person as a consequence, in particular when a person has medical conditions that might impair their mental capacity; and iv). whether there are any changes to policies, procedures or practices as a result of this incident.

This report has been prepared after a careful review of the three binders of exhibits as well as notes taken during almost five complete days of testimony in court. Where I was selected as an expert witness specifically related to business process management, that topic is briefly reviewed in Section 2. Then in Section 3 a summary of the key events in the Davis incident is presented, followed in Section 4 by a statement of the problem that is to be addressed. Next, Section 5 deals with subsequent efforts, by the organizations involved, at improvement of the policies and procedures. The major portion of the report is Section 6 which lists many additional suggestions for improvement. Finally, some concluding remarks are provided in Section 7.

2. Brief Overview of Business Process Management

First, I start by defining a process. A process is a collection of activities that takes one or more kinds of inputs and creates outputs that are of value to external or internal customers. This includes business processes (such as billing and accounts receivable, order entry, providing customer service/support, employee training, etc.) where primary inputs are manpower and types of information.

Business objectives and policies drive what an organization is trying to accomplish with its processes (or procedures). In addition, the objectives and policies constrain the processes. Thus, it was felt that this report must not be restricted to just processes, but would have to also carefully consider policies.

It is critical to develop and monitor appropriate measures of performance of each process. These measures should be related to the associated objectives and policies, i.e. what is the organization attempting to accomplish with the process? Possible measures are of three types:

i). effectiveness – how well the process meets the requirements of the customers (both external and internal). Possible effectiveness measures include quality (error rates, ease of dealing with the process), customer response time, etc.

-2-

ii). Efficiency – the extent to which resources are minimized and waste is eliminated in the pursuit of effectiveness. Possible efficiency measures encompass productivity, cost, and percent of work time that adds any value from the perspective of the customers.

iii). Adaptability – the flexibility of the process to handle unusual or significant changes in customer requirements/expectations. Possible measures here are the average time it takes to get a special customer request processed compared to standard procedures and the percentage of time special requests are escalated.

Business process management encompasses the design, control, improvement and redesign of business processes. One of the major reasons for the improvement or redesign of processes is the recognition of the existence of an important problem, where a problem can be defined as a perception of a gap between the present and some desired state of affairs. Thus, creative problem solving often plays a central role in process improvement/redesign.

3. Summary of the Key Events in the Davis Incident

Some of the suggested changes will relate to the sequence of events that took place in the case of Mr. Davis. Therefore, a chronological summary of key events will now be presented:

Prior to May 2005 – history of late payments, warnings regarding cutoffs, etc.

May 2005 – gas disconnected and reconnected shortly thereafter when Mr. Davis made the necessary payment and contacted Direct Energy who provided a hot transfer to ATCO Gas leading to the necessary site visit.

June 2005 – May 2006 – continued occurrence of late payments, cutoff warnings, etc.

June 8, 2006 – ATCO Gas shutoff gas on request from Direct Energy, the request being as a result of failure of the customer to make payments.

September 6, 2006 – Mr. Davis called Direct Energy about having the services restored. He was advised that a payment of \$654.74 (balance outstanding plus reconnect fee and security deposit) was required with confirmation to have the service restored.

September 6, 2006 – payment at the bank by Mrs. Doreen Davis (mother of Mr. Davis) of the outstanding balance (including \$81.50 for the security deposit and reconnection charge).

September 7, 2006 – posting of the payment to Mr. Davis' account resulting in a credit of \$81.50.

-3-

September 7-17, 2006 – no further action taken by Mr. Davis.

September 18, 2006 – refund cheque of \$72.95 (\$81.50 minus fee of collection agency) issued to Mr. Davis. When a specified amount of time (that varies with the customer's specific billing cycle) elapses for an inactive account the system automatically refunds any outstanding balance.

October 16, 2006 – Mr. Davis cashed the refund cheque.

October 19 & 20 and November 1 & 13, 2006 – Mr. Davis called Direct Energy four times requesting turn-on of gas service. On each occasion he was told that he first had to pay \$81.50 (security deposit and reconnection fee) and call back with reconfirmation. Mrs. Davis also called on November 13th (prior to the call by Mr. Davis) to have the gas turned on, but was advised that John Davis himself had to call as the account could not be discussed with her.

November 24, 2006 – Mr. Davis found (by Calgary Police Service) deceased at his residence. Constable Rashid's report (page 3 of Tab G of the large exhibit binder) indicated "... the temperature in the home was estimated at minus fifteen degrees..." According to Environment Canada records the minimum temperature in Calgary on November 24th was -20.5 degrees C.

November 27, 2006 - The subsequent Autopsy Report (Tab A.1 of the large exhibit binder) indicated that the immediate cause of death was environmental cold exposure. The Report also included "He had a past medical history significant for chronic ethanol abuse, benzodiazepine abuse, severe memory impairment and Wernicke's encephalopathy."

Also of relevance was subsequent testimony by Mrs. Davis on two matters. First, she said that when she made the payment on September 6, 2006 (that included the security deposit and reconnection charge) she did not know of the need to make an appointment to permit access to have the gas turned on. Second, she was unaware of the refund cheque, cashed by Mr. Davis on October, 16, 2006, hence the need for a new payment of the security deposit and reconnection fee.

4. The Problem to be Addressed

It appears from the written and oral evidence that the policies and procedures in place in 2006 were correctly applied. However, although there was an existing policy (Schedule B, Tab 3 of the ATCO Binder) specifying under what conditions to not disconnect the gas supply to a customer, there was no policy or guidelines regarding the need for reconnection when the temperature got low enough. Also, there appears to be an implicit assumption in the existing policies and procedures that a customer can understand what has to be done for

-4-

reconnection or will point out extenuating circumstances (such as health issues) or will seek assistance through authorizing a social agency or an additional responsible party to have access to the status of the customer's account. For whatever reason Mr. Davis did not seem to understand the necessary procedures and did not take advantage of the types of assistance indicated above.

Thus the problem to be addressed can be stated as follows:

The organizations involved are faced with how to prevent any further fatalities (or other serious consequences) due to the shut-off of residential gas supply to individuals, particularly those (elderly, invalids, alcoholics, people with memory limitations or other mental disabilities, etc.) who may have trouble comprehending the billing, collection and reconnection policies and procedures.

5. Subsequent Efforts at Improvement of the Policies and Procedures

A number of initiatives have been undertaken since Mr. Davis' fatality. These include:

- a). Reviews of policies and procedures by Direct Energy, ATCO I-Tek and ATCO Gas.
- b). Brainstorming session between ATCO I-Tek and Direct Energy employees to "mitigate against this type of situation occurring again in the future".
- c). Change in the pink disconnect notice (Tab 10 of ATCO Binder), left at the customer's residence, to now include the telephone number of the retailer.
- d). More formalized ATCO Gas document of January 5, 2009 (Tab 6 of the ATCO Binder) that spells out instructions for the ATCO I-Tek Call Centre to deal with a customer regarding a request for reconnect after a turnoff for nonpayment. Apparently, such instructions were delivered in the form of e-mails and other informal documentation in 2006.
- e). Implementation of a shared (between Direct Energy and ATCO I-Tek) data base that automatically tracks complaints and how quickly they are dealt with.
- f). Call Centre Update/Change Bulletin of October 22, 2008 (page 3 of Tab 37 of ATCO Binder) regarding, among other issues, dealing with "customers who have difficulty grasping the message you are trying to deliver, although you repeat the message in different ways".
- g). Temporary turn-on policy and procedure – On January 28, 2008, due to forecasts of extremely cold weather, Direct Energy Regulated Services requested of ATCO I-Tek a temporary change to standard processes regarding turning on of services for residential customers (page 166 of Tab D2 of the Exhibits Binder). The wording

-5-

included "At this time, any customer who has been cut off for non-payment and is calling requesting to have service restored, will be accepted without having received payment. Customers will be asked to make payment arrangements, but this will in no way hinder the immediate energization request to be made on their behalf". The temporary change was left in effect for the period January 29 – February 11, 2008. At the same time the document R1-850: De-Energize due to Non-Payment ("CONP") was modified on January 29, 2008 (See Tab 30 of the ATCO Binder) to standardize the Temporary Turn-on Process. The wording includes "The Client will monitor weather conditions during the winter moratorium to determine if temperatures warrant invoking the Temporary Turn-on Process".

6. Suggestions for Improvement

It is worthwhile to first repeat the problem to be addressed, as first spelled out in Section 4, viz.:

The organizations involved are faced with how to prevent any further fatalities (or other serious consequences) due to the shut-off of residential gas supply to individuals, particularly those (elderly, invalids, alcoholics, people with memory limitations or other mental disabilities, etc.) who may have trouble comprehending the billing, collection and reconnection policies and procedures.

Recognizing that difficulties arise due to gas supply having been shut off followed by the weather turning cold, one can think of two broad approaches to resolving the problem. First, disconnects can be limited as much as possible. Second, timely reconnects can be ensured, particularly for the segment of the population of particular concern.

There are three parts of this section. The first deals with suggestions of a broad nature. The second is concerned with some specific changes that might have helped in the case of Mr. Davis. Finally, the third lists a large number of other suggestions. At first glance some of the recommendations may appear to not be practical. However, they should still be given careful consideration for two reasons related to the principles of creative problem solving. First, the organizations involved may be able to recommend changes that would make them usable. Second, the original suggestions may spawn other worthwhile ideas.

a). Suggestions of a Broad Nature

Suggestions here include:

i). A more careful examination of what the organization(s) is (are) trying to accomplish with each major process or procedure, including envisioning the consequences of poorly performing processes (extra costs, dealing with errors/complaints, high level of debt, compromising customer safety, and so on). – This includes spelling out and monitoring

-6-

measures of performance on the three separate dimensions of effectiveness, efficiency and adaptability. From the exhibits provided, as well as the testimony, there appears to be an implicit emphasis on effectiveness and efficiency primarily from the perspective of the organizations as opposed to the external customers. There should be more concern for quality and adaptability as viewed by customers. For example, what about measuring the ease/convenience of dealing with the process, particularly, for customers with special needs? Some other specific suggestions will be offered in Section 6c.

ii). Extensive investigation (benchmarking) of what is being done by energy providers in other cold weather jurisdictions (and worldwide, i.e. not just restricted to North America) in terms of policies and procedures/processes with regard to providing energy, billing, collection, disconnections, reconnections, etc. – Actually, the provision of electricity in very warm climates faces a similar issue, namely disconnection of energy can jeopardize the health of customers (requiring electric power to operate air conditioning units). Douglas Brooks of DERS mentioned a Texas moratorium on electricity disconnection in the summer period. Also I am aware of a 2007 case in Auckland, New Zealand where a customer, requiring electricity to operate a system providing oxygen, passed away when the power was turned off due to non-payment.

iii). There are several interrelated suggestions regarding the procedures for and training of customer service representatives (particularly in Credit and Collection). More emphasis could be placed on the importance of serving and protecting customers. Also, there could be significant training of agents to be cognizant of the importance of temperature together with a clear visual indication (such as a large colour-coded display) when the forecasted temperature is in a specified danger zone. The training of CSR's should bring out the need to be sensitive to possible customer concerns such as extenuating health conditions. The CSR's could be empowered to take at least some limited actions on their own and to use escalation to quickly respond to concerns of customers. (The "distress flag", mentioned by Mr. Brooks, is an excellent device in this regard.) These types of actions should be considered in a positive sense with respect to how the agents are reviewed and rewarded. The people dealing with the escalations could, among other things, be specially trained in dealing with CONP accounts and should have at least limited authority to quickly permit reconnections. Finally, with regard to reconnect requests, agents should be encouraged or even required to look at the detailed history of the account, including checking for possible recent refunds.

iv). A more rational choice of conditions where shut-offs are prevented and rapid turn-ons are required – There are several concerns and inconsistencies with respect to the policies and procedures dealing with preventing gas disconnections and ensuring timely reconnections. For example, ATCO Gas has somehow decided that December 1 – April 14 is the typical heating season in Calgary, therefore gas service can not be interrupted in this period. Elsewhere in the year, when the overnight temperature is forecast to drop below zero degrees Celcius, the Company will not disconnect a residential property (Schedule B –

-7-

page 67 of Tab 3 of the ATCO Binder). There is an inconsistency here. As shown in Table 1 the historical minimum temperatures are actually much lower in late November than they are in early April. In fact, as early as October 25th, the average minimum temperature is about the same as the average minimum on April 14th! Thus, the choice of the boundary dates of December 1 and April 14 has to be re-examined. A temporary turn-on policy was introduced (as described in point g of Section 5). DERS is responsible for making the decision to activate the policy and there is no specified temperature regarding turn-on, hence the decision is very subjective. Would it not make sense to require timely reconnections under the same conditions for which disconnects are prohibited? Another issue is for how long should a reconnect, made outside of the "heating" season, be left in place? Also serious consideration should be given to having an independent (government?) organization specify the precise conditions under which disconnects should be prohibited and timely reconnects assured. This might even be best handled by some form of legislation. Finally, of course, there would be a need to properly monitor adherence to any such restrictions.

v). More consideration for the use of fail-safe mechanisms – These involve immediate warnings that something has not been done properly and there is a risk of serious associated consequences.

b). Specific Changes That Might Have Helped in the Case of Mr. Davis

There are several issues here. In particular, there was a confusing (from a customer perspective) sequence of events in the September-November 2006 period. As shown in Section 3 payment was made on September 6th by Mrs. Davis of an amount that covered the outstanding balance on the account plus a security deposit and reconnection fee. On September 18th a refund cheque (for an amount somewhat less than the total of the security deposit and reconnection fee) was issued to Mr. Davis. Then, in subsequent phone calls the agents indicated that a new security deposit and reconnection fee (again different from the refund amount) had to be paid as one of the requirements before reconnection. The first two changes relate to this issue.

i). When a customer makes a reconnect/deposit payment this is an indication that immediate reconnection is desired and this could be flagged in the system so that any agent dealing with such a customer would immediately be made aware of this desire.

ii). Making a change in the system which currently, after a specified length of time, automatically issues a refund of any balance remaining in an inactive account – It would be necessary to have a flag recognizing when the balance exactly represented the total of a security deposit and reconnect change. If this had been in place when Mr. Davis called back in October and November, he would not have had to make a payment and a hot transfer could have been made with ATCO Gas personnel to arrange the site visit for

-8-

Table 1 – Weather Statistics*

| <u>Date of Year</u> | <u>Average Minimum Temperature</u> |
|---------------------|--|
| Apr 10 | -3.6 |
| Apr 11 | -3.5 |
| Apr 12 | -3.4 |
| Apr 13 | -3.2 |
| Apr 14 | -3.1 |
| . | . |
| . | . |
| . | . |
| Oct 24 | -3.0 |
| Oct 25 | -3.2 |
| Oct 26 | -3.4 |
| Oct 27 | -3.6 |
| . | . |
| . | . |
| . | . |
| Nov 20 | -9.9 |
| Nov 21 | -10.1 |
| Nov 22 | -10.4 |
| Nov 23 | -10.6 |
| Nov 24 | -10.8 |
| Nov 25 | -11.0 |
| Nov 26 | -11.2 |
| Nov 27 | -11.4 |
| Nov 28 | -11.6 |
| Nov 29 | -11.8 |
| Nov 30 | -12.0 |

*Source: "The Four Seasons: Calgary's Popular Weather Book", Canadian Western Natural Gas, 1986. (This older source was used because the Environment Canada data, provided to me, only showed historical averages by month and not by day of the month.)

-9-

reconnection. An alternate, probably less effective, change would be to have an explanatory letter accompanying such a refund cheque.

iii). No longer make the assumption (mentioned in the testimony, e.g. on page 6 of the text at the front of the ATCO binder) that someone who went through the disconnect and reconnect processes over a year earlier would be familiar with exactly what would have to be done for reconnection. This is particularly of concern for customers with memory problems. As an illustration, would Mr. Davis have understood the meaning of "with confirmation" in the telephone conversation of September 6, 2006? He might have thought that once Direct Energy had received the payment, that in itself would represent confirmation. There is no explicit statement in the credit case notes, related to that call (Tab 20 of the ATCO binder), that he was told that a telephone call was required, not just for confirmation of the payment, but so as to facilitate site access by means of a hot transfer to ATCO Gas.

iv). When the weather is getting cold and a customer keeps calling with the same question, don't just keep giving the same answer. Escalate if necessary.

v). Under extremely cold conditions the need for prepayment of deposit/reconnect fees could be waived. The Temporary Turn-On Policy (discussed in point g of Section 5) does this but still requires making payment arrangements. Trying to do the latter might still have prevented Mr. Davis from satisfying the requirements for reconnection.

c). Other Suggestions for Improvements

The first three suggestions relate specifically to proactively dealing with customers who have extenuating circumstances (on-going serious medical problems, memory issues, trouble helping themselves, etc.) where de-energize actions could lead to dire circumstances.

i). At the time of enrolment and on monthly bills encourage such customers to inform DERS of such circumstances as well as to contact an ombudsman or an appropriate social services agency that provides assistance. (This concept would be equally applicable to providers of electrical energy.) Once the retailer was informed of such circumstances a special code could be entered on the account which could be flashed up when a customer service representative received a phone call regarding the account.

ii). This type of customer should be strongly encouraged to provide authorization for an Additional Responsible Party (Tab 6 in the small binder) and/or release of account information to a social services agency (Tab 7 in the small binder).

-10-

iii). Under (projected or actual) very cold conditions do not wait for this special class of customers to request a connection. Instead, proactively contact them (or their representatives) by telephone with the intention of using a hot transfer to ATCO Gas to facilitate the required site visit. This would include being very flexible about any necessary payment arrangements.

iv). Anyone (not just the special class of customer discussed above) could just call and have their gas reconnected under pending cold conditions. According to statistics provided by DERS for 2006 there were approximately 780,000 residential gas customers in Alberta and 32,586 disconnections for non-payment were made. However, some of the disconnects must have been multiple ones for the same customers. Also, what is really relevant is how many of these disconnects were not reconnected until the beginning of the cold season. Nevertheless, if a large number of customers are allowed to reconnect each year despite being in arrears on payments, it is clear that there are potential serious economic consequences to retailers (and to customers, in general, if rates have to be accordingly increased). The benchmarking of energy providers in other jurisdictions (as recommended in Section 6a) could provide some innovative ideas for dealing with this dilemma of balancing economic concerns with customer safety/health considerations. One possibility would be to have some independent agency or authority assess the customer's financial circumstances. If it was deemed that a customer could not afford to pay all utility bills, then an ARP or some social services agency might be expected to cover the cost. On the other hand, if a customer was judged to be financially capable of covering the costs, then legal action could be undertaken to ensure collection, perhaps including a significant additional fine. Obviously such assessments would be time-consuming and could not be completed quickly enough with respect to specific turn-on requests at the start of a cold period. One way around this would be to allow the first reconnect and if the customer does not quickly pay the required fees, then the customer should be informed that the next time around they must have a financial assessment done ahead of time otherwise there will be legal consequences.

There are a number of possible changes to improve communication with customers regarding what to do so as to ensure reconnection after a disconnect due to non-payment. The next seven points relate to this issue.

v). Currently the telephone numbers on the back of overdue statements (e.g. page 16 of Tab D2 of the Exhibits Binder) do not provide direct communication with Credit and Collection. Instead, the customer has to work through a menu or choose the option of speaking with an operator. Instead, any written communication regarding overdue payments, pending disconnects or completion of disconnects should provide a direct phone number to Credit and Collection.

vi). The current requirements for reconnection include payment (encompassing any outstanding amount plus the security deposit plus the reconnect charge) with confirmation

-11-

(presumably by a telephone call) and arranging a site visit for the reconnection. Is there a specified time limit within which the confirmation and site visit arrangements have to be made? I would think that a clearly indicated time limit would lead to more customers meeting these requirements.

vii) The above requirements, together with appropriate direct telephone numbers to Credit and Collection and to ATCO Gas, should be included on the pink disconnect notice.

viii). Besides leaving the pink disconnect notice in the mailbox, consideration should be given to one or more follow-up contacts by telephone.

ix). In addition to continuing the practice of advertising in newspapers, possibly use direct contacts of individual disconnected customers as the winter season approaches.

x). As mentioned earlier, encourage the use of an ombudsman (or some agency such as the Distress Centre in Calgary) that disconnected customers could contact in emergency (cold) situations.

xi). Consider having someone (or some small group) in the company responsible for proactively contacting disconnected customers who are having trouble getting reconnected. (This relates back to a point made in Section 6 regarding not just giving the same answer when the customer keeps making requests for reconnection.)

Finally, here are four other suggestions.

xii). Aggressive follow-up on (the likely small number of) customers who have paid deposit and reconnect fees but have not arranged a site visit. – As mentioned in Section 6b the system could be modified so as to flag any customer who was in this situation. (This is an example of a fail-safe mechanism.) Follow-up (repeated, if necessary) phone calls could be made to such customers with the intention of arranging a hot transfer to ATCO Gas. In any event, there would not be a refund of the deposit and reconnect charge until the customer was contacted by telephone and confirmed that there was, indeed, no desire to further use the gas service.

xiii). Before a disconnection takes place, the field representative of ATCO Gas could knock at the door of the customer so as to provide the latter with the opportunity to point out that there are extenuating circumstances that might prevent disconnection. Currently disconnects are done external to the residence and the pink notice is just left in the mailbox.

xiv). This point relates to the refusal of the request of the police officer (on November 24, 2006) to have the gas turned on at the Davis residence. The policy cited was that any contacts from the police service should be with Mr. Weir, the Chief Security Officer of Direct Energy. This policy makes sense in a non-emergency situation (such as an

-12-

investigation). However, in an urgent situation, such as on November 24, where there is a risk of substantial property damage, couldn't the officer be, instead, hot transferred to ATCO Gas who could make a decision, such as in contacts from customers during non-office hours, to at least temporarily reconnect the gas?

xv). The following is taken from page 6 in Tab C1 of the Exhibits Binder: "His (*Craig MacInness of DERS*) concern is that perhaps she (*Mrs. Davis*) did drive to the Calgary DERS head office and dropped off a cheque – and something happened to it not getting to them faster. This has happened before as payments get routed (and misplaced) to Ontario first." – Surely some type of (fail-safe) mechanism can be introduced to avoid possible mishandling of customer payments which could lead to disconnect actions or prevent reconnections.

7. Conclusion

This report has focused on potential improvements in business policies and processes of Direct Energy, ATCO I-Tek and ATCO Gas so as to substantially reduce the risk of future occurrences of fatalities or other serious health consequences resulting from having the gas supply not available to customers (particularly these with special circumstances) during cold weather conditions. It is hoped that the contents of this document will be of significant assistance to Judge Millar in the preparation of his report to the Attorney General as well as being beneficial in the long term to the organizations involved and their customers.

Davis Fatality Inquiry

Excerpt from the Evidence Given by Allan McLean, Office of the Utilities Consumer Advocate

January 5, 2010

BACKGROUND:

- On January 5, 2010, Allan McLean from the Office of the Utilities Consumer Advocate (UCA) provided evidence in the fatality inquiry related to the death of Mr. John Frederick Davis.
- Mr. McLean was asked to provide a written summary of the suggestions made by the UCA that might prevent this type of incident from happening in the future. To the extent that any suggestions have a financial impact on a regulated utility, this impact would have to be reviewed and assessed in the applicable regulatory proceeding.
- Mr. McLean was also asked to provide statistics related to the number of times consumers had contracted the UCA about issues related to disconnections in the calendar year 2009.

SUGGESTIONS THAT MIGHT PREVENT SIMILAR INCIDENTS FROM HAPPENING IN THE FUTURE:

A. The following suggestions are related to changes to the Terms and Conditions of Service that regulated retailers and distribution companies operate under:

1. Natural gas distribution companies should be required by regulation to have "winter rules" in their Terms and Conditions of Service. This is currently only a requirement for electric utilities in a regulation under the *Electric Utilities Act*.
2. The "winter rules" time period for natural gas utilities should be extended to October 15 to April 15 (previously November 15 to April 15). It should also be standardized amongst gas and electric utilities with respect to temperature restrictions for disconnections outside of this time period.
3. Disconnections should not be allowed on Fridays, weekends, or days preceding a statutory holiday. This would provide at least one working day after the disconnection for the consumer to make payment arrangements and/or contact someone to review their situation prior to the weekend.
4. The collections process – i.e. the steps to be taken and timelines followed - should be formalized in the retailer's T&Cs and standardized amongst all gas and electric retailers. Disconnection processes should be as long as reasonable and include reasonable attempts to contact the consumer either in-person or over the phone before they are disconnected so the consumer knows the seriousness of the situation.

B. The following suggestions are related to operating practices and customer service policies/processes followed by retailers and distribution companies:

1. A consultation process with all industry stakeholders should be undertaken in Alberta to examine energy issues relating to low-income energy consumers. The purpose of the consultation would be to assist stakeholders to gain a better understanding of those issues and to consider the need for policies or measures to best address them. Consideration should be given to what other jurisdictions in Canada and the United States are doing to assist low-income vulnerable consumers.
2. This stakeholder consultation group should consider funding low-income assistance programs through rates charged to consumers by distribution companies – perhaps as a percentage of total revenue.
3. Assistance programs for vulnerable consumers need to be in place all year – not just during the winter. Retailers typically increase their disconnection efforts in the fall and spring before and after the “winter rules” time period. Without some assistance, consumers disconnected outside of the winter season could find themselves totally disconnected once winter comes.
4. Monthly bills issued by retailers should contain information about how vulnerable consumers can obtain social assistance.
5. A minimum threshold should be established respecting amounts owing before a disconnection notice can be issued. Some retailers today disconnect consumers for relatively small amounts and the reconnection fees and security deposits are sometimes more than the amounts in arrears.
6. Retailers should consider implementing flexible customer service policies. Some retailers will not reconnect a consumer until the whole bill is paid including deposits and reconnection fees. For example, consideration should be given to:
 - Offering repayment plans to most consumers that allow them to spread the amounts owing over time periods of up to 5 or 6 months.
 - Security deposits should be waived for consumers where financial assistance is currently covering the cost.
 - Payment of security deposits should be spread over time periods of up to 12 months for other consumers who are experiencing financial difficulties.
7. Disconnection notices should make reference to the fact that the retailer will consider these repayment plan options. The notices should also contain contact information for social agencies that can provide assistance to consumers along with a description of the process to qualify for that assistance.
8. Utility companies should establish partnerships with social agencies that assist low-income consumers. Social agencies would administer the intake process and determine eligibility requirements for financial assistance. Social agencies have the experience and expertise that are best suited to these tasks.
9. Retailers should have awareness programs about the social assistance available to consumers.

10. Retailers should be required to track statistics regarding the number of disconnections and reconnections, the number of repayment plans approved, the number of security deposits collected, and the number of security deposits waived.

DISCONNECTION STATISTICS FOR 2009:

- A spreadsheet containing the number of times consumers contacted the UCA related to issues involving disconnections is contained in a separate attachment. Disconnections are logged in one of six categories: Inability to pay, Refusal to pay, Error, Non-application, Consumer Feedback and Other.

ATTACHMENT:

2009 Disconnection Statistics Received by the Office of the Utilities Consumer Advocate.

CALLS RELATED TO DISCONNECTIONS RECEIVED BY THE OFFICE OF THE UTILITIES CONSUMER ADVOCATE IN 2009

| | January | February | March | April | May | June | July | August | September | October | November | December | TOTAL |
|--|---------|----------|-------|-------|-----|------|------|--------|-----------|---------|----------|----------|-------|
| TOTAL DISCONNECTS | 17 | 16 | 21 | 29 | 54 | 53 | 68 | 67 | 89 | 72 | 24 | 38 | 548 |
| CATEGORIES: | | | | | | | | | | | | | |
| Customer Feedback | 1 | 2 | 2 | 2 | 5 | 3 | 4 | 9 | 4 | 8 | 3 | 2 | 45 |
| Error | 2 | 0 | 0 | 1 | 5 | 3 | 5 | 5 | 5 | 3 | 1 | 6 | 36 |
| Inability to Pay | 7 | 8 | 11 | 11 | 23 | 22 | 21 | 24 | 38 | 31 | 10 | 7 | 213 |
| Non-Application | 1 | 0 | 2 | 5 | 7 | 8 | 13 | 5 | 10 | 6 | 1 | 9 | 67 |
| Other | 5 | 2 | 4 | 5 | 10 | 10 | 16 | 20 | 28 | 19 | 8 | 12 | 139 |
| Refusal to Pay | 1 | 4 | 2 | 5 | 4 | 7 | 9 | 4 | 4 | 5 | 1 | 2 | 48 |
| ENERGY TYPE | | | | | | | | | | | | | |
| Both | 1 | 1 | 0 | 0 | 4 | 4 | 3 | 6 | 6 | 5 | 0 | 0 | 30 |
| Electric | 13 | 12 | 19 | 17 | 23 | 26 | 32 | 22 | 34 | 31 | 15 | 29 | 273 |
| Gas | 1 | 2 | 2 | 8 | 25 | 22 | 29 | 38 | 43 | 33 | 8 | 9 | 220 |
| Other | 2 | 1 | 0 | 4 | 2 | 1 | 4 | 1 | 6 | 3 | 1 | 0 | 25 |
| DEFINITIONS OF CATEGORIES: | | | | | | | | | | | | | |
| Consumer Feedback = comments/suggestions from consumers | | | | | | | | | | | | | |
| Error = disconnection was in error (e.g. slammed site, mixed meter, payment went to wrong account) | | | | | | | | | | | | | |
| Inability to Pay = consumer was disconnected because they didn't have the money to pay the bill | | | | | | | | | | | | | |
| Non-Application = consumer was disconnected because they didn't apply to go into account | | | | | | | | | | | | | |
| Other = reason for disconnection did not fit into current categories | | | | | | | | | | | | | |
| Refusal to Pay = consumer did not pay because they disagreed with the charges | | | | | | | | | | | | | |

THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF *THE FATALITY INQUIRIES ACT*

IN THE MATTER OF THE DEATH OF
JOHN FREDERICK DAVIS

**JOHN FREDERICK DAVIS FATALITY INQUIRY BEFORE
HIS HONOUR JUDGE BRUCE MILLAR**

**Overall Submissions as well as Response of ATCO Gas, ATCO I-Tek
and Direct Energy Regulated Services to the Report of Dr. Silver dated
May 13, 2009 and the UCA Suggestions received February 2, 2010**

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TABLE OF CONTENTS

| | |
|---|----|
| I. INTRODUCTION AND OVERALL COMMENTS | 3 |
| II. DR. SILVER'S REPORT | 4 |
| III. EVIDENTIARY COMMENTS RELEVANT TO DR. SILVER'S REPORT | 24 |
| IV. UCA SUGGESTIONS THAT MIGHT PREVENT SIMILAR INCIDENTS FROM HAPPENING IN THE FUTURE: | 25 |

I. INTRODUCTION AND OVERALL COMMENTS

1. All parties agree that the circumstances involving Mr. Davis' death were tragic and unfortunate and both ATCO and Direct Energy are working hard to make sure that something like this does not happen again. As the end-use customer interacts primarily with the Retailer/Service Provider as opposed to the Distributor, in finding a means to avoid the occurrence of a similar event, ATCO Gas, ATCO I-Tek and Direct Energy Regulated Services agree that the stronger focus needs to be on the Direct Energy/ATCO I-Tek Retailer/Service Provider side of the natural gas supply business as opposed to the ATCO Gas Distributor side of this business.

2. Policy and procedural changes were being developed and implemented prior to Mr. Davis' death but as mentioned in the evidence of Tanis Kozak, Doug Brooks and Mike Jones, and as further set forth below, these changes and revisions were fast tracked in light of the seriousness of the Davis situation. As also detailed below, as a result of Mr. Davis' circumstances, extensive changes have taken place across the business processes to prevent a similar circumstance from ever happening again. As well, ATCO Gas, ATCO I-Tek and Direct Energy are in agreement with taking many additional steps so as to avoid injury to or death of an end-use customer due to disconnection of service.

3. The evidence of Mike Jones, Doug Brooks and Tanis Kozak points to the fact that the main issue on the Direct Energy/ATCO I-Tek Retailer/Service Provider side of the natural gas supply business, is not with policies and procedures (which are designed to respond to the needs of over 800,000 end-use customers). Further, focus needs to be on additional education and training of front line agents, and customer themselves. Such additional education and training will assist the front line agents to ask the right questions or to think about certain points when dealing with end-use customers such that calls like those that were received from Mr. Davis from October 19, 2006 to November 13, 2006, are elevated to the next level as appropriate. At that next level, personnel with a broader perspective can assist the front line agents. As will be seen below, Direct Energy and ATCO I-Tek have already implemented additional education and training in this regard and will continue to do so in the future.

4. As stated by the Utilities Consumer Advocate ("UCA") in its suggestions received February 2, 2010 (the "UCA Suggestions"), to the extent that any recommendations or suggestions for change have a financial impact on a regulated utility such as ATCO Gas as a Distributor or Direct Energy Regulated Services (referred to below as "Direct Energy" or "DERS") as a Retailer/Service Provider, this impact, which would in turn, become a cost to the end-use customer, will have to be reviewed and assessed in regulatory proceedings before the Alberta Utilities Commission ("AUC"). In such regulatory proceedings before the AUC, numerous parties having many different perspectives (such as consumer groups or representatives, including the UCA itself, that have concerns about an increase in costs to end-use customers), will have the opportunity to be heard.

6. Direct Energy, ATCO Gas and ATCO I-Tek have addressed the recommendations as contained in Dr. Silver's May 13, 2009 report and the UCA Suggestions. In relation to Dr. Silver's report, the Court will see below the individual recommendations contained in Dr. Silver's report followed by the response of these parties to each of the recommendations. This will be followed by some brief comments of these parties on certain evidentiary points that are relevant to Dr. Silver's report. Following the evidentiary comments, the Court will see the response of Direct Energy, ATCO Gas and ATCO I-Tek to the UCA Suggestions.

II. DR. SILVER'S REPORT

Overall Suggestions for Improvement (Pages 5 to 7 of Dr. Silver's Report)

- i) There should be more emphasis on effectiveness and efficiency, particularly as it relates to quality and adaptability from the perspective or view of end-use customers.

RESPONSE: Direct Energy, ATCO Gas and ATCO I-Tek have always extensively evaluated policies and processes in order to best serve the end-use customer. The efficiency and quality of those policies and procedures as well as the adaptability of those policies and processes are very important.

Direct Energy and ATCO I-Tek work very cooperatively to develop and make changes to Direct Energy policies. A formal process exists to ensure the changes are managed efficiently, and with a view to the impact on customers. The process consists of the following key steps:

- 1) Identify the need for a new policy or a change to an existing policy – Either Direct Energy or ATCO I-Tek can trigger this work.
- 2) Direct Energy prepares a request for service which describes the business problem that needs to be resolved, and any requirements that need to be met to solve the problem.
- 3) During weekly meetings, Direct Energy and ATCO I-Tek review the request so that both parties completely understand the change, and what must be accomplished to successfully implement the change. As part of these review sessions, all end-use customer impacts are thoroughly reviewed and understood by both parties.
- 4) ATCO I-Tek prepares a statement of work, which is forwarded to Direct Energy for approval.

5) Once approved, ATCO I-Tek implements the changes and forwards proof of implementation to Direct Energy to demonstrate the successful implementation.

6) Any customer feedback about the policy changes are captured and forwarded to Direct Energy for review.

This process has been in place since May of 2004 when Direct Energy and ATCO I-Tek began working together. The process is used for policy changes, as well as any other type of service changes. The process is efficient, and undergoes continuous improvement – e.g. the process was recently enhanced to deal more efficiently with different sizes of changes. Both companies follow the process rigorously as part of the governance processes between the two companies.

- ii) Benchmarking worldwide what other gas Utilities are doing during cold weather conditions as well as what electricity providers are doing in very warm climates.

RESPONSE: While to do a benchmarking worldwide, as suggested by Dr. Silver, would involve a cost that both ATCO Gas and Direct Energy would have to justify to and obtain approval for from their regulator, ATCO Gas and Direct Energy have commenced a review of how disconnects and reconnects of utilities are dealt with in Canada and the United States in both cold weather and hot weather conditions when end-use customers have made defaults in payment. Even a preliminary review indicates that there is nothing unusual with the approach presently taken in this regard by ATCO Gas and Direct Energy on the Distributor and Retailer/Service Provider side of the gas supply business in Alberta.

- iii) Procedures for and the training of customer service representatives to place more emphasis on the serving and protecting of customers, including
 - a. Training of customer service representatives to be cognizant of the importance of temperature together with a clear visual indication (such as large colour-coded display) when temperature is in a specified danger zone.

RESPONSE: ATCO I-Tek acting on the Direct Energy/Retailer/Service Provider side of the business, currently has these practices in place today to monitor and communicate weather situations to the agents (referred to by Dr. Silver and below as "CSRs"), including quick team huddles to remind them about how to handle dangerous/unsafe weather situations. The CSRs have in front of them on their screen, constant information as to the current weather in a number of locations across Alberta.

When winter and cold weather is approaching, additional training is provided to remind CSRs of the cold weather and to emphasize the dangers that may pose to end-use customers. CSRs are continually reminded to exercise their own judgment when a call comes into the Call Centre and that would include taking into consideration the outside weather temperature.

ATCO I-Tek has developed a case study based on Mr. Davis' situation to reinforce the dangers of cold weather. This is a "real-life" situation which is used during training with the intent of educating CSRs to escalate situations sooner if need be and to recognize that interpretation and application of policies and procedures always involves an element of discretion and an exercise of good judgment.

b. Training of CSRs should bring out the need to be sensitive to possible customer concerns such as extenuating health conditions.

RESPONSE: ATCO I-Tek currently has sensitivity training built into its new hire training.

c. The CSRs should be empowered to take at least some limited actions on their own and to use escalation to quickly respond to concerns of customers (eg. distress flag)

RESPONSE: CSRs are empowered to take action on their own. ATCO I-Tek also currently has a procedure that allows an agent to quickly gain attention from a supervisor using a distress flag. What has been done more recently in the course of training CSRs, is to reinforce with the CSRs that they have this power, and to educate them as to when they should use the powers that have been given to them. ATCO I-Tek is consistently working with CSRs to get them to apply their own judgment to a situation and to think about what the CSR is hearing from the customer and seeing on the screen in front of them and applying that information to the procedures which are already in place.

d. These type of actions should be considered in a positive sense with respect to how the CSRs are reviewed and rewarded.

RESPONSE: ATCO I-Tek has reward and recognition programs for delivering excellent service and subscribes to positive coaching models. CSRs are not disciplined in any way for escalating calls. Escalation of calls is considered a positive coaching opportunity to assist the CSR with a similar call the next time one is received.

e. The people dealing with the escalations could be specially trained in dealing with CONP accounts and should have at least limited authority to quickly permit reconnections.

RESPONSE: ATCO I-Tek staff who deal with escalations do have authority to manage situations, including the ability to further escalate the call to Direct Energy when required. In terms of the "escalation ladder", a CSR can first escalate to a team leader if necessary. If the team leader is unable to resolve the matter, further escalation to a supervisor may be required. If the supervisor is unable to resolve the issue, then further escalation to the Customer Experience Team ("CET") may be needed (Policy R1-245 Exhibit 6, Tab 12; Exhibit 2, Tab 37).

In the event that the CET member is unable to resolve the issue, further escalation can occur to Direct Energy (Evidence of Mike Jones, pages 513 to 518).

f. With regard to reconnect requests, agents should be encouraged or even required to look at the detailed history of the account, including checking for possible recent refunds.

RESPONSE: CSRs are encouraged to review the complete history on the account. ATCO I-Tek has modified the training of CSRs to specifically focus on reviewing account history to identify the situations that occur where a refund equals the amount of the reconnect fee and security deposit.

- iv) A more rational choice of conditions where shut-offs are prevented and rapid turn-ons are required, including:
- ATCO Gas December 1 to April 14 winter heating season. Re-examine boundary dates.

RESPONSE: The objective of ATCO Gas policy is to not accept any Retailer/Default Service Provider disconnects of residential and commercial/residential properties when ambient overnight temperatures are forecast to be below zero degree Celsius. Zero degree Celsius is set as criteria as this is generally the temperature below which the property owner or resident has to take other precautions.

This temperature restriction is the important factor for consideration regardless of the season or time of the year. For example, a disconnection request could be made in August of any given year. ATCO GAS will not disconnect if the temperature forecast on the scheduled disconnect date is anticipated to be below zero Celsius.

It is important to note that both conditions below apply to any request for disconnection:

1. Between April 15 and November 30 when the overnight temperature is forecast to drop below zero Celsius, ATCO Gas will not disconnect residential commercial/residential properties.
2. Residential and commercial/residential property accounts will not be disconnected during the period of December 1-April 14 (the "Winter Moratorium").

The selection of the December 1 to April 14 period was made a number of years ago. ATCO Gas does not have documentation as to how the selection of that period evolved. The Winter Moratorium dates were approved by the Alberta Utilities Commission.

Typically, that Winter Moratorium is considered the heating season as overnight forecast temperatures are generally below zero degrees Celsius. Given that ATCO Gas does not wish to disconnect residential and commercial/residential properties when overnight forecast temperature are below zero degree Celsius, those dates were chosen as a reasonable period when no such disconnects will take place. That is of course, in addition to the condition that outside the Winter Moratorium, disconnects of residential and commercial/residential properties will not take place when overnight forecasts are below zero degree Celsius.

In addition, and as will be seen below, ATCO Gas, ATCO I-Tek and Direct Energy are supportive of the UCA suggestion to revise the Winter Moratorium such that it extends from October 15 to April 15. However, all three parties are in agreement that this will result in a financial impact for ATCO Gas and Direct Energy, and ultimately the end-use customer, all of which will require approval from the AUC. In addition, in order to make this change, ATCO Gas must file an amendment to the Terms and Conditions for Distribution Access and approval for such change will have to be obtained from the AUC.

- Require timely reconnections under the same conditions for which disconnects are prohibited.

RESPONSE: ATCO Gas performs timely reconnections throughout the year upon receiving reconnection requests from Retailer/Service Providers. It is therefore assumed that this recommendation of Dr. Silver pertains to making reconnections simply based upon the weather turning cold and the temperature forecast being below zero Celsius and even if the customer account is in arrears.

In item (iv) of Other Suggestions for Improvement, Dr. Silver recommends that in pending cold weather conditions any customer that calls in should have gas reconnected. Dr. Silver also cites “potential serious economic consequences to retailers (and to customers, in general if rates have to be accordingly increased)”.

Direct Energy and ATCO Gas agree with Dr. Silver’s comment regarding the economic consequences that ultimately will have to be borne by the end-use customers or the public if any customer could call in without any requirements and have their gas reconnected under pending cold weather conditions.

Direct Energy and ATCO Gas believe that implementation of a recommendation requiring “timely reconnections under conditions for which disconnects are prohibited” will have similar economic consequences. Such changes in policy, would cause large numbers of reconnects by ATCO Gas having to be done within a short period time of the year. Staffing by ATCO Gas will have to be increased at that time of the year to deal with the large number of reconnects. The implementation of such a recommendation would increase the rates that ATCO Gas charges to Direct Energy and other retailers and which are passed on to end-use customers. Therefore, such a change would require the approval of the AUC in a rate application process involving the participation of end-use customer representation groups.

Similarly, Direct Energy anticipates bad debt numbers will rise significantly, again resulting in costs that will have to be passed on to the end-use customer base as a whole and which will require similar approval by the AUC.

Direct Energy and ATCO Gas believe that the better approach is as contained in a number of the UCA Suggestions, including a consultation process amongst all industry stakeholders, consideration of low income assistance programs, and retailers establishing partnerships with social agencies to assist low income consumers. As will be seen below, Direct Energy is already working with Alberta Employment and Immigration in this regard.

- Review how long a reconnect made outside of heating season should be left in place.

RESPONSE: We believe Dr. Silver meant to say "Review how long a disconnect made outside of the heating season should be left in place. If this assumption on our part is correct, the comments of Direct Energy and ATCO Gas made above about potential serious economic consequences to retailers and to end-use customers apply.

- Serious consideration should be given to having an independent (government?) organization specify the precise conditions under which disconnects should be prohibited and timely reconnects assessed. This is to monitor adherence to any such restrictions. This might even be best handled by some form legislation. There would also be a need properly monitor adherence to any such restrictions.

RESPONSE: Direct Energy and ATCO Gas believe this is a function which the AUC process deals with today and should be the process that deals with this in the future. The AUC is an independent body which monitors the provision of natural gas in Alberta. It is unnecessary to have another body created or appointed when the AUC is already fulfilling that role. The AUC provided a response as to their role dated May 22, 2009 [Exhibit 8].

Social agencies in Alberta also have an ability to advocate on behalf of vulnerable customers. These social agencies do communicate with Direct Energy on a regular basis with regard to mutual clients.

- v) More consideration for the use of fail safe mechanisms that provide immediate warnings that something has not been done properly and there is risk of serious associated consequences.

RESPONSE: With all due respect to Dr. Silver, this suggestion seems to be more suited to an automated or machine environment which is not the environment within which this incident occurred.

ATCO Gas, ATCO I-Tek and Direct Energy believe that the systems, policies and procedures in place have mechanisms and checks and balances to capture anything that may be out of the ordinary. In terms of "fail safe mechanisms" it is difficult to have fail safe mechanisms when you are not dealing with a fully automated environment. The CSRs are front-line staff and the first point of contact with end-use customers. ATCO I-Tek takes the training of CSRs very seriously and ensures they have the best tools available to succeed in their job and to succeed in resolving the inquiries and concerns end-use customers have. If something is unusual or out of the ordinary, it is the CSR who will have the tools to identify that and deal with it accordingly.

There is a constant review of performance of the CSRs and coaching to improve their communications skills and continuous training to minimize errors.

Specific Changes in Case of Mr. Davis (Pages 7 to 9 of Dr. Silver's Report)

- i) Flag in system so that when customer makes reconnect and security deposit payment any agent dealing with the customer would be immediately made aware of this desire for reconnection.

RESPONSE: Direct Energy and ATCO I-Tek state that this enhancement is possible, but is not practical as the vast majority of customers call back within a very short time after making the necessary payments or payment arrangements to ensure reconnection. Also, appointments for reconnection cannot be made solely because of a payment - the customer is required to make arrangements for access to the premises so that service can be safely reconnected. All agents are currently able to view all payments made to the account.

Direct Energy and ATCO I-Tek feel that the systems, policies and procedures in place appropriately deal with the vast majority of the over 800,000 end-use customers. Direct Energy is working to facilitate relationships with government and social agencies to identify and address the needs of vulnerable customers.

As of the date of this response, Direct Energy has developed a relationship with Alberta Employment and Immigration to address the needs of vulnerable customers, further details of which are set out below.

- ii) Making a change in the automatic refund system such that there is no refund, or a longer delay in making the refund when the amount in the account matches the total of the reconnect fee and security deposit (until end-use customer confirms they do not desire the gas service), or as a probably less effective alternate, there is an explanatory letter accompanying such a refund cheque.

RESPONSE: Direct Energy will review and consider putting a form of correspondence directly on the refund cheque stub. This communication will identify the refund and also identify to the customer that the account is now closed. A customer would then need to take steps to make sure the account was not closed.

Direct Energy's review, analysis and customer feedback information, related to the issuance of refunds indicated the vast majority of customers want any credit balance left on their account refunded promptly. The majority of customers may have moved, no longer want gas service through Direct Energy, want the gas shut off for a period of time etc. and are not pleased with Direct Energy holding a refund balance for any length of time.

Any change to the refund procedure which, in the opinion of Direct Energy and ATCO I-Tek will only benefit an extremely small number of customers (1 or 2 situations per year), will need to be assessed by Direct Energy in terms of the cost associated with that change and the reason for that change in light of previous information that customers wish to receive refunds promptly.

- iii) Do not assume people who have been previously disconnected are aware of reconnection procedures.

RESPONSE: It should be noted that the CSRs Mr. Davis spoke to consistently told him that he needed to phone back when payment had been made in order to arrange for a reconnection. There was no assumption made by the CSRs that Mr. Davis did not need to be told about the reconnection process, even though his gas had been previously disconnected and successfully reconnected.

ATCO Gas has made further changes to the "pink card" notification that is delivered to an end-use customer at the time of the disconnect as reflected on the attached schedule "A". The addition of the retailer phone number was a change implemented in 2007. The attached shows an additional change to make it clear to the end-use customer that the first step in having service restored, is for the end-use customer to contact the retailer at the phone number noted on the pink card itself.

ATCO Gas, ATCO I-Tek and Direct Energy are supportive of keeping the Notice of Disconnected Service simple, but at the same time are agreeable to providing contact information for the UCA or a social agency on the Notice of Disconnected Gas Service, subject to the UCA or the social agency being in agreement with this. ATCO Gas has contacted Mr. McLean in this regard and he has been in contact with Alberta Employment and Immigration ("AEI"). ATCO Gas has left the offer of adding the name of UCA or a social service agency with Mr. McLean.

- iv) Escalate call in cold weather when customer keeps calling with the same question.

RESPONSE: Direct Energy and ATCO I-Tek state that end-use customers are escalated based upon the judgment of the agent. Many customers call back with the same question, but there is no need to escalate all of these situations. Direct Energy and ATCO I-Tek believe that by reinforcing existing training to take into account issues raised in this Inquiry, a similar occurrence will be avoided. As referenced previously, the circumstances of Mr. Davis' account have been used to develop a case study which is now included in new agent training, and during refresher training prior to the beginning of the cold weather.

- v) In extremely cold weather conditions the need for prepayment of deposit/reconnect fees should be waived. Review DER Temporary Turn On policy as well regarding the requirement to make payment arrangements.

RESPONSE: Direct Energy and ATCO I-Tek state that the temporary turn on process already deals with payment arrangements. The temporary turn on process was developed to address the situation where a customer is calling in for reconnection and cannot pay the outstanding account, security deposit or connection fee. It is important that this inability to pay, or other extenuating circumstance is communicated by the customer to the CSR. [Policy R1-850 Exhibit 2, TAB 30, Exhibit 6, TAB 1]

When the Temporary Turn On policy is in effect, prepayment is waived as part of this process. As Doug Brook's evidence indicated, while payment is discussed, the threshold for "payment arrangements" is very low. [Evidence of Doug Brooks Transcript pgs. 852-857].

To suggest payment arrangements should not be discussed at all, again places a potential serious economic consequence on retailers, and to end-use customers as rates will have to be increased to take into account customers who do not pay their accounts and believe they will be automatically turned on in cold weather without making payment arrangements or complying with payment arrangements previously made.

Direct Energy is working extensively with social services agencies in situations where a Customer is not able to make a payment and that Customer is associated with a social services agency. Direct Energy works with both the agency and the Customer to facilitate payment and reconnection. As of November 01, 2009, Direct Energy has made arrangements with Alberta Employment and Immigration ("AEI") to allow CSRs to provide website and phone number information for customers that require further financial assistance. In addition, the process for AEI to work with Direct Energy to assist their clients with utility payments has been reviewed and improved to ensure timeliness and ease of communications so as to provide better service overall to the customer. Links to the AEI websites have also been added to the Direct Energy website to further assist customers in making contact with AEI and finding information about further options in paying their utilities.

As a pilot project in 2009, as cold weather approached, Direct Energy sent to customers with disconnected service the written notice set forth in Schedule "B". This written notice emphasizes that Direct Energy is ready and willing to work with customers whose service is disconnected so that their service can be reconnected in advance of winter conditions.

Due to the response to this pilot project, this notice will become a permanent program going forward.

Other Suggestions for Improvement (Pages 9 to 12 of Dr. Silver's Report)

- i) At time of enrolment and on monthly bills, encourage end-use customers to inform DERS of extenuating circumstances (on-going medical problems, memory issues, trouble helping themselves, etc.) as well as to contact an ombudsman or an appropriate social services agency that provides assistance. Once DERS or other retailer is informed of such circumstances, a special code should be entered on the account which could be flashed up when a customer service representative receives a phone call regarding the account.

RESPONSE: Direct Energy's Policy R-1 800 [Tab 17 of ATCO Gas and ATCO I-Tek Overview, Exhibit 2] already addresses social services and extenuating circumstances, including medical conditions. The suggestion of "encouraging" end-use customers to inform Direct Energy of extenuating circumstances raises practical problems alluded to by Mr. Brooks in his evidence [Page 842 of the transcript]. Many people will take offence if pressed on the issue of what disabilities they are under or if the CSR assumes the customer has a disability.

At the time of enrolment, consideration is being given to posing a simple question to the customer such as "Do you have any special circumstances that you would like to inform us about?"

As indicated above, Direct Energy is working with social service agencies if a customer cannot make payment arrangements but is associated with a social services agency. Direct Energy will work with that agency and the end-use customer to facilitate payment and reconnection.

Currently, if a customer has a health issue that Direct Energy or ATCO I-Tek is aware of, that issue is flagged on the account and considered before any disconnect notice is issued. If customers have an issue that cannot be resolved, the Utilities Consumer Advocate (UCA) is mentioned to the Customer as one more option to consider.

As well, the current processes and policies allow ATCO I-Tek agents acting for Direct Energy Regulated Services to work with social service agencies (AEI) and with the UCA.

Social Services Agencies:

Direct Energy Policy R1-800 [Exhibit 2, Tab 17] sets out how ATCO I-Tek interacts with AEI. For clarity, the following is an excerpt of the policy, which has previously been submitted to the court:

“Payment Arrangements – Social Service Agencies

The Supplier will accept and release Customer information when requests are received from the Alberta Employment and Immigration (AE&I) agencies on their “Consent to Release Utility Information” form by fax in relation to outstanding utility charges. The Supplier will provide the requested information the same business day when such requests are received by 3:00 p.m. AE&I forms received after 3:00 p.m. will be responded to by 11:00 a.m. the following business day.

The Supplier requires that the Customer provide signed, written authorization to allow the release of their account information to a Social Service Agency, when the Social Service Agency is considering paying outstanding charges on behalf of the Customer.

The Supplier, upon receipt of the Customer’s written authorization, will release to the Social Services Agency the following Customer information:

- The Customer’s Statement Account number for the purpose of proper application of payment.
- The total outstanding charges and breakdown of outstanding charges (including utility charges, service fees, security deposit etc.)
- Whether a disconnection notice has been issued and the date issued if required,
- Status of site energy flow (i.e., energized or de-energized).

The Supplier will request that the Social Services Agency provide verbal confirmation of their willingness to pay the Customer’s outstanding charges. When such confirmation is received, the Supplier will cease regular collection activities.

The Supplier will enter a payment arrangement into ATCO-CIS and cease collection activities for a maximum of 30 calendar days from the date of receipt of verbal confirmation of payment by the Social Services agency.

The Supplier will not follow up with the Social Services agency if payment is not received within the 30 day timeframe and will continue collection activities if the payment is not received within the required timeframe.”

As of the date of this response, Direct Energy has developed a working relationship with AEI to provide direct resources which would be available to vulnerable and low income customers.

Direct Energy has worked with ATCO I-Tek to enhance its call centre protocol so that if a customer identifies themselves as being with Social Services, Direct Energy will ensure their concerns are escalated to a high priority.

In addition to the above changes, specific steps have been taken by Direct Energy to increase the understanding between Direct Energy and social agencies to best meet the needs of Customers who may run into financial difficulties. These actions include:

a) Proactively and voluntarily reaching out to Alberta Employment and Immigration (“AEI”) to form a relationship so that both organizations are working to address a Customer’s needs;

b) Providing enhanced information on the Direct Energy website so that Customers may click through directly to AEI for more information on how to obtain assistance;

c) Provided information sheets to social services agents so that they are aware of how best to contact Direct Energy with regard to assistance for customers or to make arrangements for payment plans;

d) Direct Energy has implemented an additional step in its processes to identify customer sites who have not contacted Direct Energy to request reconnection prior to the winter months. Direct Energy has reached out to those customers and asked that they contact Direct Energy so that Direct Energy can provide customers with information and aid their efforts to get reconnected; and

e) Direct Energy has sent a list of postal codes of any sites that have been identified as disconnected prior to the winter months to AEI so that AEI is also aware of where those customers reside so that additional AEI resources can be allocated in those areas.

Utilities Consumer Advocate:

Direct Energy’s Policy R1-245, regarding Customer Complaints (previously submitted to the Court, [Exhibit 6, Tab 12], describes how ATCO I-Tek works with the escalated complaints, including complaints that are escalated to the UCA. Direct Energy has directed ATCO I-Tek

to release all customer information requested by the UCA without a requirement to obtain the customer's prior authorization.

The UCA obtains general oral or written authorization from end-use customers to collect information from their retailers in order to investigate and mediate the resolution of concerns raised by those customers. The UCA is a program under s.2(a) of Schedule 13.1 of the *Government Organization Act* (GOA) and s.8 of the GOA. As a result, the UCA has authority to collect information from Direct Energy under s.33(c) and s.34(1)(a)(i) of the *Freedom of Information and Protection of Privacy Act* (FIOP). Direct Energy has authority to disclose the information under s.20(c) of the *Personal Information and Protection of Privacy Act* (PIPA).

- ii) Special needs customers mentioned immediately above should be strongly encouraged to provide authorization for an Additional Responsible Party and/or release of account information to a social services agency.

RESPONSE: Direct Energy Policy R-1 800 currently requires a customer to release account information when the end-use customer is receiving assistance from a social services agency and the social services agency is considering paying the account on behalf of the end-use customer.

Other than to ask a fairly open ended question when a new account is opened along the lines of "Do you have any special circumstances you would like to inform us about yourself?", there is the potential of offending customers with more direct questions.

Further to the previously itemized changes, Direct Energy is looking at and has made arrangements with social service agencies to deal with situations where a customer cannot make payment arrangements but is associated with a social services agency. Direct Energy will work with that agency and the end-use customer to facilitate payment and reconnection.

At times of enrollment, the customer is presented with an opportunity to appoint an Additional Responsible Party ("ARP"). If someone phones in on someone else's account, the possibility of having that person appointed as an ARP (by the account holder) is discussed in many situations, particularly in situations where that individual lives in the same household with an account holder [Policy R1-265 Exhibit 6, Tab 6]. The ARP is not designated to be a guarantor of payment of the account. When Direct Energy initially developed this ARP Policy it stated that Direct Energy could pursue collection of an outstanding account from the ARP. However, the Policy needed to be changed because of a combination of credit and collection law and privacy law requirements.

As the Policy currently stands, an ARP can be appointed over the phone. If an ARP was going to be made responsible for the account, having an ARP appointed over the phone would no longer be a possibility.

- iii) During cold conditions proactively contact this special needs group of customers by telephone with the intention of using a hot transfer to ATCO Gas to facilitate the required site visit.

RESPONSE: Many customers who may be in an arrears situation with Direct Energy, are likely in arrears with other service providers. Therefore, getting actual telephone contact with these customers is difficult and in some situations the phone has also been cut off for non-payment. In Mr. Davis' situation, he was called more than once prior to having his gas disconnected for non-payment and the CSR was unable to make contact.

Due to what is stated above, it was felt to be more effective for Direct Energy to send to customers with disconnected service the written notice set forth in Schedule "B". As a pilot project in 2009, Direct Energy sent to such customers the written notice set forth in Schedule "B" as cold weather approached. It will be seen that this written notice emphasizes that Direct Energy is ready and willing to work with customers whose service is disconnected so that their service can be reconnected for winter conditions. Due to the response to this pilot project, this notice will become a permanent program going forward.

It also should be noted that Direct Energy's practice is to hot transfer the Customer to ATCO Gas to facilitate the required site visit when reconnecting the service of customers.

- iv) In cold weather conditions any customer that calls in should have gas reconnected. The potential serious economic consequences to retailers, and to customers, if rates have to be accordingly increased, is acknowledged. The possibility of having some independent agency or authority assess the customer's financial circumstances is suggested. If such agency or authority deemed that a customer could not afford to pay all utility bills, then an ARP or some social services agency might be expected to cover the cost. On the other hand, if the customer was judged to be financially capable of covering the costs, then legal action should be undertaken to ensure collection, with perhaps an additional significant fine included. Since such a financial assessment would require time, another possibility would be that of allowing the customer the first reconnect and if the customer does not quickly pay the required fees, then the customer should be informed that the next time around they must have a financial assessment done ahead of time otherwise there will be legal consequences.

RESPONSE: Direct Energy and ATCO Gas agree with Dr. Silver on the potential serious economic consequences that he describes if every end-use customer who was cut off for non-payment can simply phone up in cold weather and have their gas reconnected. As mentioned above, ATCO Gas will incur costs for reconnects under such a process as there will be a sudden rush for reconnects come the Fall of each year. The cost in this regard is difficult to estimate as it is subject to the number of end-use customers that may eventually decide to not pay their bills given such a change in policy. However, it is certain that, the cost will have to be recovered in rates that ATCO Gas charges to end-use customers and, therefore, will have to be approved by the Alberta Utilities Commission in a rate application process involving participation of customer representation groups.

As Direct Energy advised [through an email from Ms. Moulton to Alberta Justice dated May 5, 2009], there were 32,586 disconnections for non-payment in 2006. If this recommendation of Dr. Silver were implemented, Direct Energy would incur costs due to an increased number of account payment defaults which also will have to be passed on to end user customers. The costs which would arise from this recommendation of Dr. Silver and that will have to be passed on to end-use customers, are not insignificant.

The recommendation that an independent agency be used to police whether end-use customers are abusing the new policy proposed, points to the complexity of the solution proposed by Dr. Silver when it is believed by Direct Energy, ATCO Gas and ATCO I-Tek that the real solution to the problem, which has already been implemented, is as suggested by Mike Jones in his evidence [see transcript of evidence, pages 625 and 626], namely additional training for front line agents to help them better determine when to elevate an issue or customer concern to the next level. As well, the alternatives mentioned in some of the suggestions of the UCA, commented on above as well as below, including programs to assist low income end-use customers and working with social agencies to assist such low income customers, appear to Direct Energy, ATCO Gas and ATCO I-Tek, to be a better approach.

In addition, the idea suggested by Dr. Silver that an ARP guarantee payment, is not practical or appropriate, as indicated in the response to "Other Suggestions for Improvement" item (ii). One of the other recommendations made by Dr. Silver earlier in his report, was the increased use of ARPs. Making ARPs responsible for accounts, will diminish the likelihood that individuals will wish to be an ARP on an account.

- v) For overdue statements, provide on the accounts and other written communications with the end-use customer a phone number that provides such customer with direct communication to the Direct Energy Credit and Collections and eliminate having to go through a number with the menu options.

RESPONSE: Direct Energy and ATCO I-Tek disagree with this recommendation. The messages on the phone menu when the end-use customer phones the Direct Energy number, are very clear. If the customer chooses the wrong option, they will be transferred to Credit and Collections. This recommendation would not have prevented Mr. Davis' situation and would not avoid the reoccurrence of a similar event.

- vi) For end-use customers wishing to have their service restored, provide a time limit within which they must phone back with confirmation and to arrange a site visit for reconnection.

RESPONSE: Direct Energy and ATCO I-Tek believe it is not consistent with trying to avoid a reoccurrence of the Davis situation to put a time limit within which end-use customers must call back to have their service restored. End-use customers cannot be made to phone back or to arrange a site visit for reconnection. This recommendation does not appear to add anything to the existing processes.

- vii) On ATCO Gas pink disconnection notice, include direct telephone numbers to Direct Energy Credit and Collections and to ATCO Gas.

RESPONSE: As shown in the enclosure counsel for ATCO Gas provided to Ms. McCurdy on May 1, 2009, since 2007, the pink card delivered by ATCO Gas to the end-use customer upon the disconnection for non-payment, shows the phone number for Direct Energy. To add on a number for ATCO Gas simply will lead to confusion as to the proper party for the end-use customer regarding reconnection. As explained at the Fatality Inquiry hearing [see evidence of Daryl Kong, Transcript pages 690 to 694] and the revised ATCO Gas and ATCO I-Tek Overview, Exhibit 2 (page 1, second bullet point, passed on to the Court by Ms. McCurdy under cover of her letter dated May 13, 2009), the regulatory system in this Province requires that retailers/service providers, here Direct Energy, request ATCO Gas to reconnect the service of an end-use customer. ATCO Gas is in breach of the regulations which govern it if it were to arrange for such a reconnect without a request from a retailer/service provider. As mentioned in item (v) above, a direct line into Direct Energy's Credit and Collections is not necessary and would not avoid a reoccurrence of a similar event.

As mentioned above, ATCO Gas has made further changes to the "pink card" notification that is delivered to an end-use customer at the time of the disconnect as reflected on the attached schedule "A". Besides the addition of the retailer phone number in 2007, very recently an additional change was made to make it clear to the end-use customer that the first step in having service restored, is for the end-use customer to contact the retailer at the phone number noted below on the pink card. As mentioned above, ATCO Gas is already in contact with Mr. McLean pertaining to adding a reference on the Notice of Disconnected Service, to the UCA or social agencies that may assist. ATCO Gas is willing to add such references and simply needs to work out wording that is satisfactory to the UCA and any social agency that is to be mentioned in the disconnect notice.

- viii) Besides leaving the pink disconnect notice in the mailbox, consideration should be considered to one or more follow-up contacts by telephone.

RESPONSE: As mentioned above, with 32,856 disconnects for non-payment in 2006, there is a considerable cost associated with contacting a customer who has been disconnected for non-payment. As can be seen from the chronology of events pertaining to Mr. Davis [See Exhibit 3], trying to make contact with an end-use customer who has been disconnected, does not normally involve making one simple call. In the case of Mr. Davis, multiple attempts were made to contact him both by phone and by mail, prior to disconnection.

Once again, such a recommendation involves the larger customer base having to assume the additional costs associated with this recommendation. Further, such phone contact is not an effective means of communication. Policies and procedures currently in place allow for ample communication both in writing and by phone with the customer prior to any disconnect being made. The multiple written notices and calls made to Mr. Davis in 2005 and 2006 [See chronology, Exhibit 3 and pending disconnect notices, final account balances and call attempts made] prior to any disconnect for non-payment shows this to be the case.

As also mentioned above, Direct Energy has now implemented a system as winter approaches of sending out to disconnected customers the notice shown in Schedule "B".

- ix) Direct contacts with individual disconnected customers as the winter season approaches.

RESPONSE: Direct Energy, ATCO Gas and ATCO I-Tek make reference to the responses to (iii), (vii) and (viii) immediately above. In particular, reference is made to:

- a. **The notice now being sent to disconnected customers as shown in Schedule "B";**
 - b. **The fact Direct Energy must, and ATCO Gas cannot, initiate the request for reconnection of gas service under other applicable regulations in this Province; and**
 - c. **Phone contact is not an effective means of communication to deal with this type of situation.**
- x) Encourage use of an Ombudsman (or some agency such as Distress Centres such as exist in Calgary) that disconnected customers should contact in emergency (cold) situations.

RESPONSE: Direct Energy's policies do support informing customers of social services agencies [R1-800, Exhibit 2, Tab 17] and the relevant government ombudsman, the UCA [R1-245, Exhibit 6, Tab 12]. For additional information on this point, see the Response to Item (i) Other Suggestions for Improvement, above.

As mentioned above, ATCO Gas is already in contact with Mr. McLean pertaining to adding a reference on the Notice of Disconnected Service, to the UCA or social agencies that may assist. ATCO Gas is willing to add such references and simply needs to work out wording that is satisfactory to the UCA and any social agency that is to be mentioned in the disconnect notice.

- xi) The retailer or party doing the customer service work for the retailer, should set up a group of individuals to proactively contact end user customers who are having trouble getting reconnected (end user customers who repeatedly phone back about being reconnected but do not take the steps required to do so. ie. payment required and arrangements for the site visit).

RESPONSE: Direct Energy and ATCO I-Tek state this would be a specialized service that would require system enhancements and process changes that would be very expensive, the cost of which would have to be passed on to end-use customers. In addition, this suggestion is addressed with the sensitivity training and escalation policy as it has been amended.

- xii) Aggressive and repeated follow-up on customers who had paid deposit and reconnect fees but who have not arranged a site visit - system flag on account as per recommendation earlier in the report. No refund of the deposit and reconnect fee until the end-use customer is reached and confirms they have no desire for further gas service.

RESPONSE: This is addressed in the response to the previous recommendation (xi) immediately above. Direct Energy is considering placing additional information on the cheque stub the Customer receives

which would address this concern and provide more information to the customer.

- xiii) ATCO Gas to knock on door prior to disconnecting service.

RESPONSE: This recommendation is in the context of proactively dealing with customers who have extenuating circumstances (on-going serious medical problems, memory issues, trouble helping themselves, etc). It is likely the condition or circumstance of Mr. Davis that has spurred this recommendation. ATCO Gas employees are not in a position to appropriately assess the condition of the person that comes to the door or determine what other persons are at the premise that may be the responsible party. Moreover, it is not the disconnecting of the service that is at issue in Mr. Davis's fatality because the disconnection occurred in the summer.

Further, it is ATCO Gas' experience that there is a serious risk of confrontation with very aggressive and threatening end-use customers while an employee is performing a disconnect. ATCO Gas employees have received insults, vulgarities and threats of bodily harm when attending at a customer's premises to perform a disconnect. Having a requirement in place to knock on the door during each disconnect increases the risk of injury and harm to ATCO Gas employees.

- xiv) Review the policy regarding police officer requesting restoration of service having to call Mr. Weir, Direct Energy Chief Security Officer before service can be restored. The suggestion is that such a police officer should be hot transferred to ATCO Gas as is now done in emergency situations during ATCO Gas after hours.

RESPONSE: Rob Weir is currently on call 24 hours/day. Direct Energy is implementing a 1-800 number for Mr. Weir that the ATCO I-Tek employees would be able to give to police officers and other such agencies. This would address the comment by the police officer who attended at Mr. Davis' house that he did not want to incur long distance expenses and call Mr. Weir himself when given the number.

An additional consideration is that Direct Energy needs to have the account held in someone's name to continue the provision of gas services. For example, it is not feasible to simply turn on gas when the information that is received indicated that the Responsible Party on that account is deceased or otherwise unable to pay the costs associated with the account. At the point the officer made the call from Mr. Davis' neighbor's home, there was no one in a position to take responsibility for the account. This circumstance subsequently changed the next day when the gas was

turned on and responsibility for the account was in the name of Mr. Davis' brother-in-law.

In dealing with Estates of deceased individuals, the normal course is a relative will call or send a letter to ask that the Direct Energy account be transferred to their name. The issue with Mr. Davis was how does Direct Energy restore service to an unassigned account? Who would be responsible for that account?

- xv) Review Direct's handling of payments to avoid possible mishandling of customer payments referenced in this part of Dr. Silver's report which could lead to disconnect actions or prevent reconnections.

RESPONSE: Direct Energy does not believe payments are mishandled and no evidence was presented in the course of this Inquiry to suggest otherwise in Mr. Davis' circumstances. It is more a situation of payments being made to the wrong place. Any one-off situations have been addressed and have resulted in process changes to ensure this does not reoccur. Also, there are multiple edits in the system that provide an opportunity to review an order prior to disconnection, including multiple letters and phone calls that are required before a disconnection occurs.

It is important to have a number of options available to the customer to make payment. Mailing payment, paying at a financial institution, payment on-line etc. are all methods that are beneficial and convenient to the end-use customer.

III. EVIDENTIARY COMMENTS RELEVANT TO DR. SILVER'S REPORT

At page 3 of his report (under chronology for November 27, 2006), Dr. Silver refers to Mr. Davis as having "severe memory impairment". While there are medical terms referenced in the records produced in relation to Mr. Davis that might suggest memory impairment was possible, Mrs. Davis testified to the fact that she felt Mr. Davis memory was fine, and in fact, he could add in his head while playing cards [Transcript, pages 94, lines 4 to 19; page 95, lines 16 to 25; page 97, line 27 to page 98, line 2].

In addition, while there was a great deal of discussion at the inquiry and in Dr. Silver's report about persons such as Mrs. Davis being added as Additional Responsible Party ("ARP") on the account of Mr. Davis, the testimony of Mrs. Davis was that her son would never had agreed to her being added on his account as an ARP, as he was very independent [Transcript, page 116, line 13 to page 117, line 2]

IV. UCA SUGGESTIONS THAT MIGHT PREVENT SIMILAR INCIDENTS FROM HAPPENING IN THE FUTURE:

A. The following suggestions are related to changes to the Terms and Conditions of Service that regulated retailers and distribution companies operate under:

1. Natural gas distribution companies should be required by regulation to have "winter rules" in their Terms and Conditions of Service. This is currently only a requirement for electric utilities in a regulation under the *Electric Utilities Act*.

RESPONSE: ATCO Gas does have "winter rules" in its Terms and Conditions of Service. Those rules are as follows:

1. **Between April 15 and November 30 when the overnight temperature is forecast to drop below zero Celsius, ATCO Gas will not disconnect residential commercial/residential properties.**
2. **Residential and commercial/residential property accounts will not be disconnected during the period of December 1-April 14. [see Exhibit 2, Tab 3, pages 67]**
2. The "winter rules" time period for natural gas utilities should be extended to October 15 to April 15 (previously November 15 to April 15). It should also be standardized amongst gas and electric utilities with respect to temperature restrictions for disconnections outside of this time period. [Note: Mr. McLean is incorrect in suggesting the Winter Moratorium is presently November 15 to April 15. It presently runs from December 1 to April 14]

RESPONSE: ATCO Gas, ATCO I-Tek and Direct Energy are supportive of the UCA suggestion to extend the Winter Moratorium such that it extends from October 15 to April 15. However, all three parties are in agreement that this will result in a financial impact for ATCO Gas and Direct Energy, and ultimately the end-use customer, all of which will require approval from the AUC. In addition, in order to make this change, ATCO Gas must file an amendment to the Terms and Conditions for Distribution Access and approval for such change will have to be obtained from the AUC.

3. Disconnections should not be allowed on Fridays, weekends, or days preceding a statutory holiday. This would provide at least one working day after the disconnection for the consumer to make payment arrangements and/or contact someone to review their situation prior to the weekend.

RESPONSE: ATCO Gas does not do disconnections on Fridays, weekends, statutory holidays, or any day prior to a statutory holiday. These rules are

already part of the ATCO Gas Terms and Conditions for Distribution Access Service, Schedule B, section 4 [see Exhibit 2, Tab 3, pages 67 and 68]

4. The collections process – i.e. the steps to be taken and timelines followed – should be formalized in the retailer’s T&Cs and standardized amongst all gas and electric retailers. Disconnection processes should be as long as reasonable and include reasonable attempts to contact the consumer either in-person or over the phone before they are disconnected so the consumer knows the seriousness of the situation.

RESPONSE: All Retailers and Service Providers including Direct Energy are required to abide by the Alberta Collection Laws. These laws provide strong guidelines as to the collection processes that are allowed and considered to be fair to consumers while allowing companies to perform collection practices for moneys owed. The particular timelines and/or parameters used for collection practices by Direct Energy are considered confidential and proprietary. The requirement to make these parameters public would not benefit the vulnerable customer group, and would decrease Direct Energy's ability to collect debts and minimize costs the customer base as a whole.

B. The following suggestions are related to operating practices and customer service policies/processes followed by retailers and distribution companies:

1. A consultation process with all industry stakeholders should be undertaken in Alberta to examine energy issues relating to low-income energy consumers. The purpose of the consultation would be to assist stakeholders to gain a better understanding of those issues and to consider the need for policies or measure to best address them. Consideration should be given to what other jurisdictions in Canada and the United States are doing to assist low-income vulnerable consumers.

RESPONSE: ATCO Gas, ATCO I-Tek and Direct Energy are agreeable to participating in such a process. The Alberta Department of Energy should likely be the party to initiate such a consultation process.

2. This stakeholder consultation group should consider funding low-income assistance programs through rates charged to consumers by distribution companies – perhaps as a percentage of total revenue.

RESPONSE: ATCO Gas, ATCO I-Tek and Direct Energy are agreeable to considering such an option in discussions with the stakeholder consultation group.

3. Assistance programs for vulnerable consumers need to be in place all year – not just during the winter. Retailers typically increase their disconnection efforts in

the fall and spring before and after the “winter rules” time period. Without some assistance, consumers disconnected outside of the winter season could find themselves totally disconnected once winter comes.

RESPONSE: Assuming that the assistance program being referenced by Mr. McLean here is the low-income assistance program suggested under item 2 immediately above, ATCO Gas, ATCO I-Tek and Direct Energy agree that such a program if implemented should be in place all year round.

As referenced previously in this Response, there are assistance programs currently in place year round and Direct Energy and ATCO Gas continue to work with the UCA and AEI, among others, to continue providing assistance, when necessary, to all customers.

4. Monthly bills issued by retailers should contain information about how vulnerable consumers can obtain social assistance.

RESPONSE: Direct Energy has added a quick link to AEI on its website to allow customers to access the information if they desire. Monthly bills are not considered an effective “advertising” media and would target the entire customer base by including the information on a monthly basis.

5. A minimum threshold should be established respecting amounts owing before a disconnection notice can be issued. Some retailers today disconnect consumers for relatively small amounts and the reconnections fees and security deposits are sometimes more than the amounts in arrears.

RESPONSE: Direct Energy currently does not request disconnection for non-payment on accounts that owe \$40 or less. This threshold was implemented based on many factors including the ability for a bill to quickly escalate during the existing winter moratorium season. During low consumption months (warmer months) a customer can be in arrears by 120+ days and not meet this minimum arrears' threshold. The amount of time an account remains unpaid is more of a risk than the actual amount forward on a bill. Security deposits are a risk mitigation tool and are meant to cover three months of average annual consumption charges.

6. Retailers should consider implementing flexible consumer service policies. Some retailers will not reconnect a consumer until the whole bill is paid including deposits and reconnection fees. For example, consideration should be given to:

- Offering repayment plans to most consumers that allow them to spread the amounts owing over time periods of up to 5 or 6 months.

RESPONSE: Direct Energy works with the customer long before an account reaches the point of disconnection. Disconnection is a last collection resort and is performed on accounts that have multiple broken arrangements and a history of non-payment historically. Reconnecting an account based on

payment arrangements usually results in non-payment behavior and the requirement and cost of disconnecting the account again in the next warm season with a higher balance owing.

- Security deposits should be waived for consumers where financial assistance is currently covering the costs.

RESPONSE: Financial assistance programs do not disagree with the deposit policy and will post the deposit for their client. They understand and appreciate that the deposit is refunded to the account after 12 months of good payment behavior and is applied to the account for then current charges

- Payment of security deposits should be spread over time periods of up to 12 months for other consumers who are experiencing financial difficulties.

RESPONSE: A security deposit is to mitigate the short term risk of an account going unpaid. Collecting this deposit over 12 months would negate the purpose of the deposit and add further collection cost to the process.

7. Disconnection notices should make reference to the fact that the retailer will consider these repayment plan options. The notices should also contain contact information for social agencies that can provide assistance to consumers along with a description of the process to qualify for that assistance.

RESPONSE: The suggestion that disconnection notice should provide additional information in the form of contact numbers for the UCA or social services agencies has already been addressed. Direct Energy, ATCO Gas and ATCO I-Tek are agreeable to adding this information should UCA and the social services agencies be in agreement. One consideration is that the addition of this information will result in higher call volumes which will require additional resources and result in additional expenses which need to be considered by the UCA and social service agencies.

The purpose of the disconnection notice is to open the lines of communication with the customer, including discussions on repayment plan options. Disconnection is the last resort and follows multiple attempts to contact the customer through mail and phone calls. Each customer situation is unique and requires different treatment. This can only be identified and handled appropriately after discussion with the customer.

8. Utility companies should establish partnerships with social agencies that assist low-income consumers. Social agencies would administer the intake process and determine eligibility requirements for financial assistance. Social agencies have the experience and expertise that are best suited to these tasks.

RESPONSE: Direct Energy has become fully engaged with AEI and has plans of expanding this relationship with other assistance agencies

9. Retailers should have awareness programs about the social assistance available to consumers.

RESPONSE: Direct Energy has been given the general direction in past mandates that customer education of government agency programs is the responsibility of those specific agencies and that the duplication of these efforts provides by Direct Energy would provide little to no value to the customers. However, Direct Energy has taken steps to assist our customers in learning about available programs by providing web links from the Direct Energy website and contact information via the call center. Direct Energy is currently working with Government Agencies to provide easy access to information to customers that are in need.

10. Retailers should be required to track statistics regarding the number of disconnections and reconnections, the number of repayment plans approved, the number of security deposits collected, and the number of security deposits waived.

RESPONSE: Direct Energy tracks these statistics and many more that indicate customer behavior, customer satisfaction, accounts receivable risk, etc. These statistics are the foundation for policy engineering and modification. As with any business, these statistics are confidential and are not public information. Such information would provide no benefit if made available to the public.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DIRECT ENERGY REGULATED SERVICES
through its counsel, MCLENNAN ROSS LLP

Per: Alexis Moulton
Alexis Moulton

ATCO GAS AND ATCO I-TEK
through its counsel, BENNETT JONES LLP

Per: Dan Gallagher
Dan Gallagher, Q.C.

Retailer Request



Printed on recycled paper

NOTICE OF DISCONNECTED GAS SERVICE

It was necessary to disconnect gas service at the request of the Retailer.

To have service restored, your first step must be to contact the Retailer noted below.

| |
|---------|
| NAME |
| ADDRESS |

| |
|--|
| DATE |
| SITE ID |
| RETAILER <input type="checkbox"/> Direct Energy Regulated Services, 1-877-420-3175 <input type="checkbox"/> |

You will be charged the applicable ATCO Gas reinstatement fees plus GST via your Retailer billing.

You are cautioned to protect your property against damage that may occur due to freezing temperatures. The distribution company is not liable for any damages as a result of loss of utility services to your property.

Schedule "B"

Urgent Notice regarding your Natural Gas Service

We are writing to provide you with critical information about your natural gas account. A review of our records indicates that you currently do not have natural gas services connected at your premises. As winter approaches, temperatures have begun to reach freezing levels. Most Albertans rely on natural gas to heat their homes and businesses. If you require natural gas services at your premises it is critical that you contact us as soon as possible to make arrangements for your services to be reconnected. Our Financial Services Representatives are ready and willing to work with you.

Please call us toll free, as indicated below. For your convenience, our Financial Services Representatives are available to respond to your telephone inquiry from 7:00 a.m. to 9:00 p.m. Monday to Friday; and 8:00 a.m. to 4:30 p.m. Saturday.

Please call 1-877-420-3175

If you have already had your natural gas services restored, please disregard this letter.

Thank you for being a customer of Direct Energy Regulated Services. We appreciate your business and look forward to working with you to keep you warm this winter.

Sincerely,

Doug Brooks

Sr. Director, Energy Operations, Western Canada