

**ONTARIO ENERGY BOARD**

**CONSULTATION ON ENERGY ISSUES RELATED TO LOW-INCOME CONSUMERS**

**REPORT OF THE BOARD: LOW INCOME ENERGY ASSISTANCE PROGRAM**

**Comments on the Report and its Implementation  
Industrial Gas Users Association (IGUA)**

**Summary of Concerns.**

1. It remains IGUA's view that the formulation of social distributive policy is a matter for elected and accountable government, and not this Board. If government is of the view that subsidizing energy use by any particular class of energy consumer is sound public policy, such subsidy should be publicly funded rather than funded by ratepayers of regulated utility service, many of whom are facing very difficult financial and economic pressures of their own. IGUA respectfully observes that the Board's proposal to raise funds for energy bill assistance through distribution rates is not an exercise in setting rates with reference to ability to pay. Rather it is a mechanism which uses rates to fund implementation of a regulator defined social policy.
2. There is no government policy that would guide the Board towards formulation and implementation of a fund for low-income energy consumer assistance through regulated delivery rates paid by other energy consumers. Absent government policy providing direction in this respect, it is IGUA's respectful view that this aspect of the Board's Low Income Energy Assistance Program (LEAP) blurs what IGUA believes to be the

appropriate distinction between the respective roles of the Board and the government in the formulation and implementation of policy.

3. The Board has diligently guarded against inter-class rate subsidies in the past. The bill assistance component of the LEAP is a troubling departure from that established practice. IGUA is concerned that this determination could ultimately lead to further erosion of this basic ratemaking principle, and urges the Board to proceed with implementation of LEAP in such a way as to jealously guard against that risk.
4. In particular, IGUA urges the Board to:
  - (a) Clarify that all distributor costs related to LEAP implementation, including funding of the rate assistance component of LEAP, that are to be recovered in rates not exceed the 0.12% of distribution revenue requirement level determined by the Board to preclude material rate impact on remaining customers.
  - (b) Provide for reporting mechanisms that enable validation of the Board's assumptions that ratepayer funding of LEAP will lead directly to offsetting savings in utility arrears management and disconnection/reconnection expenses.

**Context for Interpretation of the *LEAP Report*.**

5. As noted in the *Overview of IGUA's Position* (September 17, 2008) submitted earlier in this process, IGUA is sensitive to the personal hardship faced by Ontarian's living in low-income households as costs for the basic necessities of life, including energy for heating, cooling, cooking, washing and lighting, rise. Indeed, as large employers IGUA's members are acutely aware of the impact of current economic pressures (including job losses) on Ontario's citizens.

6. In particular, IGUA has endorsed the Board's consideration of utility service policies, including consideration of information programs and conservation and demand management (CDM) programs, targeted specifically at low-income energy consumers.
7. IGUA's primary concern in this process has always been with the notion that low income energy consumers should receive rate assistance subsidized by other consumers of regulated distribution services. In IGUA's view, a view heightened by the current economic crises facing many of IGUA's members, their employees and the communities in which they operate, the direct financial assistance of low-income consumers is a matter of social distributive policy best left to government.
8. The interplay of government policy and regulatory policy has been publicly addressed by the Board Chair as follows<sup>1</sup>:

*Government policy is the means by which the government translates its political vision into broad structures, directions and mandates intended to deliver particular outcomes. Government policy is broadly set out in legislation, and further developed in regulations and directives issued under the legislation.*

*... Acting independently, within the broad ambit of its legislative mandate and the public interest, the Board formulates regulatory policy which provides the details required to implement the law and the government's broad policy objectives. Through various tools, the Board establishes the regulatory framework that shapes specific outcomes to accord with government policy objectives and sound regulatory principles. [Emphasis added.]*

9. IGUA agrees with the foregoing characterization of the appropriate role for the Ontario Energy Board (OEB) *vis a vis* the role of government in the formulation and application of policy.

---

<sup>1</sup> May 9, 2007, Speech by Howard I. Wetston, Chair, Ontario Energy Board to the Ontario Energy Network Luncheon Meeting.

10. IGUA is not aware of any statement of government policy that would guide the Board in formulation and implementation of what is clearly a matter of social, or "distributive", policy. While the Ontario Superior Court has recently clarified that the Board could "take into account the ability to pay in setting rates"<sup>2</sup>, it has also clearly restated the role of the Board as "rate-setting within the context of the interpretation of its statute in a fair, large and liberal manner", and specifically not as "setting social policy."<sup>3</sup>
11. In the specific context of considering low-income rate assistance, the Superior Court defined "social policy" as addressing "distributive justice through a differentiation of rates on the basis of income"<sup>4</sup>. In so doing, the Court explicitly recognized that; "Any program to subsidize low income consumers would require a source of funding which is a matter of public policy."<sup>5</sup> [Emphasis added.]

#### **Comments on LEAP implementation.**

12. In interpreting the Board's March 10, 2009 *Report of the Board: Low Income Energy Assistance Program* (the *LEAP Report*), IGUA has attempted to reconcile the directions in the report with the views of the court, and this Board, as summarized above regarding the appropriate scope for development and implementation of regulatory policy.

---

<sup>2</sup> IBID, para. 61.

<sup>3</sup> IBID, para. 56, see also para. 49.

<sup>4</sup> *LIEN Decision*, para. 47.

<sup>5</sup> *LIEN Decision*, para. 49.

13. IGUA thus interprets the Board's LEAP policy to generally assume that the temporary financial assistance program, and other fiscal elements of the policy, will be financially immaterial and ultimately revenue neutral to other ratepayers.<sup>6</sup>
14. IGUA notes several statements made by the Board in its *LEAP Report* to the effect that funding of the LEAP:
- (a) can be put in place without undue cross-subsidization or material rate impact<sup>7</sup>;
  - (b) is in the interest of all ratepayers as it may minimize bad debt and disconnections, and the associated costs otherwise borne by all ratepayers<sup>8</sup>;
  - (c) is to be funded through distribution rate inclusion of LEAP related costs that are not to exceed 0.12% of distribution revenue requirement<sup>9</sup>.
15. IGUA urges the Board to include sufficient measures in its LEAP reporting requirements to allow for evaluation of the distribution cost savings resulting from the LEAP, including the emergency rate assistance component of the LEAP. Statistics regarding the impact of LEAP programs on distributor costs for arrears management and disconnection/reconnection activities would be particularly relevant.
16. IGUA is concerned with the Board's statement that placing the discretion to disburse bill assistance funds within the social service agencies with which the distributors are directed to partner will reduce the need for regulatory oversight<sup>10</sup>. While IGUA appreciates that the Board will not, and agrees that the Board should not, extend

---

<sup>6</sup> In a manner consistent with analogous programs mandated by the Pennsylvania Public Utilities Commission for Pennsylvania Power & Light (PPL), discussion in respect of which is recorded in the September 23, 2008 Transcript herein, pages 74 to 76 and pages 85 (bottom) through 88.

<sup>7</sup> *LEAP Report*, page 4 first bullet; page 10, second paragraph; page 11, top paragraph.

<sup>8</sup> *LEAP Report*, page 5 third bullet; page 8 first paragraph; page 11, top paragraph.

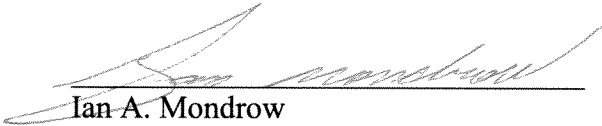
<sup>9</sup> *LEAP Report*, page 10.

<sup>10</sup> *LEAP Report*, page 9, second paragraph.

regulatory oversight to these agencies, IGUA submits that sufficient reporting should be required to permit robust evaluation of the extent to which the rate assistance subsidies provided to eligible low-income consumers, and the administration of that assistance, are, in aggregate, revenue neutral to the distribution customers funding that assistance.

17. Further, IGUA suggests that the Board clarify that the LEAP costs recovery maximum of 0.12% of distribution revenue requirement applies to all distributor costs related to LEAP implementation, including funding of the rate assistance component of LEAP.
18. Finally, IGUA notes the direction in the *LEAP Report* that LEAP cost allocation will be reviewed periodically as the Board reviews the effectiveness of the program. IGUA thus reserves comment on the appropriate allocation of LEAP costs to the time at which the Board considers disposition of deferral accounts mandated by the *LEAP Report*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:  
Macloed Dixon, LLP  
per:



---

Ian A. Mondrow  
Counsel to IGUA

April 17, 2009

139481.v2