BEFORE THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act 1998, S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Union Gas Limited pursuant to Section 36(1) of the *Ontario Energy Board Act*, 1998, for an Order or Orders approving the 2013-2014 Large Volume Demand Side Management Plan.

GEC Final Argument

Contents

I. Introduction

The Green Energy Coalition (GEC) represents over 125,000 Ontario residents who are members or supporters of its member organizations: the David Suzuki Foundation, Greenpeace Canada, Sierra Club of Canada and WWF-Canada. All of the GEC's member groups are charitable or non-profit organizations active on environmental and energy policy matters.

In this proceeding the Board has two groups of issues before it:

First, Union Gas has presented a proposal for its 2013-14 Large Volume DSM plan, and while there is widespread agreement that the 'self-direct' approach it proposes for T2 and Rate 100 customers has merit, there are significant issues surrounding the details of the proposal. Parts of Union's proposal threaten to diminish DSM success and others would simply enrich Union shareholders with no corresponding performance improvement. We offer suggestions to overcome these concerns.

Second, APPrO (apparently *without* support from other industrial group intervenors such as IGUA who have previously favoured opt-out), has proposed an opt-out arrangement whereby a subset of large volume customers would be given special rate treatment excusing them from contributing to Union's DSM portfolio costs (other than for the Low Income program) and no longer being offered DSM programs.

From GEC's perspective, the Opt-Out proposal has two egregious impacts. It would reduce the net investment in energy efficiency among the specific large volume customers that opt out, a clear conflict with government policy and the Board's statutory objectives. It would also allow a subset of customers who are particularly large emitters to free ride, avoiding any contribution toward the common overhead costs of Union's effort to enhance societal benefits including system savings, transmission cost reductions, commodity cost reductions and the reduction of the environmental externalities of gas consumption. While GEC is most concerned with the latter benefit, if DSM can avoid system costs and lower commodity costs even slightly, it can generate a significant benefit to ratepayers as a group[1]. GEC observes that the Board has explicitly recognized that reduction of greenhouse gas emissions is a proper purpose of DSM[2].

GEC's submissions are presented in three groupings: Refinements to Union's Proposal, Refinements to the Shareholder Incentive Scorecard, and a Response to the APPrO Opt-Out Proposal. In our conclusion we offer the Board an alternative shareholder incentive scorecard that would accommodate our proposals.

[1] See C1, p. 7 for a discussion of system benefits

[2] DSM Guidelines, Overview: "While the focus of DSM is natural gas savings and the reduction in greenhouse gases emissions..."

II. Proposed Refinement's to Union's Approach

1. Multi-Year Plans Instead of One-Year Plans

Union's proposal requires a T2 or Rate 100 customer to define and commit to a project by August 1st in each year. Any uncommitted funds would then be placed in a pool for allocation by the utility.

GEC supports the self-direct approach but submits that the particular proposal is not optimal. Mr. Neme, GEC's expert witness, has suggested that a multi-year approach would greatly enhance the proposal. He notes:

> "Put simply, a one year direct access budget may not be large enough to overcome other internal barriers to the investment. The end result of this program design feature is that the Company may artificially constrain the amount of savings and even the cost-effectiveness of the savings that are realized."[3]
>
> "In short, a multi-year direct access budget gives customers much greater flexibility to plan and pursue projects that provide the biggest bang for the buck and/or make the most sense for their business."[4]

In his written evidence Mr. Neme offers illustrative examples demonstrating how Union's single year approach will tend to favour smaller, less desirable projects over larger projects that offer far more cost-effective savings potential per DSM program dollar. He also points out how the one year approach in effect disadvantages the very large customers compared to the smaller industrial customers:

> "It is worth emphasizing that such a multi-year perspective is the norm in DSM, including Union's DSM efforts to date. Under the program designs the Company is delivering in 2012 and is proposing for all commercial and industrial customers other than T2 or Rate 100 customers in 2013 and 2014, a customer can identify a custom project it wants to pursue and potentially receive a financial incentive from Union that is well above what it contributes in rates to DSM in that year. That approach works because customers do not typically take on such large projects every year. In other words, the program can afford to spend more on some customers in one year because it will often spend less on many of those customers the following year (when more may be spent on a different set of customers). Union's proposed change to its program design for large volume customers – to move away from a completely pooled DSM budget to a "right of first refusal" direct access budget for each customer that can only be accessed one year at a time – significantly reduces that flexibility. However, the problem is not the "direct access" approach; rather, it is the annual limitation on the direct access approach."[5]

[3] Exh. C1, p. 12
[4] Exh. C1, p. 13
[5] Exh. C1, p. 13

During the hearing two concerns were raised by Union. The fear that customers may 'procrastinate' and thereby jeopardize DSM success and the concern that the two year approach would increase the deferral account balances and therefore increase rate volatility.

Mr. Neme responded in his oral evidence in chief to both of these concerns. He cited the report of the leading North American expert on self-direct programs, Anna Chittum, who identifies a multi-year approach as best practice[6]. He stressed how increased flexibility for customers would surely serve those customers well and would tend to increase overall savings, the primary goal of DSM. He noted that over his 20 year career practicing in numerous jurisdictions he had never heard an expert, a DSM provider or a customer suggest that more flexibility was a bad thing.

Mr. Zarumba agreed more flexibility to conform to customer business and maintenance and investment cycles was desirable and a longer period would help provide that[7]. Mr. Russell also noted how his company does its annual maintenance and capital planning in the 3rd quarter of the previous year[8]. Accordingly, a one year proposal would not address LDE's needs[9]. A two year approach would obviously be an enhancement for companies in that position. In argument Mr. Smith suggested that a two year approach would somehow disempower the internal customer efficiency advocates. As is apparent from the only first-hand evidence available, the LDE example, this is certainly the case for a one year approach, rather than a two year approach.

As to the concern about procrastination, the two year approach will make the use it or lose it incentive a double or nothing incentive – surely that can only increase the effect of the incentive for customer action. Customers would of course be at liberty to file their plan earlier and proceed to implementation earlier if that better suits their particular business. Further, the Board asked Union to address how a decision in this case, part way through 2013, would be accommodated by Union's one year approach and GEC's two year suggestion. Union responded that the commitment date could be moved to December 31st of the first year – hardly a major 'procrastination' opportunity.

In regard to the concern about decreasing rate predictability due to the delayed clearance of variance accounts, Mr. Neme offered a simple solution: 'bake into rates' a portion of the predicted account balances, such as the expected shareholder incentive at the 100% achievement level[10]. Given the history that the utilities have routinely met or exceeded their 100% targets, this would likely dramatically reduce the balance to be disposed of in the shareholder incentive variance account and thereby reduce volatility in rates. This is already done with DSM O&M costs, and anticipated lost revenues and expected shareholder incentive costs could be treated similarly.

The mechanics to implement a two year approach were canvassed with Union's panel. First, the DSMVA for T2/R100 would need to be cleared after two years rather than one. Second, the

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6 See Exh. D6.1 attachment
7 Vol. 2, p. 44
8 Vol. 2, p. 117
9 Vol. 2, pp. 56-57
10 The Board's DSM Guidelines suggest 40% of the maximum incentive be earned at the 100% of target level

finalization of the shareholder incentive associated with the program would also be bi-annual. As discussed above, if the expected shareholder incentive (or DSMVA for that matter) were included in prospective rates, the variance account balances could be minimized, addressing the large customer concern about rate predictability. (See below where we address this issue in regard to the proposal to eliminate the DSMVA 15% allowance.)

In addition GEC would suggest that the commitment date in a two year approach could be moved to the 12 or 15 month mark, allowing more time for implementation, more time to utilize any non-committed funds in a measured manner, and to guard against any tendency among the affected customers toward procrastination. Should the Board accept that a multi-year approach is preferable it would be appropriate to allow Union to determine the appropriate deadlines for each step to balance these concerns.

2. Maintaining a 15% DSMVA for T2/Rate 100

In GEC's submission, Union's proposal to eliminate the 15% overspend allowance in the DSMVA for T2/Rate 100 is a misguided and counter-productive response to a problem that has already been addressed by earlier changes to the DSM framework. It would clearly reduce the extent of DSM success and reduce available funding of DSM below the already restrictive spending levels in the Guidelines.

Large volume customers had in recent years experienced major variations in their rates due to the manner in which DSM budgets and shareholder incentives were allocated and controlled. For 2011 Rate T1 customers ultimately faced an allocation of DSM costs that was 440% higher than expected.[11] While the problem of large deferral account balances peaked in 2011, it had been an issue for some time. Exhibit B6.2 attachment 1 (see K1.4 at page 5) provides the history, a history that informed the efforts by the Board and intervenors to control volatility in the last case. It is understandable that the extreme 2011 experience still causes concern among some customers. But the 2011 'problem' had already been addressed by the Board, Union and the intervenors before that extreme case was visible to most customers.

In the past, the utilities could readily transfer budget from one rate class to another to chase savings that were either easier to achieve or had more shareholder incentives associated with the program spending. Industrial efficiency offered both features. Accordingly the utilities tended to 'overspend' on the large volume customers. This in turn precipitated large balances in the LRAM and SSM accounts that were subsequently allocated to the industrial rate groups. In some years the LRAM and SSM adjustments from prior years significantly exceeded the current DSM budget allocated to these rate groups. Because the DSMVA was also unrestricted by rate class, 15% of the full *all rate class* program budget could be spent on the industrials, exacerbating the problem.

The Board's recent DSM Guidelines and the 2012 settlements (as accepted by the Board) addressed this problem of rate impact and volatility with several features. First, the Board

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[11] Exh. C1, P. 9

suggested that the annual shareholder incentive cap be allocated among the rate classes in proportion to the amount budgeted to be spent on the rate class, rather than on the results of that spending (either TRC net benefits or lifetime m3 of gas saved). Thus, the reality that savings (and net economic benefits) per dollar of DSM program spending tend to be much higher for large volume customers will no longer saddle such customers with (by far) the largest portion of DSM financial incentive payments to Union's shareholders. Second, the parties agreed to an absolute cap on budget and variance account balances that could be subsequently allocated to these groups and the Board accepted that proposal. Finally, the above constraints have the complimentary effect of minimizing the potential for a substantial LRAM variance.[12]

These features were put to Union's panel:

> MR. POCH: …So would you agree, in summary, you quite fairly aggressively responded or agreed to responses that fairly dramatically and quite effectively address the concern that was brought to the Board's attention by that -- these customers in recent years? About rate volatility, rate impact?
>
> MR. MacEACHERON: Yes, that's correct.[13]

Accordingly, it is entirely unnecessary to eliminate the 15% DSMVA to address the concern for rate stability or predictability. Further, as Mr. Wanless discussed with Union's witnesses, the Board's guidelines have already led Union to cap DSM budgets below a level that could achieve added cost effective savings. To drop the 15% allowance in the DSMVA would be to amplify what in GEC's submission is already an undesirable outcome.

Union did express a concern that the direct access approach made it more difficult to manage the 15% if it were available. We simply observe that if a two year approach to the program is adopted, there will be a lengthy period of up to one year to utilize the 15% after the customer plan commitment date. Once Union has satisfied itself that it is likely to reach its 100% target it could then add the 15% to the pool and allocate it among the competing customer efficiency offers.

All of the evidence confirms that elimination of the 15% from the DSMVA will reduce gas volume savings from DSM. The clearest example is Union's proposed 15% reduction of the scorecard upper bound from 125% to 110% which it unequivocally attributes to the loss of the DSMVA flexibility.[14] Such an easily avoided lowering of expected savings is simply contrary to good public policy, current government policy and the Board's statutory mandate.

Nevertheless, Union in its argument has stressed the need to curb deferral account volatility.
If the Board remains concerned that the numerous changes implemented in 2012 will not already adequately control rate impact volatility, the answer is not to eliminate the DSMVA overspend

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[12] See discussion at C1, p.9 and at Transcript, v. 1, p. 33 *et seq.*
[13] Volume 1, p. 34, l. 21
[14] Volume 1, pp. 36-37

allowance for large volume users, as this would effectively reduce available resources to a level below that allowed in the Board's recent DSM Guidelines. Rather, the answer is to bake into rates the 15% allowance, making it a regular and predictable part of the rate impact. Any unspent funds would, as in the past, be refundable to ratepayers.[15]

3. Environmental Defence's Proposed Budget Increase

GEC supports Environmental Defence's call for an increased budget for the reasons that Environmental Defence brought forward in its cross of Union Gas. We do however appreciate that the Board's Guidelines indicate a reluctance to raise rates to achieve more savings. If the Board is not prepared to consider an increased budget at this time we do urge the Board to recognize that Union's proposed elimination of the 15% DSMVA allowance is an effective decrease in resources that would result in a level of DSM spending below the level that the Board accepted in its guidelines. As discussed above, maintaining the 15% DSMVA or increasing the budget by 'baking into rates' the 15% allowance would at least allow the maintenance of that level.

4. Moving the T1 Rate Class into the General Resource Acquisition Budget

Union has proposed to maintain a separate budget for the new T1 rate group despite noting that DSM programs for the customers in the bundled contract rate classes "serve other similarly sized customers"[16] and that "The new Rate T1 customers, however, will receive the same program offerings in 2013 as similar type customers in other rate classes."[17]

Mr. Neme points out that the impact of this is to complicate the regulation of DSM and reduce the flexibility of the utility in administering its DSM programs, thus reducing the effectiveness of the program.[18] Union proposes to treat like customers in an unequal manner.

Union justifies this by reference to the Board's earlier identification of Rates T1 and 100 as large volume customers requiring special consideration. However, with the creation of Rate T2 this is no longer an apt reference. As noted above, apart from being T service customers, as far as DSM goes the new T1 customer group (with volumes on average 94% lower than the T2 customers) is indistinguishable from the bundled service industrial customers.[19]

In its cross examinations, IGUA pointed out how the new T1 rate group is facing a significant increase in their allocated DSM costs while Rates T2 and Rate 100 are seeing a decline. It is not clear to GEC how Union justifies this *de facto* budget reallocation and we await Union's argument in reply to IGUA's concern. The Board may wish to ascertain if this reallocation is justifiable. If indeed the more than trebling of DSM costs from 2012 to 2013 for the new T1 rate group is justified, then we would have sympathy for the argument that a realignment of the T1

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[15] See discussion at Transcript v.1 at pp. 41-42
[16] Exh. A-Tab 1, P.7
[17] Exh. B2.2
[18] Exh. C1, P.15
[19] Exh. B5.1

group with the bundled customers should be delayed until 2014 or 2015 as it would increase their ‘worst case’ exposure to a rate increase due to the increased flexibility it would provide to Union for the administration of their program. However, in that case we would urge the Board to direct Union to move toward consolidation of these two similar groups in future scorecards.

III. Proposed Revisions to Shareholder Incentive Metrics

1. Pegging 2013 Metrics to 2012 Program Performance

Union proposes to tie the 2013 scorecard to 2012 performance but as can be seen from Mr. Neme’s Table 2 (reproduced below) the savings per dollar of incentive can fluctuate considerably from year to year given the small number of large customers involved.

	2009	2010	2011	3-Yr Total
T2/100	190	699	480	452
T1	964	173	185	336

Further, at this time the 2012 full year results are not available to the Board or intervenors. This is an invitation to gaming. As Mr. Neme has noted:

> “It could be that 2012 will be a “down year” for reasons that are easily addressed by Union in 2013. In other words, it is possible that the 2012 results will be such that Union could earn a large shareholder incentive without demonstrating “exemplary performance”, which the Board’s 2011 gas DSM guidelines state is the objective of the shareholder incentive mechanism. Put another way, Union could be indirectly rewarded in 2013 if it had a poor performance in 2012.”[20]

To address this shortcoming GEC submits that the scorecard target be set slightly (5%) above the average of 2010 to 2012 results (for a discussion of the choice of 5%, see our submission on performance trends below under “proposed 30% reduction”). As Board Staff noted in its cross of Union, the previous TRC-based shareholder incentive was done on a rolling three year basis.

Union’s stated concerns with the complications of a 3 year rolling average were fully addressed in Mr. Neme’s evidence[21] and put to Union’s witnesses in cross and in each case demonstrated to be illusory (see: Volume 1 at pages 43-44).

[20] Exh. C1, P.17
[21] Exh. C1, P.17-18

2. Pegging 2014 Metric to 2013 Performance

For the reasons discussed above in regard to 2013, GEC submits that the 2014 scorecard be based on a slight improvement above a rolling 3 year average.

3. 30% Savings Reduction for Direct Access Program

Union has proposed to reduce its 2013 scorecard target by 30% to address the uncertainty of the new T2/Rate 100 Direct Access approach. Union acknowledges it has no empirical evidence (such as the experience in other jurisdictions) to support a 30% reduction. Indeed, as cited in Mr. Neme's written evidence, the only available independent evidence of the effects of switching to a self-direct program approach – the ACEEE paper which comprehensively reviewed all such programs in North America – suggests that such programs, if well designed, may actually *increase* results:

> "It appears that in some cases, self-direct programs can yield greater savings from certain customers than would have been achieved through traditional…programs. They can also leverage a facility's internal technical expertise to multiply the impact of the program dollars dedicated to energy efficiency, perhaps even at a lower cost when compared to (traditional DSM) programs."[22]

When pressed on the rationale for the 30% reduction in savings goals during cross-examination, Mr. MacEacheron stressed the funding of studies which would not generate savings in the year in which they are undertaken. In particular, he suggested that the Company was expecting to pay more for such studies under the self-direct program approach proposed, leaving less funds for supporting immediate investments in efficiency measures and thereby justifying lower savings goals. However, the evidence shows that Union has funded an increasing number of studies in recent years.

Exhibit B2.13 indicates that Union has funded 47 studies in 2008, 50 in 2009, 51 in 2010 and 72 in 2011. Importantly, Union agrees that increased funding of studies will not reduce savings *over a multi-year period*. Indeed Union expects it will enhance savings, but that the benefits would not be fully realized until subsequent years[23]. This leads to two observations. First, we should anticipate that the growing number of studies in the 2008-11 period will increase savings that will show up in 2013. Second, assuming a large increase in studies in 2013 occurs, and that little or no savings from these current studies show up in 2013, then the 2014 target, based as proposed by Union on the 2013 achievements, will in effect carry forward the 30% decrease, despite the fact that the additional savings generated by the new studies will start to come home to roost in 2014 – giving Union a windfall. Put simply, sooner or later, Union will capture a larger shareholder incentive due to the unsupported 30% reduction in target. If however, the Board accepts our proposal of a multi-year program, Union's concern, if it had any merit, simply evaporates as there will be time for savings to appear in the longer period captured in a multi-year shareholder incentive.

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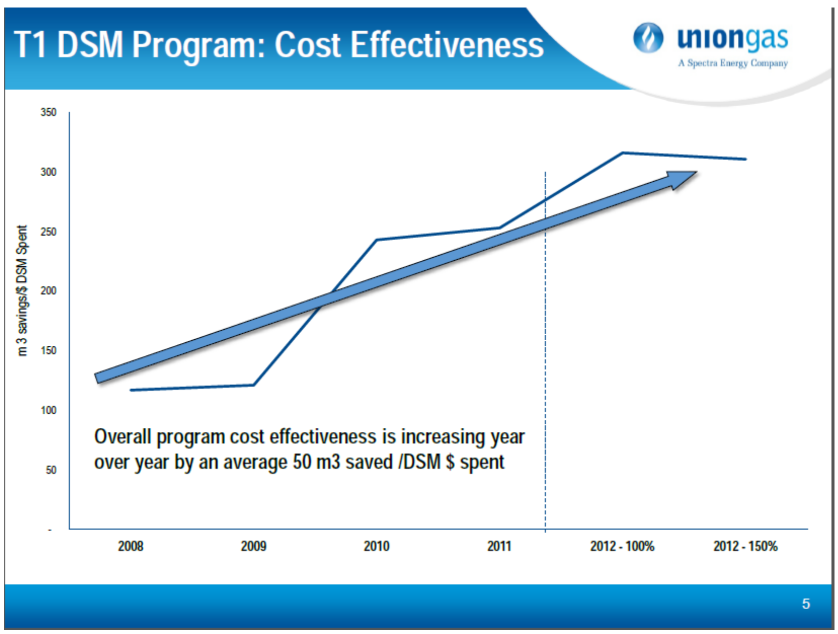
[22] Exh. C1. P. 11 citing Anna Chittum, ACEEE, 2011
[23] Vol. 1, pp. 47-48 and at p. 53

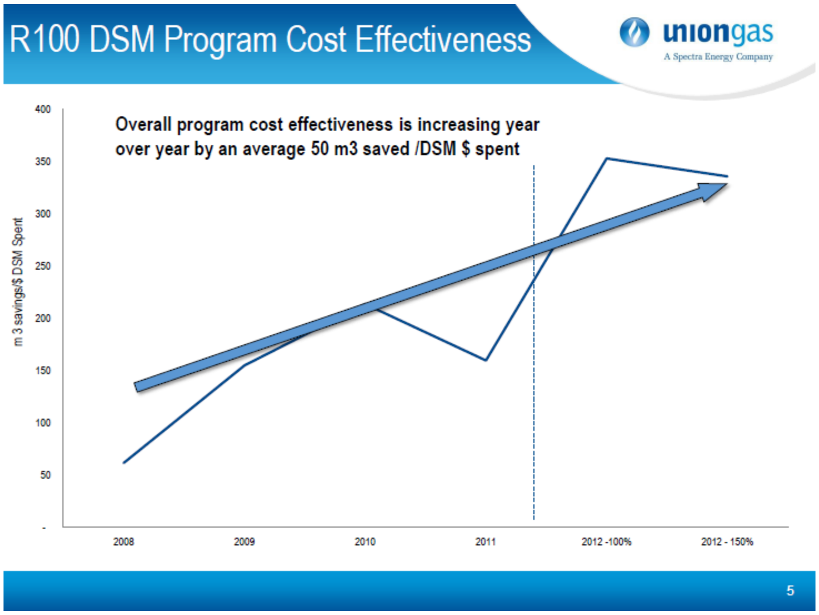
In argument Union attempts to offer a further the basis for the 30% reduction: "… the direct access budget mechanism provides flexibility to fund a greater percentage of incremental project costs…"

Being able to fund a higher proportion of incremental project costs, assuming that Union runs its program rationally, should decrease free ridership and therefore increase net savings, the basis of shareholder incentives. This was addressed at Volume 1, pages 46-47. Not only did Union's witnesses agree that, all else being equal, a higher incentive can reduce free ridership, they also noted how the increase in other efforts they make such as technical support can increase performance.

Finally, Mr. Smith, in his argument in chief referred to the slides (reproduced below) that Union filed and acknowledged that "overall program cost effectiveness is increasing year over year by an average of 50 m3 saved per DSM dollar spent."[24]



[24] Transcript V2, P. 124 at l. 16 and Exh. A, Tab 1, Appendix B, slide 5 & Appendix C, slide 5



That amounts to an average annual increase of 30-35% since 2009. Thus, Union's own evidence suggests that the target should be increasing (both for T2 and Rate 100), not decreasing.

In short, Union's proposal should be rejected as an unsupported attempt to extract unearned rewards.

Mr. Neme has suggested a modest 5% increase over a rolling 3 year average (see discussion of the 3 year proposal, above). In our submission this low escalation would be generous to Union given all available evidence regarding performance of self-direct programs in other jurisdictions, recent increasing savings trends from Union's large volume customer programs, limited if any increases in forecast spending on studies, and the potential for such studies to actually increase savings over a multi-year period.

4. Upper Band Savings Metric of 110% of Target for T2/Rate 100

Union's proposed elimination of the 15% DSMVA for the T2/Rate 100 program has led Union to reduce its scorecard upper bound by 15%. For the reasons discussed above in regard to the 15% DSMVA allowance, both proposals should be rejected. The upper band should be set at 125% of the target as it is for programs directed at other rate groups.

5. Customer DSM Budget Spending Metric

Union is proposing a new line in its shareholder incentive scorecard to reward the company for achieving a high rate of individual customers taking up of available individual customer incentives and support under its self-direct approach.

However, Union is already achieving very high levels of industrial customer participation in recent years (T2 60% and Rate 100 72% in 2011)[25]. Given that history and the 'use it or lose it' architecture of the direct access proposal, there is simply no need for an incentive to the company to pursue widespread customer participation. Union agreed that the very design of the self-direct proposal is intended to encourage customer participation[26]. Mr. Zarumba agreed that a use it or lose it approach would dramatically change the expected participation among respondents to his survey[27]. A two year approach would double this use it or lose it impetus.

The effect of Union's proposed incentive would be to reward Union for no effort and it would steal available incentive from other elements of the scorecard which could otherwise more effectively encourage better cubic meter performance. It is a cash grab that must be rejected.

6. Allocation of Weights between T1 and T2/Rate 100

Union is proposing to spend 32% of its T1/T2/R100 combined budget on T1 customers and 68% on T2/R100. However, the Company is also proposing to shift the weighting of its scorecard metrics away from T2/Rate 100 and put a disproportionate 60% weight on T1.

Union cites "a lack of historical information upon which to base the Rate T2/Rate 100 cost-effectiveness" as the basis for this proposal.[28] However, historical savings per dollar of customer incentive for T2/Rate100 customers are actually greater than for T1 customers.[29]

More importantly, in its recent DSM guidelines the Board moved expressed a desire to shift away from the previous policy of allocating shareholder incentives based on the results of DSM efforts. Instead, it consistently emphasized that potential shareholder rewards should be allocated in proportion to budget allocations[30]:

> *"To the extent that the approved DSM budgets deviate in magnitude from the Board proposed budgets, the Annual Cap should be scaled accordingly."*
>
> *"The Annual (Shareholder Incentive) Cap should be allocated among the three generic program types…based on their approved DSM budget shares."*
>
> *"Likewise, incentive amounts paid to the natural gas utilities should be allocated to rate classes in proportion of the amount actually spent on each rate class."*

As Mr. Neme suggested in his direct evidence, the approach supported by the Board in the guidelines appropriately aligns potential rewards with the best indicator of level of effort (i.e. budget).

[25] Vol. 1, p. 56-57
[26] Vol. 1, p. 56
[27] Vol. 2, pp. 42-43
[28] Exh.A, Tab 1, P.15
[29] Exh.C1, P.19,
[30] EB-2008-0346 DSM Guidelines at p. 31

Further, given the greater than 3 fold increase in the T1 budget that IGUA has pointed out (with a drop in the T2 budget), the disproportionate and unsubstantiated allocation of shareholder rewards to T1 would add insult to injury.

IV. Response to the APPrO Opt-Out Proposal

In its DSM Guidelines the Board indicated its view that DSM programs for large customers are not mandatory and those proposed will be considered on their merits. Union has proposed a DSM program for Large Volume Customers that has received widespread support from customers and other intervenors with the *possible* exception of the electricity generators that APPrO represents. We say ‘possible exception’ because the Navigant survey did not address the choice clearly (it mis-described the self-direct alternative) and appears to have gathered unrepresentative or inaccurate data, as we discuss below.

Union’s ‘self-direct’ or ‘direct access’ approach allows large volume customers the flexibility to better utilize their in-house expertise, the existence of which was recognized by the Board in its Guidelines.

Union’s approach has these large customers continuing to contribute to the overall DSM portfolio overheads that enable Union to serve Low Income customers with DSM, and to deliver a broad DSM offering to all customers to reduce overall consumption, to reduce costs, and to further the important public policy goal of reducing externalities.

In GEC’s submission it is entirely fair and appropriate that Union’s largest customers, who are responsible for the greatest share of emissions, should be required to assist in the utility’s efforts to reduce emissions. Otherwise these customers would be free riders of the worst kind.

Union’s evidence points to widespread support among industrial customers for its industrial DSM programs and that these programs, in audited results after accounting for free ridership, are in fact significantly increasing energy efficiency beyond the level that industrial customers would achieve with these programs. The one sub-group that registers disapproval is the electricity generation group. They seek special treatment contrary to the general principle that all customers in a rate class receive equal rates.

The Board’s Guidelines preface the move to non-mandatory industrial DSM on the observation that large industrial customers possess the expertise to pursue efficiency on their own. GEC submits that a second factor must be considered in weighing any proposal to reduce DSM offerings to large customers: will the proposal ensure that efficiency will still in fact occur to the same or a greater degree? If not, the Board, in our respectful submission, will not be adequately addressing its statutory mandate to promote energy efficiency.

All the evidence suggests that a simple opt-out that places no alternative requirement for efficiency performance on the part of the customers will not address this second test.

It is notable that when APPrO's members were asked whether they would accept a "self-direct" option that would eliminate their contribution to DSM in rates but would require them to invest an equivalent amount in energy efficiency investments and to demonstrate the savings resulting from those investments, overwhelmingly 87% responded "no"[31]. Union's witnesses interpreted this as an acknowledgment that without DSM incentives and without a requirement to demonstrate a comparable level of energy efficiency investment, many of these customers would not deliver similar savings. While there may be a range of reasons for the 87% negative response, it does seem clear that there would be no reasonable assurance of similar savings without DSM or other regulatory guarantees.

Navigant, in the only expert evidence that APPrO offers, acknowledges that it does not have sufficient information to respond to the question: will savings rise, fall or stay the same under the opt-out proposal?[32] Mr. Zarumba acknowledged that APPrO, revealingly in our submission, did not invite Navigant to ask whether savings would change[33]. Under cross-examination Mr. Zarumba suggested that he did not see DSM as valuable to the electric generation sub-group because they were in a specialized and highly competitive category. But when he was asked about the meaning of 'Energy Management Plan' as used in his survey he explained that the people conducting the survey would explain it if needed as a plan to improve the heat rate of the generators. Thus he revealed his focus is on the front end of generation. As Mr. MacKeacheron explained, much of the savings that Union has achieved in this sector is at the back end with customers like Veresen who use the waste steam left over after generation.[34]

More striking is Mr. Zarumba's apparent willingness to discount or ignore his own survey evidence where 38% of respondents who participated in Union's DSM programs indicated that they would not have made the energy efficiency investment within 3 years otherwise. Mr. Zarumba tried to suggest alternative explanations for the 38% but on cross-examination agreed that he was merely speculating[35].

Indeed, in jurisdictions such as Wisconsin and Utah where opt-out is premised on customers demonstrating that they are investing in conservation with reasonable payback periods, no customers are opting out.[36] The reason is that industrial customers have payback criteria that are far shorter than the life-of-measure criterion used by utilities to screen and support DSM measures and these customers are thus disinclined to make comparable conservation investments without assistance, incentives and cajoling. Union's witnesses noted that most industrial DSM measures have an 8 to 10 year payback but that industrial customers, left on their own, tend to have a far shorter payback requirement. Mr. Zarumba attempted to suggest that electric generators were different from other types of industrial customers. However, Union stated that its own assessments of even the newest electric generating facilities has found a number of different cost-effective efficiency improvements (18 different measures were identified[37]) to be

[31] Exh. C2, P. 18, question 12
[32] Exh. D1 page 4
[33] Vol. 2, p. 63-64
[34] See transcript excerpt at Union argument compendium, Tab 16, p. 8
[35] Vol. 2, p. 41, l. 26
[36] Exh. D6.1 – attachment at p. 17
[37] Exh. B5.6, p. 3

untapped. Those findings appear to be consistent with the substantial number of projects and savings Union's programs have produced with electric generators in recent years.

The difference between industrial payback periods and those that cost-effective DSM measures provide is in part a reflection of a market failure – the price of gas does not reflect externalities, and thus far it does not reflect government policy to reduce emissions. The value of gas savings to a customer understates the true value of gas savings to society. Industrial customers will quite rationally invest their scarce resources in what they view as better opportunities unless DSM assistance pushes them farther. Simply put, the provision of DSM research, expertise and incentives tilts the economics for industry improving the relative attractiveness of marginal conservation opportunities relative to other possible investments. Market failures such as the non-full cost pricing of gas are why the government has instructed the Board to *promote* energy efficiency and are one important reason that DSM makes sense.

The only evidence potentially refuting these self-evident economic realities is that of one company (LDE), which claims it has not and will not do anything differently with or without Union's DSM. It is possible that the claims of this one company are true, that it is a free rider. However, even if true, the reality from one company cannot be construed to be representative of an entire population of customers. Moreover, it is far from clear whether Mr. Russell's position that LDE has done nothing different because of Union's DSM is accurate given the contents of the October 2011 letter from Veresen to the Board, wherein their Vice President states: "Veresen's position regarding this program is that it has played an important role in achieving increased energy efficiency at these facilities."[38]

The differing views we heard from Mr. Russell and the Veresen VP may be explained by Mr. Russell's later evidence wherein he clarified that theoretically the availability of incentives would change the economics of efficiency investment but the problem LDE had in relying upon Union DSM funding was that it came too late in the company's planning cycle and was unreliable in amount – hence his view that the Union's DSM did not in fact change efficiency outcomes for his company[39]. He agreed that in an opt-out situation there would be no assurance that rate savings would be applied to energy efficiency. He also agreed that the timely and reliable availability of DSM incentives would change the weighing of efficiency investment decisions (though we agree, that may not be determinative in any given case). He further acknowledged that he was not familiar with the details of Union's proposed self-direct program[40]. Thus LDE's concerns may be well addressed if Union's self-direct program is designed to be timely and reliable. As to timeliness, we refer the Board to our comments above in regard to the need for a multi-year approach. If customers can apply at any point before the plan commitment deadline they should thus be able to get an assurance of funding that is both timely and reliable.

It is important to note that Navigant's survey heard from only a portion of APPrO's members. It is reasonable to assume that those companies most dissatisfied with Union's approach would be more motivated to respond and disproportionately represented among respondents.

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[38] Exh. K1.2
[39] Vol. 2, p.53 *et seq*. confirmed at Vol. 2 at page 103
[40] Vol.2, p. 56, l.12

Indeed, Union reports that its DSM programs have supported some 60 projects in the three year period and paid out some $700,000 in incentives to its power generation customers yet Navigant's survey finds only 3 projects totalling under $90,000. It seems clear that Navigant's survey is either based upon an unrepresentative group of respondents, or has generated and relied upon very poor quality answers, or is biased in some systematic fashion, or some combination of these possibilities. When asked, Mr. Zarumba could not offer any other explanation:

> MR. POCH: Can we agree, assuming Union's numbers cover the same years, that difference is likely attributable to the fact that your survey, either because the luck of the draw of who didn't answer or there was some systematic bias in the question or just bad answers from those that did respond, that would be really the only explanations, assuming Union's numbers are accurate?
>
> MR. ZARUMBA: I -- because we did not have 100 percent response rate, that could be part of the answer. Beyond that, I really can't state. I can't state why there would be a difference.[41]

Despite potential biases against DSM, APPrO's own survey conducted by Navigant demonstrates that Union's DSM program is indeed encouraging marginal gas savings even among electricity generators. As noted above, Navigant found that 38% of respondents to its survey who participated in Union's programs made conservation investments that they would not otherwise have made for 3 years or more. Further, some portion of the remaining 62% could have made such investments earlier than they otherwise would have (i.e. 1, 2 or 3 years earlier). Union's panel agreed that given the immense gas use by this sub-group, the acceleration of efficiency by one to three years can bring very large benefits[42]. Mr. Zarumba also agreed that such accelerations were possible and his survey results did not preclude that[43].

Union's audited evaluation results, which account for free ridership, indicate that some 230 million cubic meters of gas savings have been fostered among its electricity generation customers in recent years due to the DSM program.[44]

Accordingly, there is every reason to conclude that an Opt-Out regime would reduce energy efficiency investment. Customers are being offered improved flexibility in Union's self-direct approach which if implemented on a multi-year basis will provide timely assistance.

In essence, at its highest, APPrO's proposition simply allows generators special dispensation to avoid Union's overheads. APPrO tried to suggest that only 51% of the value of the budget plus potential variances such as the potential shareholder incentive would be available to its members under the self-direct approach. APPrO's math distorts the situation. Of the total budget, 59%

[41] Vol. 2, p. 82
[42] Vol. 1, p. 74
[43] Vol. 2, p. 73
[44] Exh. B5.6, P. 3

goes to customer incentives[45], 15% goes to Technical Resources of which only 1.6% ($0.1M of the $.9M%) is directed at sales marketing support and administration[46], only 2% goes to program promotion, 1% goes to evaluation which offers value to customers by improving everyone's understanding of the true incremental savings. 9% goes to portfolio budget. 14% goes to the Low Income program which APPrO does not propose to discontinue contributing to. Thus APPrO can only legitimately complain about the 9% portfolio budget, 2% promotion, and the 1.6% included in Technical resources that goes to marketing and that might be said not to benefit APPrO members or address Low Income, a total of 12.6%. Any further costs by way of the variance accounts will occur if and only if increased savings occur, savings after accounting for free ridership. These gas savings that will generate many millions of dollars in cash savings to the participating customers. Since more than 38% of APPrO survey respondents benefitted from DSM (and likely far more given the discrepancy between survey results and the Union data) the 12.6% and the variance account amounts are not an unreasonable burden given the much larger benefit to the generator sub-group.

As we discuss above, those overheads are what facilitates and drives DSM for all other customers and that effort is a valuable externality reduction response that all customers should contribute to, especially the largest emitters. A more realistic appraisal, based on the evidence of audited net savings, would recognize that these customers, if allowed to opt out, will not only avoid contribution to common externality reduction costs but will also reduce their level of conservation investment. Customer concerns that have not already been addressed in the Guidelines and 2012 case can and should be addressed by improvements to Union's DSM program, not by its elimination.

Alternative Scorecard and Recommendations

Below is a modified scorecard that accommodates the recommendations Mr. Neme has made. GEC urges the Board to adopt these changes.

In addition to the scorecard changes below, to mitigate rate volatility GEC suggests that the Board consider allowing Union to collect in rates an estimate of the eventual shareholder incentive (subject to subsequent true up). For example, if the expected result is the 100% target, in keeping with the Board's DSM Guidelines, for 2013 the added inclusion would be 40% of the maximum $1.809M, for 2014 it would be 40% of 1.849M, ($0.724M and $0.740M respectively)[47]. Further rate stability might be achieved by including a larger portion (eg.75%) of the potential maximum shareholder incentive, assuming a higher level of likely achievement reflecting past excellent performance (again, subject to true up).

As discussed above, if the Board remains concerned about the 15% DSMVA potential overspend allowance for the T2/Rate 100 customers (despite the changes already incorporated in 2012) it could similarly include some or all of that value in rates subject to subsequent true up.

[45] Exh. A, Tab 1, p. 10
[46] Exh. B5.7
[47] Maximum incentives from Exh. A, Tab 1, p. 21, table 6

We ask the Board to note that GEC's proposal for a multi-year approach to the self-direct program would require the Board to permit clearance of the related variance accounts on a two year basis. The proposal to bake into rates the projected shareholder incentive could smooth the rate impacts of this two year clearance approach.

The Scorecard below assumes the following features which GEC recommends:

- No 30% reduction in 2013 100% target, 5% increase.
- 15% DSMVA allowance for T2/100 persists enabling the 125% upper band
- Allocation between T2/100 and T1 in proportion to budget
- Incentives only for acquisition of gas savings (not for % of customer incentive spent)
- Two year initial period for Direct Access program

GEC Proposed Two-Year (2013-2014) Large Volume Customer Scorecard

Metric	**Metric Target Levels**			**Metric Weights**
	Lower Band	**Target**	**Upper Band**	
T2/R100 Lifetime Natural Gas Savings (m^3)	75% of Target	(Average of 2010, 2011 and 2012 Post Audit m^3 Savings per Customer Incentive Dollar) * ($4.766 million 2-year budget) * (1.05 performance improvement)	125% of Target	68%
T1 Lifetime Natural Gas Savings (m^3)	75% of Target	(Average of 2010, 2011 and 2012 Post Audit m^3 Savings per Customer Incentive Dollar) * ($2.208 million 2-year budget) * (1.05 performance improvement)	125% of Target	32%

Finally, we thank the Panel for accommodating our need to make written submissions and we hope that GEC's intervention in this proceeding has been of assistance to the Board. GEC respectfully requests its costs of that participation.

All of which is respectfully submitted this 5th day of February, 2013

David Poch
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