uniongas
A Spectra Energy Company

February 12, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
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Re: EB-2012-0337– Union Gas Limited – 2013-2014 Demand Side Management Plan for Large Volume Customers – Reply Argument

Dear Ms. Walli:

Please find enclosed two copies of the Reply Argument of Union Gas Limited for the above noted proceeding.

Should you have any questions, please contact me at 519-436-4521.

Yours truly,

[original signed by]

Marian Redford
Manager, Regulatory Initiatives

cc: Alexander Smith (Torys)
EB-2012-0337 Intervenors

EB-2012-0337

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 to 2014 Demand Side Management Plan.

REPLY ARGUMENT OF UNION GAS LIMITED

Overview

1. This is Union's Reply Argument, which should be read in conjunction with Union's Argument-in-Chief. Union remains of the view that its application, which is supported in most respects by Board Staff and all intervenors other than APPrO, should be approved as filed. Union's reply to the arguments raised by intervenors and Board Staff are set out below on an issue-by-issue basis. All references are to Union's Reply Compendium.

Opt-out

2. Union relies on its Argument-in-Chief.[1] APPrO's argument failed to meaningfully address the fatal flaw in its proposal pointed out by Union[2] and by Union's witness Mr. Tetreault: an opt-out option for APPrO members would be contrary to the fundamental class ratemaking principle that "all customers in the class pay the same rates".[3] A departure from this principle would invite a flood of similar requests for special exemptions, both within large-volume rate classes and in other rate classes. As the argument of SEC suggests, the claim that a subset of a rate class deserves a special exemption inevitably leads other subsets of that rate class to insist that they too deserve special exemptions.[4] If successful, this argument will encourage

[1] Tab 1; Transcript Vol. 2, pp. 129-135

[2] Tab 1; Transcript Vol. 2, pp. 131-133

[3] Tab 2; Transcript Vol. 1, pp. 126-127

[4] Tab 3; School Energy Coalition ("SEC") Final Argument

subsets of all rate classes -- and not just of large-volume rate classes -- to push for special exemptions. BOMA rightly characterizes this as a "slippery slope".[5] As the Board has previously stated: "Over the years, the Board has had many requests for special status for a customer group or a customer. The Board has been consistent in its response to such requests by adhering to its established principles in dealing with cost allocation and rate setting".[6] The Board should not deviate from this approach in this proceeding. APPrO's request for an opt-out for its members should be rejected.

3. APPrO argues that its opt-out proposal is "supported by the Board's findings about the non-mandatory nature of the program now".[7] This submission is not accurate. The Board has already addressed the proposition that the phrase "no longer mandatory" in the DSM Guidelines does not mean that a customer can opt-out.[8] The phrase "no longer mandatory" is in relation to the requirement for natural gas utilities to provide DSM programs to large industrial customers. It has been a longstanding practice, as set out in EB-2006-0021 that customers in all rate classes should be provided with equitable access to DSM programs.[9]

4. APPrO has led evidence and argued that certain of its members want a right to opt-out.[10] Notwithstanding this evidence regarding the preference of certain of its members, APPrO has not established that its members will not participate in the program if it is approved.

5. In argument APPrO observed that Enbridge does not have a DSM program for Rate 125, but points to no evidence of why that is the case.[11] It is not clear how this fact in isolation can help the Board decide this application. As APPrO's witness Mr. Zarumba acknowledged, Enbridge does not have an opt-out for Rate 125 and the reason that power producers in Rate 125

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[5] Tab 4; Building Owners and Managers Association ("BOMA") Final Argument

[6] Tab 5; RP-2003-0063/EB-2004-0542, p. 5

[7] Tab 6; Transcript Vol. 3, p. 76

[8] Tab 7; EB-2011-0210 Issues Day Transcript (March 22, 2012), p. 48

[9] Tab 8; EB-2006-0021 Decisions with Reasons (August 25, 2006), p. 26

[10] Tab 9; Transcript Vol. 3, pp. 50-51

[11] Tab 10; Transcript Vol. 3, p. 53

do not pay for DSM is because that class does not, and has never been included in DSM programming.[12]

6. IGUA notionally took no position on opt-out, albeit with the qualification that opt-out, if pursued at all, should "be pursued on a rate-class basis and not on a customer basis".[13] In Union's submission, this is really a position against opt-out. APPrO's request for an opt-out is opposed in substance by all other parties and should be rejected.

Jurisdictional Review

7. APPrO argues that Navigant's jurisdictional review "demonstrates that non-mandatory participation in DSM in the rest of Canada and in the U.S. ultimately is more the norm for large gas-fired generators than otherwise".[14] Union submits that what APPrO terms "non-mandatory participation in DSM" is, at best, a conflation of a variety of initiatives in varied regulatory contexts across North America and, at worst, a euphemism for no DSM at all.

8. Navigant's jurisdictional review was not sufficiently detailed and contextual to ground APPrO's argument that "non-mandatory participation in DSM" is the norm for large gas-fired generators. The jurisdictional review section of the Navigant report is five pages long. The a-contextual nature of the inquiry Navigant was asked to perform is demonstrated by the fact that Navigant stated in its report that one of the considerations informing the Minnesota Public Utilities Commission's decision to exclude generators from paying DSM CRM was that it would result in a double payment, but acknowledged in an interrogatory response that it had "no additional information on other reasons or considerations" that informed the decision.[15] Such an inquiry does not provide an adequate evidentiary basis for APPrO's assertion that "non-mandatory participation in DSM" is the norm for large gas-fired generators in North America. APPrO's argument also ignores the fact that only one of the top twenty jurisdictions in North

[12] Tab 11; Transcript Vol. 2, pp. 104-105

[13] Tab 12; Transcript Vol. 3, pp. 31-32

[14] Tab 13; Transcript Vol. 3, pp. 52-53

[15] Tab 14; Navigant Report, pp. 5-6; APPrO Response to GEC Interrogatory 12(c)

America offers an opt-out program. That program requires the opting-out customer to spend $3 million on energy-efficiency investments over the three-year period of the pilot program.[16]

9. Finally, Union submits that APPrO's argument about "non-mandatory participation in DSM" clouds the distinction between Union providing DSM to large-volume customers, which is not mandatory under the DSM Guidelines,[17] and large-volume customers' funding of costs that have been allocated to their rate class, which is mandatory under the fundamental principles of class ratemaking.

APPrO's Flawed and Misleading "Eight Cents on the Dollar" Argument

10. APPrO argues that Union's DSM program has had a "hugely disproportionate negative impact" on power generators because over the 2009-2011 period they paid $9.448 million for DSM programming and received approximately $700,000 in customer incentive. APPrO submits that the $9.448 million number should be reduced to $9.1 million to exclude LRAM costs and argues that the $9.1 million-$700,000 ratio represents "eight cents on the dollar", which is a "stark number".[18]

11. This argument is flawed and misleading, primarily because it ignores three things. First, it ignores the Total Resource Costs (TRC) benefits power generators received as a result of participating in Union's DSM programs from 2009-2011. TRC benefits, which are net of free ridership, benefit power generators by helping them achieve long-term savings. On the basis of evidence filed in this proceeding the TRC benefits that power generators secured in 2009-2011 will be in the range of $47 million. This projection is based on the following calculation of TRC benefits.

[16] Tab 15; Exhibit A, Tab 1, Appendix A, p. 3

[17] Tab 16; Transcript Volume 3, p. 53

[18] Tab 17; Transcript Vol. 3, p. 54

TRC benefits ($47,583,563) = cost effectiveness ratio of 8.1[19] x [(1 - free ridership of 0.56)[20] x (incremental project costs funded by power producers of $12.540 million)[21] + (the three-year average percentage of DSM paid in rates by powers producers of 30.75%)[22] x (large-volume promotion costs of $100,000 + administration costs of $906,511 + EM & V costs of $40,000)][23]

12. Second, this argument fails to distinguish between DSM in the 2009-2011 period, under the old framework (EB-2006-0021) and DSM Plans, and the program that Union is applying for in this application, which Union has brought in the context of the current DSM Guidelines (EB-2008-0346) and the 2012 Settlement Agreement. The Guidelines and proposed Plan directly address APPrO's concerns around significant costs for its members and unexpected out-of-period adjustments that were possible during, and materialized in, the 2009-2011 period. Under the old Framework the SSM was allocated to rate classes in proportion to TRC savings resulting in significant charges attributed to large-volume rate classes. There was no limit to the budget amount that could be spent in a rate class and no limit to the amount of the total 15% overspend that could be allocated to large-volume customers. The Guidelines addressed the first issue by allocating the DSM Incentive to rate classes in proportion of the amount actually spent in each rate class. The 2012 Settlement Agreement addressed the second issue by limiting the Large Volume Program budget, the amount which may be transferred between rate classes within this budget, and the amount of the 15% overspend that could be applied to this program. Union's 2013-2014 proposal extends these limitations. Further, Union has removed the ability to overspend the Plan budget by 15% in Rate T2 and Rate 100 and provided these customers with direct access to the customer incentive budget they pay in rates. The result is a stable annual DSM cost to these

[19] Tab 18; Exhibit A, Tab 1, p. 30

[20] Tab 19; Exhibit A, Tab 1, Appendix E, p. 5

[21] Tab 20; Exhibit J1.4, p. 117

[22] Tab 21; Exhibit B6.2, Attachment 1; Exhibit J1.5, Attachment 1, Attachment 2;

[23] Tab 22; Exhibit A, Tab 1, p. 30

customers, and predictability in both the amount they pay for DSM and the customer incentive available for each customer.

13. Third, APPrO's argument ignores the SSM in the $9.448 million amount used in this calculation. This amount is $4.272 million[24] over the three year period. In Union's proposal, the maximum DSM Incentive is limited for all Rate T1, Rate T2 and Rate 100 customers to approximately $1.8 million per year. Using the 2009-2011 percentage of large volume DSM costs paid by power producers of 30.75%[25] as an estimate of their level of funding in the 2013-2014 period, a maximum of approximately $0.6[26] million of this could be allocated to APPrO members per year. It is significantly reduced from the SSM funded by these customers in the 2009-2011 period.

Cross-subsidization

14. APPrO argues that Union's DSM program has resulted in cross-subsidization within large-volume rate classes.[27] Union notes that the evidence relied on by APPrO -- Undertaking J1.5, Interrogatory B6.8 and Tab 5 of APPrO's Final Argument Compendium -- is evidence in respect of all Rate T2 and Rate 100 customers. This evidence does not differentiate between power producers and other customers. This evidence is not an adequate basis for arguing that power producers are cross-subsidizing other customers in their rate classes.

15. Regardless of the merits of this argument, it disregards the fact that Union's application features a direct access mechanism for Rate T2 and Rate 100 customers,[28] which allows customers with concerns about cross-subsidization to simply access their customer incentives before others in their rate class have an opportunity to do so. Similarly, APPrO's proposal to cap customers' access to program funds to 150% of their contributions[29] ignores the fact that Union's

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[24] Tab 23; Exhibit J1.5, Attachment 1, Attachment 2.

[25] Use footnote to calculation in 11 above.

[26] Calculated as $1.8 million * 30.75%

[27] Tab 24; Transcript Vol. 3, pp. 55-59

[28] Tab 25; Exhibit A, Tab 1, p. 7

[29] Tab 26; Transcript Vol. 3, p. 90

application features a Rate T2/Rate 100 percent of Customer Incentive Budget Spent scorecard metric which also addresses this concern.

The Veresen Letter and Mr. Russell's Evidence

16. APPrO argues that Union's position on the Veresen letter[30] should be "completely discounted" because Union did not put it to Mr. Russell in cross-examination that there was an "inconsistency" between his evidence and the Veresen letter.[31] This argument should be rejected. As Union understands APPrO's argument, APPrO is relying on the evidentiary rule from *Browne v. Dunn* that "if a cross-examiner intends to impeach the credibility of a witness by means of extrinsic evidence, he or she must give that witness notice of his intention".[32]

17. Union has not argued that the Veresen letter impeaches Mr. Russell's credibility. Union has argued that after Veresen sent the Veresen letter to the Board on October 11, 2011 there was a problem with 2011 deferrals and that problem upset the entire DSM relationship between Union and many of Union's customers who are APPrO members.[33] This is not an argument that must rely, or does rely, on impeaching Mr. Russell's credibility. Mr. Russell's evidence was that he did not have a chance to contact the author of the Veresen letter before giving his evidence.[34] Mr. Russell gave his evidence on behalf of London District Energy, not Veresen,[35] so any "inconsistency" between London District Energy's evidence and the position taken by Veresen in the Veresen letter merely reflects a difference in their respective views about DSM at different times. In any event, the Veresen letter speaks for itself, specifically that "Veresen's position regarding this program is that it has played an important role in achieving increased energy efficiency. In Unions' view, eliminating these programs is not in the best interest of T1 shippers and importantly, may result in a reduction in DSM initiatives by generators such as ourselves".

[30] Tab 27; Exhibit K1.2

[31] Tab 28; Transcript Vol. 3, pp. 74-75

[32] Tab 29; Bryant et al., *The Law of Evidence in Canada*

[33] Tab 30; Transcript Vol. 2, p. 139

[34] Tab 31; Transcript Vol. 2, p. 61

[35] Tab 32; Transcript Vol. 2, p. 61

The fact that Mr. Russell gave evidence to the effect that he disagrees with these statements does not raise an issue regarding Mr. Russell's honesty and integrity, nor has Union suggested that such is the case.

2-Year Direct Access Budget

18. GEC argues that the direct access period for Rate T2 and Rate 100 customers should be for a single two-year period, rather than the annual direct access periods for 2013 and 2014 proposed by Union.[36] GEC's expert witness, Chris Neme, gave evidence that such a multi-year direct access budget would give customers "much greater flexibility to plan and pursue projects that provide the biggest bang for the buck and/or make the most sense for the business".[37] While Union acknowledges that flexibility is desirable, Union remains concerned that this proposal could result in further deferral charges to customers that would disrupt rate predictability and rate stability. These deferral impacts could negate many of the improvements Union has incorporated into this application to enhance rate predictability and rate stability.

19. IGUA argued for the need for rate certainty,[38] but does not appear to grasp that a single two-year period may result in significant deferrals.[39] IGUA's position on predictability and certainty is at odds with its stated preference for a two-year period. The complex steps required to address these problems are laid out in detail in the Appendix. Union is also concerned that CME, which emphasized the importance of rate predictability and rate stability in its argument, may not fully appreciate that a single two-year period may result in non-negligible deferrals.[40] Union also shares CME's concern that under the scheme proposed by GEC many customers would wait until late in the two year period to take any action,[41] resulting in lost conservation opportunities.

[36] Tab 33; GEC Final Argument, pp. 3-5

[37] Tab 34; GEC Final Argument, p. 3

[38] Tab 35; Transcript Vol. 3, p. 35

[39] Tab 36; Transcript Vol. 3, pp. 36-39

[40] Tab 37; Transcript Vol. 3, pp. 9-10

[41] Tab 38; Transcript Vol. 3, p. 9

20. If the Board orders Union to institute a single two-year direct-access period then certain steps should be taken by Union to minimize the potential unintended consequences of the two-year approach. Failure to recover approximately half of the total potential two-year DSM Incentive Deferral Account and DSM Variance Account balances in Union's 2013 deferral disposition application would result in the potential for significantly more volatile deferral impacts for 2014. This would negate the increased rate stability and predictability for large-volume customers provided through the DSM Guidelines and 2012 Settlement Agreement, and extended in Union's 2013-2014 Plan. Union's feedback from customers, including large-volume ratepayer stakeholders, has emphasized the importance of this rate certainty. The Appendix to this reply outlines the framework Union proposes to adopt in the event the Board orders Union to institute a two-year direct access period. The steps ensure customers are not exposed to increased rate uncertainty, through higher potential deferral balances, within a two-year direct access period than under Union's proposal.

Increasing Industrial DSM Plan and Budget and Re-Filing for 2014

21. Environmental Defence alone argues that Union should be required to prepare a larger DSM budget because it can result in lower emissions at no cost.[42] This proposal ignores the need to balance conservation objectives with the objective of ensuring rate predictability and stability. Further, as Mr. MacEacheron made clear in his evidence, he heard "loud and clear" from large-volume customers that they did not want "to see a deferral account like 2011 again, ever" and instead wanted increased predictability in rates.[43] Mr. MacEacheron also gave evidence that, in his view, APPrO members would be opposed to raising the budget.[44]

22. Environmental Defence's proposal is also impractical, in that it ignores the challenges that would be involved in re-filing an application for 2014 and putting in place a substantially larger program with additional staff who would require specialized training.

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[42] Tab 39; Transcript Vol. 3, pp. 21-23

[43] Tab 40; Transcript Vol. 1, pp. 40-41

[44] Tab 41; Transcript Vol. 1, p. 148

Maintaining a 15% DSMVA for Rate T2 and Rate 100

23. GEC argues that the 15% DSMVA overspend for Rate T2 and Rate 100, which Union's application eliminates, should be maintained.[45] Union submits that this proposal is not aligned with an objective of Union's direct access proposal, which is to provide customers with direct access to 68% of what they pay in rates for DSM. This proposal also undermines rate predictability and stability.

110% Upper Band for Rate T2 and Rate 100 in Scorecard

24. While Board Staff generally supports Union's application as filed, Board staff opposes the 110% upper band for Rate T2 and Rate 100 in Union's 2013 and 2014 scorecards.[46] Board staff proposes an upper band of 125% on the basis that targets are "meant to be aggressive" and to incent "exemplary performance".[47] While Union appreciates Board staff's stated faith in Union's abilities to achieve outstanding conservation results through its large-volume DSM program, Union submits that the 110% upper band is aggressive and that, if achieved, a 10% increase above target without any additional funding whatsoever would be exemplary.

25. While GEC also opposes the 110% upper band, it recognizes that budgets and targets are interrelated, and recommend that both the 15% overspend and upper band target of 125% for Rate T2/Rate 100 customers be considered together.[48] GEC confirms the 15% DSMVA allowance for Rate T2/Rate 100 enables the 125% upper band target for these customers.[49] The additional 15% DSMVA overspend and 125% upper band target for Rate T2 and Rate 100 customers should be linked together as a single decision.

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[45] Tab 42; GEC Final Argument, pp. 5-7

[46] Tab 43; Transcript Vol. 3, pp. 47-48

[47] Tab 44; Transcript Vol. 3, pp. 48-49

[48] Tab 45; GEC Final Argument, p. 11

[49] Tab 46; GEC Final Argument, p. 18

30% Discount for Rate T2 and Rate 100 in 2013 Scorecard

26. Board Staff also opposes Union's proposed 30% discount for Rate T2 and Rate 100 in the 2013 Scorecard on the basis that it does not reflect a "rigorous analysis".[50] In Union's submission the 30% discount reflects a considered exercise of judgment on Union's part. As outlined in its pre-filed evidence, this discount is reasonable in light of Union's introduction of the direct access budget mechanism, which gives customers the flexibility to fund a greater percentage of incremental project costs, studies and audits than was possible under the 2012 program.[51]

Conclusion

27. Union asks the Board to approve this application as filed. The application is the product of close consultation with Union's large-volume customers. It balances large-volume customers' concerns about rate predictability and rate stability with the important objective of building on Union's successes in DSM and achieving further conservation. It achieves this balance in a manner that is consistent both with the 2012 Settlement Agreement and fundamental rate making principles. For the reasons set out above and in Union's Argument-In-Chief, the proposed alterations to Union's application, including APPrO's proposed opt-out, should be rejected.

[50] Tab 47; Transcript Vol. 3, pp. 47-48

[51] Tab 48; Exhibit A, Tab 1, pp. 18-19

February 12, 2013

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AND TO: All Intervenors (EB-2012-0337)

Appendix

1. This Appendix outlines the framework that Union proposes to adopt in the event that the Board orders Union to institute a two-year direct access period.

2. ***Deadlines.*** Union proposes that the Energy Savings Plan completion date be September 30, 2013. Customers will be advised of their direct access amounts for 2013 and 2014 well in advance of this date.

3. Union proposes that the commitment date for earmarking or spending direct access amounts be December 31, 2013. This date would allow Rate T2 and Rate 100 customers sufficient time to allocate the 2013 and 2014 direct access funds. Any direct access funds not earmarked or spent by December 31, 2013 will be made available to all customers within the rate class. These funds will be dispersed via an aggregated pool approach where projects are supported based on their lifetime natural gas savings and cost effectiveness. According to Mr. Russell's evidence this commitment date also aligns with plant budget planning at LDE[1]. The August 1, 2014 deadline proposed by IGUA would result in unnecessary levels of lost conservation due to procrastination and provides too little time for the allocation of available direct access funds[2].

4. ***Direct access incentive amounts.*** Rate T2 customer incentives for 2013 and 2014 will be calculated based on January 1, 2013 contract demands. Rate 100 customer incentives for 2013 and 2014 will be calculated based in part on January 1, 2013 contract demands (75% weighting) and the 2012 actual volumes (25% weighting). Please see Exhibit B4.6, pages 2 and 3 for examples of the customer incentive calculation for Rate T2 and Rate 100 customers[3]. Increases in actual January 1, 2013 contract demands from the demands assumed in the DSM Demand Unit Rates (per Exhibit B4.6, Attachment 1) will be managed within the $500,000 budget transfer rule.

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[1] Tab 1 ; Transcript Vol. 2, pp. 117-118
[2] Tab 2 ; Transcript Vol. 3, pp. 38-39
[3] Tab 3 ; Exhibit B4.6

5. ***Scorecard.*** Should the Board approve a two-year direct access period, Union is of the view that a three-year average cost effectiveness target is appropriate. The revised proposed scorecard is set out below.

2013 - 2014 Large Industrial Rate T1 / Rate T2 / Rate 100 Scorecard				
Metric	Metric Target Levels			Weight
	Lower Band	Target	Upper Band	
Rate T2 / Rate 100 Cumulative Natural Gas Savings (m^3)	75% of Target	Average of 2010, 2011 and 2012 Post Audit T2/R100 Customer Incentive Cost Effectiveness (m^3 per Customer Incentive Dollar Spent)*($4.766 million 2-year budget)*(1-0.30)	110% of Target	20%
Rate T2 / Rate 100 Percentage of Customer Incentive Budget Spent (%)	60%	70%	80%	20%
Rate T1 Cumulative Natural Gas Savings (m^3)	75% of Target	Average of 2010, 2011 and 2012 Post Audit T1 Customer Incentive Cost Effectiveness (m3 per Customer Incentive Dollar Spent)*($2.208 million)	125% of Target	60%

6. ***Budget.*** Union proposes to continue to recover its annual budget for each year through rates. Union proposes to also maintain its annual $500,000 transfer ability between rate classes and its 15% overspend option for Rate T1.

7. ***Deferral account disposition***. Union proposes the 2013 DSMVA calculation track the variance between the DSM budget in 2013 rates and an assumed 2013 DSM spend equal to the amount budgeted in rates, plus 50% of the maximum two year overspend for Rate T1 regardless of actual 2013 results (15% of the 2013 program and the associated Board-approved portfolio budget allocated to Rate T1) and the actual 2013 transfer between the Rate T1, Rate T2 and Rate 100 rate classes (up to $500,000).

8. For 2014, Union proposes the DSMVA calculation track the variance between the DSM budget in 2014 rates and the actual DSM spend for the two year period, less the assumed DSM spend in 2013. Union proposes the actual two year spend include the actual overspend for Rate T1 (up to a maximum of 15% of the 2013 – 2014 program and the associated Board-approved portfolio budget allocated to Rate T1) and the actual 2014 transfer between the Rate T1, Rate T2 and Rate 100 rate classes (up to $500,000).

9. For a two year program, the maximum DSM Incentive will be $3.658 million. Consistent with the DSM Guidelines, this is the sum of Union's maximum DSM Incentive for 2013 and 2014 of $1.809 million and $1.849 million respectively.[4] Through the 2013 DSM Incentive Deferral Account (DSMIDA) calculation, Union proposes to recover 50% of the maximum DSM Incentive achievable for the two year period, regardless of actual 2013 results ($1.809 million for 2013).

10. For 2014, Union proposes that the DSMIDA calculation reflect Union's actual two year DSM Incentive achievement, less the amount of DSM incentive recovered in the 2013 DSMIDA calculation. For example, if Union's two year DSM Incentive achievement is $3.2 million, the 2014 DSMIDA would recover $1.4 million from ratepayers ($3.2 million less the $1.8 million recovered in the 2013 DSMIDA).

11. ***Evaluation.*** Union proposes to maintain annual verification of the Large Volume Program.

12. Union proposes to continue to conduct an annual audit to confirm results for 2013 and 2014. The annual audited results will be combined towards achievement of the 2013 – 2014 Large Industrial Rate T1/Rate T2/Rate 100 scorecard targets.

[4] Tab 4, Exhibit A, Tab 1, p. 21

UNION GAS LIMITED
EB-2012-0337
Reply Argument Compendium

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Ontario

ONTARIO ENERGY BOARD

FILE NO.: EB-2012-0337

VOLUME: 2

DATE: February 1, 2013

BEFORE: Paula Conboy Presiding Member

Marika Hare Member

introduced flexibility. The cap isn't there anymore, if you have the money to surpass the cap.

So Union's targets, in my submission, balance the goal of maximizing gas savings with generating broad customer participation amongst large-volume gas users. For T2 Rate 100 customers, Union has applied a 30 percent discount factor to the 2013 target for this metric.

This reflects the fact that the direct access budget mechanism provides flexibility to fund a greater percentage of incremental project costs, studies and audits.

Union's program goals and program strategy are set out in Union's written direct evidence at pages 23 of 36 -- at page 23 of 36, excuse me. And I have included that in the compendium.

Union's goals and strategy are practical and based on Union's in-the-field experience with these Ontario large-volume DSM customers. It is an approach based on responsiveness to challenges that arise and continuous refinement to produce continued success.

So that's all I have to say on my first point.

I am now going to move on to my second point, regarding APPrO and opt-out.

APPrO proposes an opt-out from Union's large-volume DSM program. An initial question is: An opt-out from what? This issue was addressed in Ms. Lynch and Mr. Tetreault's testimony yesterday.

One version of the opt-out, the version that they were talking about involves a customer opting out of the customer incentive equivalent of the 68 percent of what they pay in rates. This approach would result in a cross-subsidy within the rate class. Those remaining in would bear the full burden of the costs assigned to the rate class as a whole.

And on that point, I'd just turn you to tab 14. And starting at line 16 -- well, I guess I will start with the question.

Ms. Dullet asked:

"Can you explain that, the customer incentive?

"Ms. Lynch: So under our direct access budget model for incentives, each customer would receive a customer incentive equivalent to 68 percent of what they pay in rates. So again, depending on design of how an opt-out program would work, our expectation is that we would need to continue all of the components, portfolio portion of the program, but it would only be that incentive piece for those who opted out that we would then look to reallocate to other customers.

"Ms. Dullet: Would you -- would the customers who do not opt out, is it plausible they would be paying more for DSM services?

"Ms. Lynch: Yes, it would be possible.

"Ms. Dullet: Would the portion of their rates linked to the DSM materially increase?

"Mr. Tetreault: They could, yes, if you're recovering the DSM budget over a smaller group of customers."

And then I will just skip to the bottom of the page, starting at line 21, where Mr. Tetreault says:

"I think the main negative consequence -- and there could be others -- the main one is the one we just spoke about, that being essentially a cross-subsidy within a rate class, where the remaining customers in a class pick up all the DSM budget costs that have been allocated to that class, because certain customers have chosen to opt out of paying costs that have been allocated to the rate class."

Over the page:

"There could be other consequences. That is -- from a rate-making standpoint, that is the main one, the cross-subsidy issue."

The opt-out that APPrO is advocating is, in my submission, more extreme as is it not only unfair to others in the rate class, but also threatens the viability of large volume DSM programs by cutting the overheads, including technical resources, that make the program possible.

The danger posed by APPrO's approach became evident in the course of APPrO's cross-examination of the Union panel, and this is tab 15, page 126, and Mr. Frank says, starting at line 13:

"And I understood you to say earlier -- I believe it was you, Mr. Tetreault -- that if that was removed, that would remove the main cross-subsidy cost?

"Mr. Tetreault: Yes. When I was referring to earlier in the cross from CME was the fact that if -- and in her example -- there was one customer remaining in the class, that customer would pay -- would pay all the DSM costs allocated to that class at that point.

"Mr. Frank: Right. But if the incentive piece was removed -- the $900,000 in that example -- such that that customer remained responsible only for $100,000, as it had been previously, then there would be no impact as a result of the opt-out, on that portion at least?"

And then Mr. Tetreault cuts to the heart of the matter and says:

"Yes, that's fair. Yes, that's fair. Recognizing of course that any type of opt-out for any customer of costs that had been allocated to the -- to any particular rate is violating a fundamental principle of class ratemaking whereby all customers in the class pay the same rates."

And then Mr. Frank speaks of how we will get to that, which no doubt we will.

So as I understand this exchange between pages 126 and 130, which I won't take you through all of, but which you have, APPrO appears to take the position that DSM is, in essence, a service and that customers should be able to opt out of the service at their own volition, just as they can opt out of the provision of other services.

Such a position does not recognize that DSM is part of Union's distribution service to customers, which is a cost that has been allocated to the rate class.

That type of opt out violates the fundamental principle of class rate-making whereby all customers in a class pay the same rates. If this is indeed APPrO's proposal, then it is not merely an attack on Union's application, but on class rate-making itself.

Finally, the special treatment that APPrO is seeking for their members is premised on the assumption that they are power generators and that that means they have no conservation savings to be gained by participating in DSM.

If Mr. MacEacheron's evidence is accurate - and I submit that it is - then that premise is false, and I will briefly take you to some of that. It is at tab 16, and it's at page 8, picking up where the black line drops off.

> "And so we have also provided in that interrogatory response a list of project applications, and you can see the list below. There's 18 on that. The list could be much bigger than that, but we boiled it down to those 18 applications. And the first one you can see here is steam system upgrades, repair and maintenance, condenser optimization. So you can see that there are a number of programs that we can deliver to power generation customers.

"I would like to pause there for a second, because the notion created by the statement -- and Navigant repeats it more than once in their evidence -- that our programs don't fit with gas-fired power generators, I would like to clarify.

"A gas-fired power generator takes natural gas and burns it in a gas turbine, and that produces electricity. It turns a generator and produces electricity. Roughly about 35 percent efficient.

"They then capture the waste heat out of the -- from the exhaust of the turbine. They put that into a waste heat recovery steam generator, and they make steam. And they use that steam for one of two purposes.

"One, to put it in a steam generator and make more electricity, and thereby increase the electrical output of the facility and with the same unit of energy.

"Or they take that steam and they give it to a host site for steam application, typically an industrial site, commercial building, what have you.

"So that steam portion of a gas-fired generator's plant is identical to any steam system, high-pressure steam system that you would find in a large-volume industrial plant."

And so I won't go on and read all of that, but I just remind you of his evidence on that point.

So at this point -- oh, I should -- also, before I leave APPrO, I wanted to speak of the survey. And we had some questions today about privilege and about professional responsibility, and I have no doubt you have very little interest in watching me trying to cut that Gordian knot. I am not interested in it.

All I am interested this is the fact that that sort of cluster of claims, I am going to call them, I think reduces the weight that you should place on the survey. I just think one has to do so much work to pierce through it, and, if you want something, come to the Board and ask. That is my submission. I don't propose to spend any more time on it than that.

So moving on to GEC's two-year proposal, Mr. Neme suggests that for 2013-2014 Union should extend the time line for the T2 Rate 100 direct access program from one to two years.

This suggestion appears to be informed by a desire to enhance program flexibility for customers and to encourage larger projects that Mr. Neme believes will lead to larger reductions.

These are laudable goals. Union has not and will not dispute Mr. Neme's credentials. Union does not dispute that Mr. Neme is an informed commentator on these issue who has an interesting theoretical perspective that is worthy of thoughtful consideration.

Accordingly, Union carefully considered Mr. Neme's report and his recommendations of extending the program to

Ontario

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BEFORE: **Paula Conboy** **Presiding Member**

Marika Hare **Member**

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2

Ontario

ONTARIO ENERGY BOARD

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	Marika Hare	Member

customers opted out. Was that the assumption made?

MS. LYNCH: Our expectation is that the overall budget would remain the same, and the incentive piece would be reallocated for customers who opted out.

MR. FRANK: Okay. But if the Board so directed, there would be no impediment to removing prorated amounts for customers who opted out, based on an appropriate formula?

MR. TETREAULT: If the -- yeah, if the Board ordered us to reduce the DSM budget in rates for a particular class, we would do so. There's no impediments to that, from a mathematic standpoint.

MR. FRANK: Thank you.

And I understood you to say earlier -- I believe it was you, Mr. Tetreault -- that if that was removed, that would remove the main cross-subsidy cost?

MR. TETREAULT: Yes. When I was referring to earlier in the cross from CME was the fact that if -- and in her example -- there was one customer remaining in the class, that customer would pay -- would pay all the DSM costs allocated to that class at that point.

MR. FRANK: Right. But if the incentive piece was removed -- the $900,000 in that example -- such that that customer remained responsible only for $100,000, as it had been previously, then there would be no impact as a result of the opt-out, on that portion at least?

MR. TETREAULT: Yes, that's fair. Recognizing of course that any type of opt-out for any customer of costs that had been allocated to the -- to any particular rate class, is violating the fundamental principle of class ratemaking, whereby all customers in the class pay the same rates.

MR. FRANK: Well, we will certainly get to that argument but, again, the question remains: From a rate impact perspective, that if the Board so ordered, the incentive piece could be removed; correct?

MR. TETREAULT: Yes, it could.

MR. FRANK: And I take it if there were fewer customers within a rate class that were being served by a DSM program, that Union could take steps to adjust its overheads, determining whether the number of personnel involved, it was appropriate that they stay the same, or other overhead costs, there is no impediment to that, is there?

MR. MacEACHERON: You know, that is an interesting question, because if there is an opt-out provision, I guess it implies that there is an opt-in provision, and therefore what resources do we maintain to serve the customers in that rate class?

And in customer consultation sessions, I heard the comment: Well, if there is an opt-out provision, heck, I'll opt out this year because I'm not planning on doing anything, and next year I'm going to opt in.

And to that, we said: Whoa, what if everyone took that approach? What would we have to offer in the next year?

And the customer said: Well, you know, in this case

Jay Shepherd
Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

February 5, 2013
Our File No. 20130337

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0337 – Union Large Volume DSM Plan – SEC Submissions

We are counsel for the School Energy Coalition. In accordance with Procedural Order #4 in this proceeding, this letter constitutes the SEC's submissions in this matter.

Background

SEC was actively involved in the consultations and discussions leading up to this Application. However, it became clear once the Application was filed that between the environmental groups, the large customer groups, and the utility, a full record would be established, and that SEC could not add significant value to that process.

That having been said, SEC is vitally concerned with the direction this proceeding has taken, for two reasons:

- Schools have generally been early adopters of conservation measures, and so today find themselves in a similar position to many large customers, having already implemented many of their potential DSM projects, and yet continuing to support through rates the DSM efforts of others who have lagged behind.
- Each of the active parties in this proceeding is seeking to push the Board's DSM policies in a new direction, after the Board has only recently done a review of those policies.

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These factors cause us to make submissions on some of the issues that have been raised.

The Utility DSM Business Model

Boiled down to its essence, the position of the large users, and in particular the power producers, is that they no longer need utility DSM (if they ever did, some would say). They are sophisticated users of energy, and are able – on their own - to identify and implement all cost-effective opportunities for energy savings. The average incentive of 6.28% of project cost is not sufficient to warrant the costs borne in rates for DSM.

It is important to note, though, that this is not an argument against DSM. It is against mandato utility-provided DSM. The APPrO opt-out approach, for example, essentially treats DSM as a part of the utility service that should be offered on an unbundled rather than a bundled basis.

The Applicant proposes a type of compromise, in which a customer can, in effect, opt out but with a precondition. The customer must identify and implement cost-effective energy savings sufficient to use up the 68% of their DSM in rates that would otherwise go to incentives to others. If they do, they can get the money they paid back, so that for all practical purposes they have opted out.

In our view, unbundling DSM goes beyond the Board's current DSM policy framework. Considering that change in isolation in this proceeding is, it is submitted, too narrow a perspective for a potentially far-reaching policy change.

This brings us back to schools. If a large industrial customer can opt out of paying DSM in rates, there is no reason to say that a school board – equally sophisticated in its energy use, perhaps even more so – should not have the same option. The same would be true of a university, or a municipality, or a restaurant chain, or any number of other customers with similar ability to look after their own conservation planning.

Similarly, if any of those customers would have the right to unbundle the DSM component of the service, why not the knowledgeable landlord, or the individual homeowner with an energy-efficient home?

The point is not to consider these issues in this proceeding. The point is that the proposed changes to DSM for large users should be considered within that broader policy context, rather than in isolation. If the Board is going to go down the road of unbundling the DSM service, that step should be taken with a full review of the issues unbundling necessarily raises.

It is therefore submitted that the APPrO proposal should not be approved in this proceeding. The Applicant's proposal, i.e. the self-directed DSM account, should be approved only as a type of pilot project, to see how unbundling would work in a limited scenario.

In SEC's view, Union and Enbridge will be before the Board no later than the end of this year, considering the policy direction of their next three-year plans. That is the time at which a review of the mandatory nature of ratepayer payment for DSM programs should be put on the table.

The Two-Year Proposal

SEC has long believed that allowing multi-year planning and program implementation would improve the DSM results in Ontario. The study, assessment, decision-making and implementation cycle of most large organizations – including both large industrials and schools – is too long to fit within the annual planning and target window utilities use. The movement to multi-year plans has helped in that regard, but there is still an annual reward, meaning that there is still a bias to the short-term rather than the long term.

GEC has proposed a variation on the Applicant's self-directed DSM accounts that would allow a two-year period to use the accounts. In our submission, adding the two-year potential is appropriate in the context of a pilot project.

Changes to the Targets and other Rules

We have had an opportunity to review the submissions of GEC, and we support both their rationale and conclusions on the following issues (topics as listed in their submissions):

Maintaining a 15% DSMVA for T2/Rate 100

Moving the T1 Rate Class into the General Resource Acquisition Budget

Pegging 2013 Metrics to 2012 Program Performance

Pegging 2014 Metric to 2013 Performance

30% Savings Reduction for Direct Access Program

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

Customer DSM Budget Spending Metric

Allocation of Weights between T1 and T2/Rate 100

Budget Increase

Environmental Defence has proposed an increase in the DSM budget for the large user classes. It is common ground among all parties that there remains much cost-effective DSM to be procured in Union's territory, whether from large users or from others. No-one disputes this.

Environmental Defence uses this fact to argue, in effect, for unlimited DSM spending to obtain all cost-effective DSM. This is neither practical nor realistic. It makes no sense for the utility or the Board to ignore rate impacts in the pursuit of DSM.

The Board has recently established a policy balance between aggressive DSM and rate impacts. All views were debated and considered, including the view now being proposed by Environmental Defence in this proceeding. Nothing in the evidence in this proceeding suggests the policy balance established by the Board is no longer appropriate.

Conclusion

We hope these submissions are of assistance to the Board.

SEC has endeavoured to participate in the process for the Union 2013-14 DSM Plan in an efficient and cost-effective manner, with a view to assisting the Board. We ask that the Board order payment of our reasonably incurred costs to do so.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties

EB-2012-0337

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 2012 to 2014 Demand Side Management Plan.

Submission of the Building Owners and Managers Association - Toronto

Introduction

This is the submission of the Building Owners and Managers Association - Toronto ("BOMA") related to the Union Gas Limited ("Union") application seeking approval of its 2013-2014 Large Volume Demand Side Management Plan). Although this program only impacts customers in rate classes 100, T1 and T2, BOMA is making these submissions on matters of general principles.

BOMA is headquartered in Toronto, but it represents members across Ontario except for those Ottawa building owners and managers who are members of BOMA Ottawa. BOMA members who are customers of Union are served primarily through rates M1, M2 and M4. This program is not expected to have any direct rate impact on BOMA members. However, BOMA is seriously concerned about the "slippery slope" that would be created if suggestions by some intervenors such as the Association of Power Producers of Ontario ("APPrO") and the Industrial Gas Users Association ("IGUA") are acted upon by the Board.

The slippery slope in question is that these suggestions would undermine Natural Gas Demand Side Management ("DSM"), Electricity Conservation and Demand Management ("CDM"), and contradict the Ontario government's policy with respect Greenhouse Gas Emission Reductions. These are areas of great interest to BOMA members who participate in DSM and CDM and take pride in their efforts to reduce Greenhouse Gas Emissions through the BOMA BESt Program a national program launched in 2005 by BOMA Canada to address an industry need for ***realistic standards for energy and environmental performance of existing buildings based on accurate, independently verified information.***

It is BOMA's strong belief that utility DSM and CDM programs and its own BOMA BESt program are complementary and work best in harmony. Even though energy and environmental management are increasingly important to our members, DSM and CDM programs are important spurs to actions and serve to keep the consideration of efficiency improvements top of mind for our ***building managers*** and often utility staff help them make the business case which change our ***owners'*** decisions. It was for this reason that BOMA Toronto stepped up to the plate to deliver CDM to its members on contract to the Ontario Power Authority in advance of the *CDM Code for Electricity Distributors* issued by the Board in 2011.

BOMA's Submission: Union's application should be approved as filed.

- Union has listened well to its large industrial customers with respect to the need for predictability in rates, a matter that BOMA firmly supports. Union has developed an innovative approach to respond to these concerns that is fully consistent with the Board's Guidelines and will address the problems experienced with the significant rate impacts of the Shareholder Incentive for stellar performance in 2011.

- While GEC's suggestion for a two year approach may ultimately be a step in the right direction, Union should have the opportunity to work through the program logistics as it has currently planned for this year given that the year has already begun. BOMA accepts the scheduling impacts noted in Mr. Smith's Argument in Chief. Union may then wish to find a more sustainable approach to the "use it or lose it" deadline once both Union and its customers get accustomed to the new energy management planning framework. BOMA is concerned about the integrity of internal management practices, but also recognized that time limited offers can spur action and move conservation projects up higher in a list of priorities.

- BOMA's experience also recognizes that good conservation practices involve continuous improvement, benchmarking, equipment replacement and third party verification of results. To date, DSM has predominant focused on equipment replacement and third party verification of engineering estimates of savings. Increasingly, both Union and Enbridge are broadening their approach. To this end, Union may want to build in more flexibility for customers in the future, with longer term approaches – such as 5 year energy management plans with annual benchmarking and increased certainty on levels of funding for the programs generally and for customer incentives specifically.

BOMA does not support opt out provisions

- Clearly large industrial DSM yields the biggest bang for the buck among the various sectoral DSM programs. With an 8.1 to 1 ratio of benefits to costs, it is critical to remember that these benefits are total societal benefits even before environmental externalities are factored in. Ontario would lose these net benefits which already include an assessment of free riders.

- Union's increasingly higher participation rates among its largest customers clearly point to the value of the programs – all elements of the programs, not just incentives.

- Even the Navigant survey indicated support for opting out diminished significantly when a requirement for third party reporting, measurement and verification was included. Note that BOMA BESt includes third party verification in addition to BOMA members supporting individual utility monitoring and verification. Again, third party verification was a must have element for BOMA's electric CDM program delivery.

- An element of government policy recognized by the Board's own renewed regulatory approach is that distributed generation will increase in importance in Ontario. BOMA asserts that combined heat and power (CHP) is in fact both a distributed source of generation, but also a significant improvement in generation efficiency, and therefore a conservation initiative of its own. The evidence in this case notes in numerous instances that state of the art stand-alone gas generators are about 35% efficient. CHP can improve that number to 80 to 90%. Any opting out provision based on the fact that the customer is also a generator could result in significant rate burden on the remaining non-generating customers, particularly as policy and regulatory direction will make it easier for customers to become generators.

- BOMA is concerned that the APPrO witness supporting an opting out provision does not have a formal energy management plan:

  MR. POCH: Have you done a formal study or had -- of energy efficiency options at different -- with different paybacks? Or is this just something you do on a kind of an ad hoc basis?

  MR. RUSSELL: It's on a continuous, ongoing basis. We have not undertaken a formal energy audit.

  MR. POCH: All right. And nor have you had an independent audit, I take it?

  MR. RUSSELL: No.

  MR. POCH: It goes without saying.

- BOMA suggests that if the Board wishes to consider allowing natural gas generators to opt out of DSM programs that they have been participating in since 1997, it may need to include conservation planning, reporting and benchmarking requirements as a condition of a generator's license. However, this might require additional oversight by the Board in ensuring compliance and duplication of resources and competencies with natural gas utilities at significant cost.

BOMA does not support arbitrary changes in DSM Budgets.

- BOMA did not support the apparent freeze on DSM budgets implied by the guideline. While the legal impact of the guidelines on this matter has been clarified by Board Counsel, for the same reason, BOMA does not support a Board driven increase in Union's submitted budget.

Union's long standing experience in delivery of DSM has informed its current budget request. However, the Board must clearly signal to all natural gas utilities that reasonable increases in DSM budgets are acceptable. The reason for this is evident in the following dialogue beginning on Page 83 of the transcript for January 31, 2013 between Mr. Wanless and Ms. Lynch:

> ***MR. WANLESS**: And then I want to do a brief comparison with other conservation programs. I would direct you to tab 2. This tab contains excerpts from the Environmental Commissioner of Ontario's year 2011 report on energy conservation. The title is **"Restoring Balance: Results Annual Energy Conservation Progress Report 2011."** I would direct you to page 12, which at the top has a table showing the portfolio of OPA programs and outlines their cost-effectiveness. And according to table 13, OPA's industrial energy conservation program has a TRC benefit-cost ratio of 2.98 to 1.0; is that correct?*
>
> ***MS. LYNCH**: I see that on the page in front of me.*
>
> ***MR. WANLESS**: So therefore you would agree that Union's industrial DSM programs are 2.7 times more cost-effective than OPA's industrial energy conservation program? Would that be fair?*
>
> ***MS. LYNCH**: Based on the numbers in front of me.*
>
> ***MR. WANLESS**: And according to that same table, the average TRC benefit-cost ratio of all of Ontario's electric conservation programs is 1.23 to 1.0, is that correct, according to that table?*
>
> ***MS. LYNCH**: I see that number on this table.*
>
> ***MR. WANLESS**: Okay. So doing quick math again. Union's industrial DSM programs are 6.7 times more cost-effective than the average electric conservation program; is that correct?*
>
> ***MS. LYNCH**: Based on the numbers that have been presented here.*
>
> ***MR. WANLESS**: Okay, thank you. I would direct you to page 13 under that same tab and specifically to figure 5. And according to this figure, natural gas provides Ontario consumers with 35 percent of their energy needs, whereas electricity provides them with 19 percent; is that correct?*
>
> ***MS. LYNCH**: Yes, based on the numbers in this report.*
>
> ***MR. WANLESS**: Okay. And what that means is natural gas is providing us with almost twice as many petajoules of energy as electricity; correct?*
>
> ***MS. LYNCH**: According to this table.*

MR. WANLESS: And, again, I would ask you to turn back to page 10. Again, according to this report, in 2011 Ontario's total electric and gas utility conservation budgets were 270 million and 55 million, respectively; is that correct?

MS. LYNCH: Yes, based on this report.

MR. WANLESS: And, again, doing quick math, the electric utilities' conservation budgets were almost five times greater than the combined conservation budgets of Enbridge and Union Gas; is that correct?

MS. LYNCH: Yes, based on the numbers here.

BOMA submits that some evidence submitted by APPrO is somewhat misleading:

- BOMA shares the sentiments of some intervenors about the validity of the survey given that its scope dealt primarily with opting out rather than ascertaining the degree of acceptance of its members with respect to the Union plan. The survey response rate does not support APPrO 's contention that this of great concern to its members. In fact, the Board should note the large number of projects submitted by APPrO members to the program.

  MR. POCH: All right. We heard at page 12 of yesterday's transcript, in Union's chief, that they have in the last three years provided incentives for some 60 projects amongst energy generators worth -- $700,000 worth of incentives.

- BOMA would also like to draw attention to a potentially misleading analysis with respect to comparing incentives to total capital costs – a more instructive analytic would be comparing the incentive to the incremental cost of the project associated with higher efficiency equipment which would be much less than the total capital cost of the project.

  MR. ZARUMBA: ...Looking at this in round numbers, we were talking $1 million of capital investments with roughly a 3 percent incentive.

- BOMA suggests that good DSM programs may not influence the timing of major projects, but can definitely influence the efficiency aspects of such major projects, a tenet that even APPrO' s witness holds to be true. (Page 43, February 1, 2013)

  MR. POCH: That in the real world, companies have capital stock turnover occasions. They have maintenance schedules, as you have said, minor ones, major ones, and that an effective DSM program is one that tries to intervene on a timely basis, timely in light of what the customer's activities are, because if you miss the window of opportunity like that, you might have missed the opportunity for efficiency for many years until that capital item gets changed over again or gets maintained again, what have you?

  MR. ZARUMBA: That I would agree with.

RP-2003-0063
EB-2004-0542

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 for an order or orders amending or varying the rate or rates charged to customers under the M16 rate schedule.

BEFORE: Paul Vlahos
Presiding Member

Paul Sommerville
Member

Pamela Nowina
Member

DECISION WITH REASONS

May 19, 2005

focused on the firm transportation component east of Dawn, as Tribute's prospective Tipperary storage pool would be served under this part of the proposed revised M16 rate schedule.

The thrust of the evidence of Messrs. Knecht and Fisher sponsored by Tribute and Tribute's submissions is that independent embedded storage is the new frontier in the natural gas market in Ontario and, as such, it should be supported by cost allocation and rate setting principles or arrangements that may depart from those applicable to other users of Union's transmission system. According to Tribute, independent embedded storage providers should not be viewed in the same manner as any other customer classification; rather they should be viewed and treated as competitors to Union's own storage activities and as an enterprise that enhances the reliability of the natural gas system in Ontario. Tribute also grounds its position on the Board's recently released report entitled *Natural Gas Regulation in Ontario: A Renewed Policy Framework* resulting from the Natural Gas Forum.

What Tribute in effect is seeking from this Panel is special status. Union and other Intervenors opposed such treatment for Tribute. True Oil, a potential storage developer, adopted Tribute's position.

Over the years, the Board has had many requests for special status for a customer group or a customer. The Board has been consistent in its response to such requests by adhering to its established principles in dealing with cost allocation and rate setting. Principled ratemaking involves the creation of a unified and theoretically consistent set of rates for all participants within the system. It begins with the establishment of a revenue requirement for the regulated utility and proceeds to design rates for the respective classes according to well-recognized and consistent theory respecting such elements as cost allocation. This is an objective and dispassionate process, which is driven by system integrity and consistent treatment between consumers on the system. Principled ratemaking typically does not involve a ranking of interests according to a subjective view of the societal value of any given participant or group of participants. This approach is not unique to Ontario. A departure from these principles should only be undertaken where the evidence and all other circumstances outweigh the inherent virtue of an objective process.

In the above referenced report resulting from the Natural Gas Forum, the Board raises a number of matters regarding storage. The Board intends to proceed to explore the

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direct, so I don't think it answers the question fully, but it is an explanation where Mr. Russell says at line 12:

"I think it can most be most simply put as London District Energy was not fully aware of the full cost of the incentive payments in the various accounts and as they would be impacting our operating budgets."

And while the point is a very fair one about the fact that Mr. Russell didn't discuss with the author, there certainly could be questions about LDE's position and how it may have changed over time. And LDE was the one who was -- Mr. Russell was here on behalf of LDE and was prepared to answer any and all questions about that.

I thought I would just turn to some submissions about why arguments against opt-out, in APPrO's view, are not supportable. And just to give a little bit of road map there, it would be my submission that the opt-out program does not violate class rate-making principles as suggested by Union.

It's consistent with and supported by the Board's findings about the non-mandatory nature of the program now and whether it is necessary or appropriate for utilities to provide and ratepayers to fund services that are widely available through the market. And I will come to that.

And I would submit that the better analogy for this type of service now is towards other services which have been unbundled, and which are not core to the distribution activity and which the distributor is able to effectively

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	Paul Sommerville	**Member**
	Karen Taylor	**Member**

And so notwithstanding that the guidelines said that they weren't mandatory, they'd have to be justified, it was determined that it would be appropriate to have a portion of the budget allocated to that, and that was ultimately approved by the Board.

MR. MONDROW: Madam Chair, if I could just respond to your question before you move on, with your leave.

What the guidelines say, as Mr. Crawford has referred to, is that large industrial DSM programs are no longer mandatory. Now, the meaning of that phrase may be subject to some debate. It may be, for example -- and I can't speak for Mr. Wolnik directly, but it may be that he or APPrO would take the position that the phrase "are no longer mandatory" would encompass an opt-out concept, which is different from "no longer mandatory for the utility to provide". And, you know, I don't know what position they'll take, but it seems to me that that is open for argument, at least.

MS. HARE: Well, as you know, it is a policy, so the three Board members here are part of that policy development, and I can tell you, it didn't -- it did not include the definition that it might be allowed for customers to opt out. That's not what we put our mind to. Not to say that that couldn't be an issue raised, but that's a very different concept than what was meant in the policy.

MR. MONDROW: Fair enough. Those comments will be instructive to Mr. Wolnik and I. Thank you. [Laughter]

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Ontario Energy Board

Commission de l'Énergie de l'Ontario

Ontario

EB-2006-0021

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

AND IN THE MATTER OF a generic proceeding initiated by the Ontario Energy Board to address a number of current and common issues related to demand side management activities for natural gas utilities.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Vlahos
Member

Ken Quesnelle
Member

DECISION WITH REASONS

August 25, 2006

The Board is satisfied that the Financial Package proposal sets reasonable TRC targets for the utilities. The Board notes that the formula used to derive the targets in years two and three of the plan is self adjusting to account for actual performance in the previous year. The Board finds this formula to be preferable to setting the targets for all three years in advance.

The Board notes that the target for Union in year one of the plan will actually be lower than its Board approved target for 2006. The Board heard evidence from Union that the TRC target for 2006 had been set at a level that it will not attain. Union indicated that according to its current projections for 2006, the company will likely achieve TRC savings in the range of $170 million (on a target of $216 million). The Board accepts Union's evidence in this regard, and finds that a target of $188 million in year one of the three-year plan is reasonable.

On what basis should the DSM program spending be targeted amongst customer classes? (Issue 1.7)

The Financial Package agreement makes the following proposal:

> "Parties acknowledge that EGD's and Union's rate classes and customer needs are not identical, and hence it is not appropriate to restrict spending based on a rigid formulaic approach by rate class. The Utilities acknowledge and accept the principle that their portfolio of DSM programs should provide customers in all rate classes and sectors with equitable access to DSM program(s) to the extent reasonable, and that this principle must be balanced and consistent with the principle of optimizing cost-effective DSM opportunities. To the extent that a proposed multi-year plan proposes DSM sector (ie. residential, commercial, or industrial) level spending that is significantly different than the historical percentage levels of spending in those sectors, the utility will provide its explanation for this in its proposed multi-year plan. Parties may challenge any such

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We have some sympathy for the position of APPrO and what we've heard from their witnesses. Generally, however, we don't support an opt-out proposal. And rather than take a lot of time explaining to you why, generally I can just say we adopt the position of Union in this matter. And indeed, I read through LPMA's written submissions on this and would adopt those as well.

So I don't have anything more to add on that topic. I am happy to answer any questions you may have, but subject to that, those are my submissions.

MS. CONBOY: Thank you. We have no questions of Board staff.

Mr. Crane, I believe you are -- oh, sorry, Mr. Frank, I believe you are next.

CLOSING ARGUMENT BY MR. FRANK:

MR. FRANK: Thank you, Madam Chair.

So a brief road map of where I plan to go. A small comment on the context for Union's application, and then some submissions on why, in APPrO's view, opt-out for the DSM program is appropriate, particularly in regard to power generators.

And under that, I thought I would touch on experience from other jurisdictions which supports opt-out; the fact that DSM has had and has a disproportionately negative impact on power generators in particular, and the evidence of that; why, in our view, DSM is simply not necessary as it applies to gas-fired power generators; again, evidence that power generators want the right to opt out; and why, in APPrO's submission, the arguments against opt-out are not supportable.

I thought I would then briefly respond to a few submissions from -- that were made today, in particular by Environmental Defence, and let the Board know APPrO's position on certain proposals by Union and other intervenors.

So what is APPrO asking for? It's participated in the proceeding on behalf of the large gas-fired generation membership to request an option. In other words, it is not that all customers would necessarily opt out, but an option to opt out; in other words, to decide to take the program and pay for the services Union offers and have eligibility for incentives, or to decide not to.

Why? Why does APPrO say that? Well, you've heard, and you have heard evidence that the DSM program, which is really there to foster conservation activity, is simply not necessary to educate gas-fired power generation customers.

We've heard evidence that they are effectively mandated by the nature of the industry to actively seek out and implement energy efficiency projects on their own.

We've heard evidence about the technical expertise that is in-house with these customers to assess and to execute energy efficiency projects on their own.

I will also take the Panel to the evidence about the extreme and disproportionate negative impact on power generation customers.

And finally, I note that the program does not lead to

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to note that at the end of the day I think it is fair to say that a proper reading of that demonstrates that non-mandatory participation in DSM in the rest of Canada and in the U.S. ultimately is more the norm for large gas-fired generators than otherwise.

Union itself has identified six opt-out jurisdictions in the U.S., but in fact most jurisdictions have gas-fired generators who can connect directly to interstate pipelines which have no DSM programs or a special rate class.

We've heard that Alberta does not have DSM programs for generators, and even Enbridge does not have a DSM program for generators who are in Rate 125.

I also think it is important to consider the impact that the program is having on power generators, and although I am loathe to run too many numbers I think there are some that bear specific review and consideration and, in particular, the results of an answer to an undertaking that came from Union.

In particular, we've heard that over the past three years 60 programs were undertaken regarding generator-related DSM projects, and that the generators received for the projects funding -- totalling $700,000, and that is found in the APPrO compendium at tab 3. And perhaps we should mark that as an exhibit.

MR. MILLAR: K3.2.

MS. CONBOY: Thank you.

EXHIBIT NO. K3.2: APPRO COMPENDIUM

MR. FRANK: We don't have to turn up tab 3, but if I

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these, but I will run them by you, in any event.

I think I heard you indicate earlier during your testimony that power producers in Enbridge's service territory do not pay into DSM. Did I hear that correctly?

MR. ZARUMBA: Yes.

MR. MILLAR: I think your microphone is off, sir.

MR. ZARUMBA: My apologies. The answer to that question is yes.

MR. MILLAR: And I believe -- I think you were here yesterday. I think we heard the same thing from Union's witnesses or maybe elsewhere in the evidence.

But just to follow up on that -- and, again, I don't know how familiar you are with Enbridge's service territory and its rates, but it is my understanding that most power producers in Enbridge's service territory are in what they call Rate 125. Are you familiar with that?

MR. ZARUMBA: Not really.

MR. MILLAR: Okay. Whatever rate they're in, it is my understanding that that rate, that entire rate, does not pay DSM. In other words, it is not an opt-out in Enbridge's service territory. It is simply that that entire rate class does not pay into DSM or get DSM programs.

Do you happen to know if that is correct?

MR. ZARUMBA: I don't know for a fact that that is correct, but that would seem reasonable, and that is actually very consistent with the results of several jurisdictions in our survey.

MR. MILLAR: Okay. As far as you know, Enbridge doesn't have an opt-out. The reason power producers there don't pay for DSM is because that class is excluded. Does that match your understanding?

MR. ZARUMBA: Yes.

MR. MILLAR: Okay. As I understand it, some power producers in Enbridge are also in Rate 300, which similarly doesn't pay into DSM at all. I take it you don't happen to know the ins and out of Enbridge's rates, though?

MR. ZARUMBA: No, I would not purport to be an expert in that area.

MR. MILLAR: Thank you. Those are my questions, Madam Chair.

MS. CONBOY: Thank you very much. Mr. Smith.

CROSS-EXAMINATION BY MR. SMITH:

MR. SMITH: Thank you.

Good afternoon, panel. Could I ask you to turn to page 2 of the Navigant report?

MS. CONBOY: Thank you.

MR. SMITH: The paragraph that begins "for large natural gas customers", do you see that paragraph?

MR. ZARUMBA: Yes.

MR. SMITH: Thank you. Do you see there is a sentence that says, and I quote:

> "In fact, 86% of APPrO members surveyed indicated that they had an existing energy management program in place."

My question is about that sentence. Does Navigant

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To begin, I will just give you a brief road map for where I intend to go with respect to IGUA's final submissions.

I will comment very briefly to start off on opt-out. Secondly, I will set out IGUA's position as it relates to GEC's proposal to move the T1 rate class into the general resource acquisition budget. Thirdly, I will comment upon GEC's proposal to revive the 15 percent DSMVA variance for the rate T2 and R100 classes. Fourthly, I will comment on GEC's proposal for a multi-year direct access plan. Fifthly, I will comment on GEC's proposal that targets be set on the basis of a three-year rolling average approach. And finally, I will comment upon, generally speaking, the positions of Environmental Defence.

Taking you to my first issue on opt-out. IGUA takes no position on opt-out, so my submissions will be very brief. It takes no position, save and except that if opt-out is to be pursued it is IGUA's position that it be pursued on a rate-class basis and not on a customer basis.

Subject to questions you have on that, I will move on to my second issue.

MS. HARE: Yes. Just to clarify, so you're saying the whole rate class opts -- has no -- not opts, but has no DSM programs? Is that what you're saying?

MR. CRANE: I'm saying that IGUA takes no position on opt-out.

MS. HARE: Right.

MR. CRANE: However, if the Board concludes that opt-out ought to occur, it is IGUA's position that opt-out ought to be applied across an entire rate class and not on a customer basis.

MS. CONBOY: So it is all or nothing, in other words?

MR. CRANE: Correct.

MS. HARE: Okay. So if the Board agrees an opt-out is not really opted out, it means no DSM programs for that rate class.

MR. CRANE: For a particular rate class; that's correct.

MS. HARE: Is that what you're saying? Okay. Thank you.

MR. CRANE: And I think, to be candid, for the very reasons raised by Mr. De Rose, that the remaining -- if it's not done on a rate-class basis, then those remaining in the rate class may be burdened more so on a DSM basis, costs associated with a DSM basis, than they otherwise would if it wasn't done on a rate class basis.

MS. HARE: Okay.

MR. CRANE: Turning now to my second topic. In GEC's proposal to shift the T1 rate class into the general resource acquisition budget, you obviously listened to my cross-examination, and IGUA opposes that proposal.

This proposal, if pursued, would change the maximum overspend within that rate class from 45 percent, which is what Union has proposed, to 100 percent pursuant to GEC's proposal. That's not consistent with rate predictability and rate stability and should not be pursued at this time.

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an increase in energy efficiency programs. And in fact, it's ironic, but because it's so ineffective from a cost perspective, vis-a-vis at least gas-fired generators, it leaves them with less funds and less flexibility to undertake the very energy efficiency programs that the DSM program is intended to promote.

Again, the Board defines the DSM program as a natural-gas demand-side management -- sorry, that natural-gas side demand management is the modification of consumer demand for natural gas.

And in a nutshell, the program, as it is structured, is not and cannot meet that definition of modifying the demand, because of the very nature of the customers we're talking about.

In terms of the context now for Union's application, I would like to note that DSM is not a core distributor activity, and the Board has determined that a DSM program is not mandatory and that this application is to be determined on its merits.

I think that is important. And it is also important to note that the onus is on Union to satisfy the Board of the merits of this application.

All right. Why opt-out for power generators is appropriate. I thought I would first touch on what is done in other jurisdictions very briefly and then run through some of the other points that I highlighted earlier.

I am not going to repeat the evidence about the jurisdictional review that was done by Navigant, other than

to note that at the end of the day I think it is fair to say that a proper reading of that demonstrates that non-mandatory participation in DSM in the rest of Canada and in the U.S. ultimately is more the norm for large gas-fired generators than otherwise.

Union itself has identified six opt-out jurisdictions in the U.S., but in fact most jurisdictions have gas-fired generators who can connect directly to interstate pipelines which have no DSM programs or a special rate class.

We've heard that Alberta does not have DSM programs for generators, and even Enbridge does not have a DSM program for generators who are in Rate 125.

I also think it is important to consider the impact that the program is having on power generators, and although I am loathe to run too many numbers I think there are some that bear specific review and consideration and, in particular, the results of an answer to an undertaking that came from Union.

In particular, we've heard that over the past three years 60 programs were undertaken regarding generator-related DSM projects, and that the generators received for the projects funding -- totalling $700,000, and that is found in the APPrO compendium at tab 3. And perhaps we should mark that as an exhibit.

MR. MILLAR: K3.2.

MS. CONBOY: Thank you.

EXHIBIT NO. K3.2: APPRO COMPENDIUM

MR. FRANK: We don't have to turn up tab 3, but if I

NAVIGANT

Transmission and Distribution Rate Mitigation Measures for Ontario

Prepared for:

The Ontario Energy Board

Ralph Zarumba, Principal Investigator
Navigant Consulting Ltd.
One Adelaide Street East
30th Floor
Toronto, ON M5C 2V9
www.navigantconsulting.com

May 3, 2011

- Rate mitigation often occurs at the end of a rate design process to remedy impacts to certain tariff classes or all customers of the utility. Rarely do jurisdictions embrace a systematic approach with pre-established triggers;

- Mitigation activities often are the function of a settlement process between stakeholders which includes a number of other rate case issues in addition to rate mitigation (e.g. the revenue requirement);

- The establishment of multi-year phase-in periods typically occurs under circumstances where the utility is facing a significant transition, or addition to rate base such as movement from vertical integration to retail access or introduction of large generating system.

Types of Rate Mitigation Mechanisms

Rate mitigation can broadly be defined as an activity to reduce the impact of changes in tariffs, either increases or decreases, to a level that is acceptable from a social, economic and policy perspective. However, the causes of the underlying shifts in the level of revenue requirement occur over different time periods and are the result of different causal factors. Based on these differences, Navigant has identified three categories of rate mitigation applicable to Ontario which is described below.

- ***Long-Run Rate Mitigation Mechanisms*** – Long-Run Rate Mitigation Mechanisms include asset planning and budgeting over of yearly capital projects and the financing of those projects in a manner that provides for their implementation in a least cost manner. A capital intensive industry such as an electric distributor generally plans investments in time frames that spans several years and even decades. Therefore, Long-Run Rate Mitigation is controlled by the management of the utility through their planning and financing processes. Investments are planned over time in manner which balances the system needs with rate impacts;

- ***Inter-Year Rate Mitigation Mechanisms*** – In contrast to Long-Run Rate Mitigation Measures which are typically tied to a specific long life asset and need to be incorporated by the utility as part of its planning and/or financing processes, Inter-Year Rate Mitigation Mechanisms apply to a much shorter time period and are implemented in response to an increase in the utility's total revenue requirement. An example of where this type of mechanism could be applied includes Ontario where the OEB has adopted an Incentive Rate Mechanism (IRM) that follows a three year cycle. The rebasing establishes the first year of the revenue requirement following by 2 years of adjustments which are a function of the rate of inflation, productivity and stretch factors. An outcome of this mechanism is that in many cases, distributors experience significant increases in the rebasing years followed by 2 years of very moderate increases, thus producing a "stair-step" pattern of rates. Using the Ontario example, Inter-Year Rate Mitigation

Mechanisms would smooth the revenue requirement within the 3 year term of the IRM cycle and eliminate the "stair-step" rate pattern;

- *Intra-Year Rate Mitigation Mechanisms* – The OEB uses an embedded cost of service methodology to allocate the revenue requirement to each tariff class. In cases where the revenues to cost ratio trigger significant rate increase or decreases to specific tariff classes, Intra-Year Rate Mitigation Mechanisms will be used to "smooth" these adjustments and avoid abrupt rate changes.

Contents of this Paper

The following sections of this paper elaborate on each of the three categories of rate mitigation mechanisms applicable to Ontario. For each category, examples of specific mitigation measures, experience of other jurisdictions and comments on the suitability for Ontario are provided. The paper also includes a discussion on potential "triggers" which could be used to identify when a mitigation mechanisms should be implemented. Conclusions and recommendations are provided in the last section.

As part of the jurisdictional review, Navigant reviewed mitigation activities which have occurred in other jurisdictions by electric utilities in the past decade. The examples illustrate various approaches to mitigation from a variety of factors ranging from a transition from a vertically integrated market design to a retail open-access design, financing of major reconstruction from storm damage, and, mitigation of rate impacts from the introduction of major construction programs. The results of the jurisdictional review have been inserted into the relevant sections of the paper to provide additio al insights.

- ten provide a self-direct program
- nine do not provide any form of self-direct or opt-out (e.g. California and New York)
- one offers a self-direct and opt-out option

Vermont is the only jurisdiction in the top twenty that provides an opt-out program. The program was established in 2009 as a three-year pilot allowing eligible customers to be exempt from the CRM fee provided that the customer commits to spending an annual average of no less than $3.0 million over a three-year period on energy-efficiency investments. Customers must also demonstrate that they have a comprehensive energy management program with annual objectives and pay a $50,000 fee to participate in the program.

In reviewing the programs offered in other jurisdictions, three factors were determined to be key in designing a successful program for large volume customers:

- credibility of the savings generated from the program;
- level of technical support provided by the program administrator; and
- rate of customer participation in the program.

These factors were considered to be key since Union and DSM stakeholders strongly believe that robust evaluation, measurement and verification are critical to ensuring reliable energy savings are generated. In addition, technical support is valued by Union's customers and participation is critical to the success of the program.

Credibility of Savings

Union and DSM stakeholders have worked together to ensure the energy savings reported through Union's DSM programs are accurate. In 2012, the Board approved Union's Stakeholder

[3] Chittum, A. And Nowak, S. (April 2012). Money Well Spent: 2010 Industrial Energy-Efficiency Program Spending. American Council for an Energy-Efficient Economy, p.7.
[4] Arnaout, M. (December 2011). Natural Gas Efficiency Programs Report, 2010 Program Year. American Gas Association, p.62.
[5] U.S Department of Commerce; "2010 Census Population Profile Maps"; http://www.census.gov/geo/www/maps/2010_census_profile_maps/census_profile_2010_main.html

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MR. MILLAR: K3.2.

MS. CONBOY: Thank you.

EXHIBIT NO. K3.2: APPRO COMPENDIUM

MR. FRANK: We don't have to turn up tab 3, but if I

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Marika Hare **Member**

could ask the Panel to turn to tab 4. This is an answer to the undertaking about the total amount that these generators who received $700,000 in funding have received over the three-year period.

I don't need the Panel to do too much math too quickly, but one can see that the numbers in each of the years are in the -- sometimes in the millions of dollars, or near millions.

And the total, if I could -- and the first page is Rate 100, and the second page is rate T1 -- the total is $9.448 million.

Now, I will acknowledge we should remove, for example, the LRAM costs, which would lower that amount to about $9.1 million. But let's talk about a stark number. $700,000 received in funding by generators who paid over $9 million in three years. That's eight cents on the dollar. And that's why I say the hugely disproportionate negative impact of the program on power generators.

I will come to it later on, but just for the context, the other important point about the $700,000 in funding -- and I will take the Panel to the specific evidence on this -- the additional costs that those generators had to obtain capital to fund those actual programs was an additional 12-1/2 million dollars. So, in other words, the projects cost approximately $3.2 million, of which $700,000 in funding was received.

And what that demonstrates is approximately 5-point-something percent in funding, which is similar to Union's

to receive customer incentives for projects and studies from the aggregate pool of budget available throughout the program year. This is consistent with Union's program approach in 2012 for these customers and the DSM program structure in Union's bundled contract rate classes that serve other similarly sized customers.

6.7 Program Duration

All Program offerings in the Large Volume Rate T1/Rate T2/Rate 100 Program will be delivered annually over the course of the two year DSM Plan. The offerings may change should market conditions change over the course of the Plan.

6.8 Cost Effectiveness

The estimated Total Resource Cost ("TRC") cost effectiveness for Union's Large Volume Rate T1/Rate T2/Rate 100 Program is displayed in Table 7. The actual cost effectiveness will be reported in Union's Annual Report for each program year.

Table 7: Large Volume Rate T1/Rate T2/Rate 100 Program Cost Effectiveness

Measure	Participants	Total TRC Benefits	Total TRC Costs	Total Net TRC Before Program Costs	TRC Ratio
Large Volume Offerings (Custom)[1]	41	$ 188,260,716	$ 22,056,635	166,204,080	8.5
Total		$ 188,260,716	$ 22,056,635	$ 166,204,080	
		Promotion Costs	$ 100,000		
		Administration Costs	$ 906,511		
		EM&V Costs	$ 40,000		
		Program Total Net TRC		$ 165,157,569	
		Program TRC Ratio			8.1

1. TRC Benefits and TRC Costs based on 3 year historical (2009-2011) average of Rate T1/Rate 100 custom results

now. The ability for our plant personnel to have access Union's DSM engineering expertise is a positive feature associated with Union's DSM program. So while the program has a cost, it does offer significant value that we do not want to lose.

- Union has made positive changes to make the DSM program more flexible and customers who participate today have more options. Suggest that Union maintain or improve DSM program flexibility where possible. The need for program rules and structure needs to be balanced with making it work for large volume customers.
- Appreciation expressed for Union Gas DSM engineering resources. It was mentioned that these resources make it easier to participate in the program. For example, your engineers identify the opportunity, provide tech engineering support to develop projects and submit reports for us.

Program Participation/Structure:

- Plant managers have been running their plants for many years and would be doing energy efficiency projects without Union Gas involvement.
- Q. How many energy efficiency programs would have been completed without Union's assistance? Would customers have done this work without Union involvement?
    - ANS – As part of our program 56% of all natural gas savings claims are deducted and not included in our lifetime savings metric. This 56% "Free-rider" offset is included to recognize work that customers initiate without Union Gas involvement.

Miscellaneous:

- Q. If Union's DSM program is successful and customers are realizing significant natural gas savings, would Union's volume throughput forecast for R100 customers decline?
    - ANS – Yes, throughput could decrease in any rate class if the DSM program is successful.
- Q. So if Union's revenue requirement remains the same, and volume throughput decreases, will Union be asking for a rate increase?
    - ANS – Typically growth helps to dampen the impact of DSM driven volumetric decreases.
- Q. So, there's an indirect cost associated with the program being successful over time, the R100 rate would increases over time, is this correct?
    - ANS – Using history as a guide, the impact on rates associated with energy efficiency is not as significant as the impact associated with plant closures. To the extent that energy efficiency activity helps to maintain the cost competiveness of a business it is aligned with keeping plants in business and avoiding closure. Growth also serves to balance the impact of energy efficiency.

UNION GAS LIMITED

Undertaking of Mr.MacEacheron
To Mr. Frank

Please provide total project costs funded by customers.

The incremental project cost funded by power customers for 2009-2011 is $12.540 million.

UNION GAS LIMITED

Answer to Interrogatory from
Industrial Gas Users Association ("IGUA")

Reference: Ex. AfTI/p.9, Table 1

Please provide a table which includes the following information, by year from 2008 through 2012, for each of Rate T1 and Rate 100:

a) DSM costs included in rates (but excluding low-income costs for 2012).

b) LRAM amounts.

c) Shareholder incentive amounts.

d) DSMVA amounts.

Response:

Please see Attachment 1.

Filed: 2012-10-25
EB-2012-0337
Exhibit B6.2
Attachment 1

UNION GAS LIMITED
Rate Class Impacts of DSM
2008 to 2011 Actuals and 2012 Forecast
($000's)

Line No.	Particulars	Direct DSM in Rates	Indirect DSM	DSMVA in Deferrals	Audited SSM in in Deferrals	LRAM in Deferrals	Total
		(a)	(b)	(c)	(d)	(e)	(f) = (a+b+c+d+e)
	Rate 100						
1	**2008** (1)	1,521	264	(241)	2,988	(8)	4,523
2	**2009** (2)	1,699	264	254	1,714	46	3,977
3	**2010** (3)	1,896	264	541	1,735	66	4,502
4	**2011** (4)	2,112	264	(1,278)	705	85	1,887
5	**2012** (5)	1,572	-				1,572
	Rate T1						
6	**2008** (1)	1,068	187	1,328	1,397	8	3,989
7	**2009** (2)	1,194	187	1,963	2,241	29	5,614
8	**2010** (3)	1,332	187	1,012	1,419	35	3,985
9	**2011** (4)	1,484	187	2,880	4,402	70	9,022
10	**2012** (5)	3,669	-				3,669

Notes
(1) DSMVA & LRAM reflect the deferral account balance disposed of in EB-2009-0052, effective October 1, 2009.
(2) DSMVA & LRAM reflect the deferral account balance disposed of in EB-2010-0039, effective October 1, 2010.
(3) DSMVA & LRAM reflect the deferral account balance disposed of in EB-2011-0038, effective April 1, 2012.
(4) DSMVA & LRAM reflect proposed deferral account balances in EB-2012-0087.
(5) EB-2011-0327, Settlement Agreement, Appendix C.

UNION GAS LIMITED

Undertaking of Mr.MacEacheron
To Mr. Frank

Please provide total amount in DSM Rates paid by these customers over this time period.

Please see Attachment 1 for Rate 100.
Please see Attachment 2 for Rate T1.

UNION GAS LIMITED

Rate 100 - 2009 to 2011 DSM Rate and Deferral Impacts for Power Generation Customers

Line No.	Particulars			2009	2010	2011
1	Forecast Rate Class Volume in Rates (10^3m^3)			2,281,152	2,271,427	2,254,074
2	Actual Rate Class Volume in Deferrals (10^3m^3)			1,805,104	1,882,972	1,892,682
3	Actual Power Generation Volumes (10^3m^3)			971,087	1,015,934	993,904
4	Direct DSM in Rates ($000's)		(1)	1,699	1,896	2,112
5	Unit Rate (cents/m^3) (line 4 / line 1)			0.0745	0.0835	0.0937
6	Power Generation Customer Impact ($000's)	(line 5 x line 3)		723	848	931
7	Indirect DSM in Rates ($000's)		(2)	264	264	264
8	Unit Rate (cents/m^3) (line 7 / line 1)			0.0116	0.0116	0.0117
9	Power Generation Customer Impact ($000's)	(line 8 x line 3)		112	118	116
10	DSMVA in Deferrals ($000's)		(3)	254	541	(1,278)
11	Unit Rate (cents/m^3) (line 10 / line 2)			0.0141	0.0287	(0.0675)
12	Power Generation Customer Impact ($000's)	(line 11 x line 3)		137	292	(671)
13	Audited SSM in Deferrals ($000's)		(4)	1,714	1,735	705
14	Unit Rate (cents/m^3) (line 13 / line 2)			0.0949	0.0922	0.0373
15	Power Generation Customer Impact ($000's)	(line 14 x line 3)		922	936	370
16	LRAM in Deferrals ($000's)		(5)	46	66	85
17	Unit Rate (cents/m^3) (line 16 / line 2)			0.0026	0.0035	0.0045
18	Power Generation Customer Impact ($000's)	(line 17 x line 3)		25	36	44
19	Total Power Generation Customer Impact ($000's)			1,919	2,230	791

Notes:
(1) EB-2012-0337, Exhibit B6.2, Attachment 1, column (a).
(2) EB-2012-0337, Exhibit B6.2, Attachment 1, column (b).
(3) EB-2012-0337, Exhibit B6.2, Attachment 1, column (c).
(4) EB-2012-0337, Exhibit B6.2, Attachment 1, column (d).
(5) EB-2012-0337, Exhibit B6.2, Attachment 1, column (e).

UNION GAS LIMITED

Rate T1 - 2009 to 2011 DSM Rate and Deferral Impacts for Power Generation Customers

Line No.	Particulars			2009	2010	2011
1	Forecast Rate Class Volume in Rates (10^3m^3)			4,871,937	4,853,733	4,827.587
2	Actual Rate Class Volume in Deferrals (10^3m^3)			3,311,476	4,057,920	4.541.959
3	Actual Power Generation Volumes (10^3m^3)			678,646	1,115,921	1,232.022
4	Direct DSM in Rates ($000's)		(1)	1,194	1,332	1,484
5	Unit Rate (cents/m^3)	(line 4 / line 1)		0.0245	0.0274	0.0307
6	Power Generation Customer Impact ($000's)	(line 5 x line 3)		166	306	379
7	Indirect DSM in Rates ($000's)		(2)	187	187	187
8	Unit Rate (cents/m^3)	(line 7 / line 1)		0.0038	0.0039	0.0039
9	Power Generation Customer Impact ($000's)	(line 8 x line 3)		26	43	48
10	DSMVA in Deferrals ($000's)		(3)	1.963	1,012	2,880
11	Unit Rate (cents/m^3)	(line 10 / line 2)		0.0593	0.0249	0.0634
12	Power Generation Customer Impact ($000's)	(line 11 x line 3)		402	278	781
13	Audited SSM in Deferrals ($000's)		(4)	2,241	1,419	4.402
14	Unit Rate (cents/m^3)	(line 13 / line 2)		0.0677	0.0350	0.0969
15	Power Generation Customer Impact ($000's)	(line 14 x line 3)		459	390	1,194
16	LRAM in Deferrals ($000's)		(5)	29	35	70
17	Unit Rate (cents/m^3)	(line 16 / line 2)		0.0009	0.0009	0.0015
18	Power Generation Customer Impact ($000's)	(line 17 x line 3)		6	10	19
19	Total Power Generation Customer Impact ($000's)			1,060	1,027	2,421

Notes:

(1) EB-2012-0337, Exhibit B6.2, Attachment 1, column (a).
(2) EB-2012-0337, Exhibit B6.2, Attachment 1, column (b).
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(4) EB-2012-0337, Exhibit B6.2, Attachment 1, column (d).
(5) EB-2012-0337, Exhibit B6.2, Attachment 1, column (e).

to receive customer incentives for projects and studies from the aggregate pool of budget available throughout the program year. This is consistent with Union's program approach in 2012 for these customers and the DSM program structure in Union's bundled contract rate classes that serve other similarly sized customers.

6.7 Program Duration

All Program offerings in the Large Volume Rate T1/Rate T2/Rate 100 Program will be delivered annually over the course of the two year DSM Plan. The offerings may change should market conditions change over the course of the Plan.

6.8 Cost Effectiveness

The estimated Total Resource Cost ("TRC") cost effectiveness for Union's Large Volume Rate T1/Rate T2/Rate 100 Program is displayed in Table 7. The actual cost effectiveness will be reported in Union's Annual Report for each program year.

Table 7: Large Volume Rate T1/Rate T2/Rate 100 Program Cost Effectiveness

Measure	Participants	Total TRC Benefits	Total TRC Costs	Total Net TRC Before Program Costs	TRC Ratio
Large Volume Offerings (Custom)[1]	41	$ 188,260,716	$ 22,056,635	166,204,080	8.5
Total		$ 188,260,716	$ 22,056,635	$ 166,204,080	
		Promotion Costs	$ 100,000		
		Administration Costs	$ 906,511		
		EM&V Costs	$ 40,000		
		Program Total Net TRC		$ 165,157,569	
		Program TRC Ratio			8.1

1. TRC Benefits and TRC Costs based on 3 year historical (2009-2011) average of Rate T1/Rate 100 custom results

UNION GAS LIMITED

Undertaking of Mr.MacEacheron
To Mr. Frank

Please provide total amount in DSM Rates paid by these customers over this time period.

Please see Attachment 1 for Rate 100.
Please see Attachment 2 for Rate T1.

UNION GAS LIMITED
Rate 100 - 2009 to 2011 DSM Rate and Deferral Impacts for Power Generation Customers

Line No.	Particulars			2009	2010	2011
1	Forecast Rate Class Volume in Rates (10^3m^3)			2,281,152	2,271,427	2,254,074
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Notes:
(1) EB-2012-0337, Exhibit B6.2, Attachment 1, column (a).
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UNION GAS LIMITED

Rate T1 - 2009 to 2011 DSM Rate and Deferral Impacts for Power Generation Customers

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Notes:
(1) EB-2012-0337, Exhibit B6.2, Attachment 1, column (a).
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Ontario

ONTARIO ENERGY BOARD

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VOLUME: 3

DATE: February 5, 2013

BEFORE:	Paula Conboy	Presiding Member
	Marika Hare	Member

evidence about what the overall average is, about 6 percent. And the point that I am trying to make here is that the likelihood of turning an unfeasible project into a feasible project is pretty low when you're getting funding that is going to be about 5 percent of the total cost of a project.

So I think those numbers are important for the Panel and the Board to consider in terms of this program.

Another important, in my submission, aspect of the impact of the DSM program as it currently is on customers is to look at who is actually using the program and what they're receiving.

Now, we've prepared a table, which is at tab 5; APPrO has prepared a table. If I could ask the Panel to turn that up, I will explain the table. And there is backup to this, which is not in our compendium, but I will give you the reference to it.

Just to simplify, let's look at the right-hand side of the table, 2011. And what this means is there are a total of 37 customers in the Rate 100 and T2 class combined.

MS. CONBOY: Sorry, may I interrupt you for a minute, please, Mr. Frank? A couple of questions.

MR. FRANK: Yes.

MS. CONBOY: These numbers were taken directly from the evidence. Am I reading that correctly?

MR. FRANK: Yes. So I will give you the reference --

MS. CONBOY: You've got Exhibit B6.8.

MR. FRANK: Yes, Exhibit B6.8.

MS. CONBOY: Okay. And they are as they were in evidence, then?

MR. FRANK: No. Sorry. This is a table that combines the information that was in B6.8.

MS. CONBOY: Okay.

MR. FRANK: And B6.8 broke it down by the T2 class and it listed each customer, and then the Rate 100 class, each customer and the amount of incentive it received on a percentage basis.

MS. CONBOY: Okay.

MR. FRANK: This just combines all of that. So what it lets you know, instead of looking at a chart that's got each of the 37 customers individually what they received, it shows of those 37 customers -- so under 2011, it says number in the category --

MS. CONBOY: Yes.

MR. FRANK: -- 15. That means 15 of 37 received less than 10 percent of the funds they paid in rates.

MS. CONBOY: Okay. I just wanted to make sure that this was an analysis that had already been done and it wasn't...

MR. FRANK: Well, to be fair --

MS. CONBOY: Some of the math that's already been done --

MR. FRANK: It is a consolidation of an analysis that was done.

MS. CONBOY: Okay. And I do have one question, and my apologies. I probably should have asked it earlier, but as you are going through some of your argument, I am catching myself repeating that question to myself.

But at the outset you had said that the APPrO membership is effectively mandated by the nature of the industry to actively seek out and implement energy efficiency projects.

Can you -- I think I know what you mean by that, but perhaps you could just elaborate on that and that will help me understand the cost-benefit analysis that you were articulating.

MR. FRANK: I will try and find quickly, but, if not, I will certainly take you shortly, Madam Chair, to a quote from Mr. Zarumba.

But in a nutshell, we heard evidence from both Mr. Russell and Mr. Zarumba that there is a financial imperative, essentially, for these type of customers to seek out efficiencies.

This is their business. This is their greatest input cost. This is necessary. Mr. Zarumba's evidence was, for a generator to have any prospect of staying in business long term, it needs to find these efficiencies.

And I want to also juxtapose that to certain customers where the input cost may be part of their overall cost structure, and maybe not as big a part and often not as big a part; whereas there is evidence, uncontradicted, that over 96 -- I think it is 98 percent of the gas received by gas-fired generators is used for energy conversion purposes.

So when I say "mandated", I don't mean in any formal sense, other than in the business, commonsense, survival, competitive world that this industry exists.

MS. CONBOY: Okay, thank you. I do remember reading that in the APPrO evidence. I just wanted to make sure I understood your argument correctly. Thank you.

MR. FRANK: If the Panel wishes, Mr. Butters can comment on that, as well, on behalf of APPrO.

MS. CONBOY: I don't think so.

MS. HARE: I don't think so.

MS. CONBOY: I'm fine. Thank you very much.

MR. FRANK: So what we have in this chart is - and I think it is pretty stark - 15 of the 37 customers received less than 10 percent. In fact, I just tallied it up. Ten of them receive zero percent and one of them receives 1 percent.

Then one could see that there are a limited number that receive a hugely disproportionate large amount of greater than 250 percent, and some of the numbers of those customers are - and this is for 2011 - 666 percent, 384 percent, 685 percent, 891 percent, 925 percent, 844 percent.

All of that comes directly from Exhibit B6.8. I apologize I didn't put that in the compendium, but, again, I think these are pretty stark and important figures, because I know one of the concerns outlined in the past by the Board is, you know, cross-subsidization, and I think this demonstrates that the program, as it is structured, is one where certain customers are getting good use.

We don't dispute that, but I think it is pretty clear and you have heard evidence why certain other customers simply don't need it.

That isn't to say no gas-fired generator is going to use it. Simply put, once your cost is sunk, you've paid it, you might as well try and access it if you can.

Obviously it is clear not everyone is doing that, but that's another point I wanted to make. Opt-out is opt-out. It doesn't mean that every single person must choose that.

I think -- are there any questions on those points?

MS. HARE: I am turning to the Chair here and asking, Do you understand this table, because I don't?

MR. FRANK: Okay.

MS. HARE: Maybe I am the only one that doesn't understand it.

MR. FRANK: Sorry, let me walk through --

MS. HARE: Let me tell you my problem. 2011, let's look at that. The percentages, why don't those add up to 100? Why is it 41, 38, 22?

MR. FRANK: They will if you add up the number that are less than 100 percent and the number that are greater than 100 percent. Those add up to 100 percent.

It just so happens a couple of different metrics -- there are a certain number who have received less than 10 percent and a certain number who have received more than 250 percent. It doesn't mean that is going to be everybody, but the total number of customers is 37.

their facilities. Customer incentive funds are dispersed via an aggregated pool approach where projects are supported based on their lifetime natural gas savings and cost-effectiveness.

In 2013 and 2014, Union is proposing to deliver the same program offerings and maintain a consistent program budget, escalated annually for inflation. All Rate T1 [1] customers will maintain access to an aggregate pool of customer incentives throughout the year. This approach has been successful in driving projects for these customers historically and is consistent with the DSM program structure in Union's bundled contract rate classes that serve other similarly sized customers.

Union is proposing to change the customer incentive budget process for Rate T2 and Rate 100 customers to a new Direct Access budget mechanism. Instead of an aggregate pool approach, at the beginning of the year these customers will each have direct access to the full customer incentive budget they pay in rates. They must use these funds to identify and implement energy-efficiency projects, or lose the funds to be used by other customers in their rate class. This "use it or lose it" approach ensures each customer has first access to the amount of the customer incentive budget funded by their rates.

The Direct Access budget mechanism is being introduced in direct response to feedback received from Union's largest customers at the focus group sessions. Rate T2 and Rate 100 customers will have enhanced flexibility to access a greater level of incentives for individual large projects or studies. They will know their dedicated amount of customer incentive budget for the program year. This funding can be incorporated into their overall budget planning process with the knowledge that available funds will either be used for qualifying activities to deliver value to them, or the funds will be moved to the aggregate pool for use by others. By motivating each customer to take action with their available incentive budget, Union's program also aims to minimize intra-rate class cross subsidization. Additionally, Union has removed the ability to

[1] As per Rate T1 proposal in Union's 2013 Cost of Service Application (EB-2011-0210)

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	Marika Hare	**Member**

appropriate, given the evidence of the number of customers who are not using the program and would suggest that an adjustment of the budget downward is appropriate.

MS. CONBOY: Thank you.

MR. FRANK: Right. And then we saw a little bit of evidence that there was significant, significant spending by a few customers, well over 100 percent, and would suggest that a cap is appropriate of 150 percent. We saw some customers in Exhibit B6.8, I believe, at 8, 900 percent, 600 percent.

MS. CONBOY: Thank you.

MR. FRANK: And subject to any questions, those would be my submissions, and I want to thank the Panel for the time.

MS. HARE: Just on that very last point, with Union's proposal about allocating a certain percentage to each customer and then use-it-or-lose-it, do you really need the cap?

MR. FRANK: You know, I guess the short answer is, it looks like certain customers are not using the program.

MS. HARE: Right.

MR. FRANK: If that's the case, direct access would not necessarily cause them to start using it, would lead to essentially -- the whole point is to avoid cross-subsidization.

MS. HARE: Mm-hmm.

MR. FRANK: And allowing certain customers to essentially be funded by other customers to perform the

K1.2

VERESEN

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October 11, 2011

Via Electronic Mail

John Pickernell
Board Secretary
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Atten: Board Secretary

Re: Demand Side Management Guidelines for Natural Gas Utilities
Issuance of DSM Guidelines

Further to the Ontario Energy Board's (OEB) letter dated June 30, 2011, regarding the Demand Side Management (DSM) Guidelines for natural gas utilities, Veresen Inc., (Veresen) wishes to express its views. Veresen is a publically traded energy infrastructure company that holds energy assets in Ontario consisting of natural gas fired electricity generation facilities including district heating, cogeneration and peaking generation, ranging in size from 15 MW to 400 MW.

Two of Veresen's facilities, the East Windsor Cogeneration Centre (EWCC) and our London District Energy (LDE) facility currently hold Union's T1 service contracts and thus are subject to the T1 rate class methodology. Both of these facilities have participated in the DSM programs offered through Union Gas with very good success. Veresen's position regarding this program is that it has played an important role in achieving increased energy effeciency at these facilities. In our view, eliminating these programs is not in the best interest of T1 shippers and importantly, may result in a reduction in DSM initiatives by generators such as ourselves. EWCC and LDE are not large industrials, and therefore the view's expressed by others such as IGUA or CME regarding the DSM program, are not representative of our position.

Veresen strongly encourages the Board to continue the DSM program as currently structured to further facilitate achivements in DSM in Ontario.

Yours truly,

J Ciccaglione

Julia Ciccaglione
Vice President, Regulatory & Government Affairs
Veresen Inc.

Cc: Paul Eastman, VP Operations - East, Veresen Inc.

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APPrO's involvement in this proceeding is a very clear indication of what its membership thinks, in terms of opt-out, and I am not sure I need to put any finer point on that.

In the compendium tabs that I just mentioned, it is instructive to look at, in my submission, some of the anecdotal information that was received by Union at the time.

So here's one interesting one, and this one is at tab 22. We're energy-efficient to start with. Union Gas didn't give me anything more than I would have done with my own technical people, but I am still paying for it as a T1 customer.

The famous Veresen letter. I really have just two brief submissions on that. The one is, we heard from Mr. Russell two things. One, that it was written at a point in time where the true cost of the program wasn't really understood or completely understood. And number two, it was written at the request of Union.

I also am -- well, I would respectfully submit that my friend's position on or any comment on the Veresen letter, Union's position on that, should be completely discounted.

Mr. Russell was here, and Union did not ask a single question about it in cross-examination, other than to say, Was it written when it appears to have been written, and was it written by the person who appeared to write it?

If Union intends to argue about some inconsistency, it was necessary for them to ask questions about that in cross-examination, and that is a general principle that applies. So having failed to do so, it just doesn't lie in Union's mouth to raise that letter.

That being said, APPrO is not running from that letter. The letter is what it is. It says what it says. It was written at a point in time. It reflected the views of one of the companies that has gas-fired generation in Union's franchise, and the Panel and the Board can determine what it may from the letter.

What I think is much more instructive is, where is Union's views -- pardon, where are Union's views, where is -- where is Union -- where is APPrO's view, where is APPrO today on that point, and where is LDE, which happens to be a subsidiary of Veresen on the point, and what is the evidence as to why LDE has changed its mind, and why it is of the view that opt-out is appropriate.

It is not -- there is nothing nefarious about someone changing their mind or explaining that they misunderstood something.

MS. HARE: Well, I will have to look at the transcript. And I don't mean to argue, but I thought when the question was posed to Mr. Russell as to whether he contacted the author of the letter to find out why, his answer was he did not.

MR. FRANK: Yes. That was a question by Mr. Poch. That was not a question from Union. What -- and that is very fair. What Mr. Russell did say is -- and this is at I think tab 25 of the compendium, and this was just in

THE LAW OF EVIDENCE IN CANADA

THIRD EDITION

Alan W. Bryant
Justice of the Superior Court of Justice for Ontario

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LexisNexis

§16.177 The Ontario Court of Appeal stated that it was indisputable that the complainant's personal diary attracted a significant degree of privacy and there was a clear intention that the contents were to remain confidential. The court held, however, that there is no absolute bar to all questioning of a complainant at a preliminary inquiry concerning a private record, and that ss. 278.1 to 278.9 of the *Criminal Code* do not preclude such questioning. Rather, only those questions that implicate the private or personal domain of the author of the record are impermissible. Accordingly, it is necessary to assess the proposed questions to determine whether they will intrude on the intimate and personal aspects of the recorded life experiences, thoughts and feelings of the diarist. On the facts of this case, the Court held that no questions could be asked touching upon the complainant's recollection of the exact contents of the diary, or the content of actual diary entries. Counsel could cross-examine the complainant at the preliminary inquiry as to whether a particular topic was covered within his diary, but should not be permitted to question the complainant about what he wrote or recalled recording concerning the identified topic.

E. Witness Tendered for Cross-Examination

§16.178 A party may call a witness to the stand and, without asking any questions in chief, make the witness available for cross-examination. This may be done to avoid the court drawing an adverse inference from the failure of the party to call a witness who is presumed to possess relevant information.[318] Although such a witness can then be subjected to cross-examination on the substantive issues, the witness cannot be attacked on his or her credibility on the ground that, because he or she has given no testimony, his or her credibility is not in issue.[319]

F. The Rule in *Browne v. Dunn*

§16.179 It appears that, if the cross-examiner intends to impeach the credibility of a witness by means of extrinsic evidence, he or she must give that witness notice of his intention. This was the rule laid down in *Browne v. Dunn*, in which Lord Herschell explained the reason for it as follows:

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[318] See Chapter 6, § 6.449 ff. for a discussion of adverse inferences from the failure to call witnesses as constituting implied admissions.

[319] *Bracegirdle v. Bailey* (1859), 1 F. & F. 536, 175 E.R. 842 (N.P.); *Hobbs v. Tinling (C.T.) & Co. Ltd.*, [1929] 2 K.B. 1, at 12 (C.A.). In *R. v. Corbett* (1985), 43 C.R. (3d) 193, at 219, [1984] B.C.J. No. 2066 (B.C.C.A.), affd [1988] 1 S.C.R. 670, [1988] S.C.J. No. 40 (S.C.C.), Craig J.A., in referring to the decision in *Bracegirdle* stated: "The logic of this proposition seems indisputable." Although permissible, there is no requirement on Crown counsel to call a material witness and simply make him or her available for cross-examination: *R. v. Cook*, [1997] 1 S.C.R. 1113, [1997] S.C.J. No. 22 (S.C.C.).

> Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue; but it seems to me that a cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.[320]

Accordingly, if counsel is considering the impeachment of the credibility of a witness by calling independent evidence, the witness must be confronted with this evidence in cross-examination while he or she is still in the witness box.[321]

§16.180 The rule applies not only to contradictory evidence, but to closing argument as well. In *Browne v. Dunn*, Lord Halsbury added:

> To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although

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320 (1893), 6 R. 67, at 70-71 (H.L.).

321 See also *Young v. Dawe* (1998), 156 D.L.R. (4th) 626, at 638, [1998] N.J. No. 28 (Nfld. C.A.); *Peters v. Perras* (1909), 42 S.C.R. 244, [1909] S.C.J. No. 39 (S.C.C.); *New Hamburg Mfg. Co. v. Webb* (1911), 23 O.L.R. 44, [1911] O.J. No. 104 (Ont. H.C.J.); *United Cigar Stores Ltd. v. Buller*, [1931] 2 D.L.R. 144. [1931] O.J. No. 30 (Ont. C.A.); *Union Carbide Canada Ltd. v. Trans-Canadian Feeds Ltd.* (1966). 49 C.P.R. 7, 32 Fox Pat. C. 17 (Ex. Ct.); *Stewart v. Royal Bank*, [1930] 2 D.L.R. 617, at 623 (N.S.C.A.), revd on other grounds [1930] S.C.R. 544, [1930] S.C.J. No. 27 (S.C.C.): *R. v. Hawke* (1974), 3 O.R. (2d) 210, at 225, [1974] O.J. No. 1856 (Ont. H.C.J.), revd on other grounds (1975), 22 C.C.C. (2d) 19, [1975] O.J. No. 2200 (Ont. C.A.). While defence counsel need not go through every single minor detail on which a witness' testimony may differ from that of the accused, a witness should be confronted with matters of substance upon which the accused seeks to impeach his or her credibility and upon which the witness has not been given an opportunity to comment: *R. v. Giroux* (2006), 207 C.C.C. (3d) 512

> not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.[322]

Accordingly, there has been some suggestion that a presumption of truth attaches to the testimony of a witness not subjected to cross-examination.[323] It is questionable, however, whether the principle in *Browne v. Dunn* can extend that far, particularly in cases where the evidence which has not been cross-examined upon is inconsistent with other evidence. The British Columbia Court of Appeal rejected this proposition in *R. v. Mete*:

> In default of authority binding on me . . . I can see no reason or logic in any view that a judge may not reject evidence which he disbelieves merely because it has not been cross-examined upon. The usefulness of cross-examination in like circumstances has been a subject of comment in a civil case by Lord Halsbury, the Lord Chancellor, in *Aaron's Reefs Ltd. v. Twiss*, [1896] A.C. 273, an outstanding authority which has been long followed, in which the Lord Chancellor had these very pithy comments to make dealing generally with this subject. At pp. 282-83 he said:
>
>> Some comment has been made upon the absence of cross-examination on the subject. I should have thought for myself that it would have been very rash for those who had no means of contradicting anything that was said to cross-examine persons who had, by the hypothesis, not many scruples as what they might say, and that it was far wiser (it seems to have been successful) to leave the statements which they chose to make to be judged of by the jury.
>
> As I say, that was stated in a civil case and it may perhaps have not too much direct bearing on this case; but the thought that the Lord Chancellor enunciated, to my mind, is apt. I just add that I find it hard to think that, if this were a jury case, a judge charging a jury would have to direct the jury that, although they disbelieved the evidence of an un-cross-examined witness, they must accept that evidence notwithstanding and acquit the accused.[324]

§16.181 The rule is one designed to accord fairness to witnesses and the parties. It is, therefore, not absolute, and the extent and manner of its application will be

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322 (1893), 6 R. 67, at 70-71 (H.L.); *R. v. McCarroll* (2008), 238 C.C.C. (3d) 404, [2008] O.J. No. 4048, at para. 107 ff. (Ont. C.A.).

323 *R. v. Dyck*, [1970] 2 C.C.C. 283, [1969] B.C.J. No. 373 (B.C.C.A.); *Peters v. Perras* (1909), 42 S.C.R. 244, [1909] S.C.J. No. 39 (S.C.C.); *R. v. Hart* (1932), 23 Cr. App. R. 202 (C.C.A.); *Jarvis v. Connell* (1918-19), 44 O.L.R. 264, at 267, [1918] O.J. No. 29 (Ont. C.A.); *Jarvis v. Hall* (1912), 4 O.W.N. 232, at 235, 8 D.L.R. 412, [1912] O.J. No. 406 (Ont. Div. Ct.); *Horner v. Canadian Northern Ry.*, [1920] 3 W.W.R. 909 (but see the remarks of Stuart J., at 929), 55 D.L.R. 340 (Alta. S.C.), affd without reference to this point (1921), 58 D.L.R. 154, [1921] S.C.J. No. 9 (S.C.C.); *Seymour v. Arrowsmith*, [1931] 3 W.W.R. 561, at 563, 567, [1931] S.J. No. 48 (Sask. C.A.); *R. v. Bedere* (1891), 21 O.R. 189, at 192, [1891] O.J. No. 65 (Ont. H.C.J.); *R. v. Hawke* (1974), 3 O.R. (2d) 210, at 225-26, [1974] O.J. No. 1856 (Ont. H.C.J.), revd on other grounds (1975), 7 O.R. (2d) 145, [1975] O.J. No. 2200 (Ont. C.A.).

324 [1973] 3 W.W.R. 709, at 712, [1971] B.C.J. No. 603 (B.C.C.A.).

determined by the trial judge in all the circumstances of the case.[325] The factors which may be taken into account include:

(1) Notice is given beforehand to the witness that his or her credibility is in issue.
(2) The testimony is of such a nature that it is obvious that credibility is in issue.
(3) Failure to cross-examine is based on concern for the witness, as in the case of children of tender years.[326]

If the trial judge's discretion is exercised to enforce the rule, it would follow, logically, that it be applied throughout the adjudicative process. Credibility should therefore not be subject to attack by evidence or argument. Furthermore, the trier of fact should not consider credibility as a factor. To do so would be to decide a matter in the absence of an explanation of the matter by evidence and argument.

§16.182 The Supreme Court of Canada in *R. v. Lyttle*[327] confirmed that the rule in *Browne v. Dunn*[328] remains a sound rule of general application. As the rule is not absolute and is grounded in common sense and fairness to the witness and to the parties, it is a matter of discretion as to how a trial judge deals with the failure on the part of counsel to confront a witness in cross-examination before impeaching the witness by contradictory evidence.[329] Rather than excluding the contradictory evidence, other avenues may be open to the trial judge. The judge may permit the contradictory evidence, but the failure to have confronted the witness may be used to negatively affect the credibility of the contradictory

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325 *Palmer v. R.*, [1980] 1 S.C.R. 759, 50 C.C.C. (2d) 193, at 210, [1979] S.C.J. No. 126 (S.C.C.); *R. v. K. (O.G.)* (1994), 28 C.R. (4th) 129, [1994] B.C.J. No. 116 (B.C.C.A.): *R. v. MacKinnon* (1992), 72 C.C.C. (3d) 113, [1992] B.C.J. No. 831 (B.C.C.A.).

326 M.N. Howard, P. Crane & D.A. Hochberg, *Phipson on Evidence*, 16th ed. (London: Sweet & Maxwell, 2005), §§ 12-35.

327 [2002] 1 S.C.R. 205, [2002] S.C.J. No. 8 (S.C.C.).

328 (1893), 6 R. 67 (H.L.).

329 *R. v. Henderson* (1999), 134 C.C.C. (3d) 131, [1999] O.J. No. 1216 (Ont. C.A.); *R. v. Khuc* (2000), 142 C.C.C. (3d) 276, [2000] B.C.J. No. 50 (B.C.C.A.); *R. v. McNeill* (2000), 144 C.C.C. (3d) 551, [2000] O.J. No. 1357 (Ont. C.A.). While defence counsel need not go through every single minor detail on which a witness' testimony may differ from that of the accused, a witness should be confronted with matters of substance upon which the accused seeks to impeach his or her credibility and upon which the witness has not been given an opportunity to comment: *R. v. Giroux* (2006), 207 C.C.C. (3d) 512, [2006] O.J. No. 1375 (Ont. C.A.), leave to appeal refused

VT INCEPIT FIDELIS SIC PERMANET

Ontario

ONTARIO ENERGY BOARD

FILE NO.:	**EB-2012-0337**

VOLUME:	**2**	
DATE:	**February 1, 2013**	
BEFORE:	**Paula Conboy**	**Presiding Member**
	Marika Hare	**Member**

"They would not want their budget -- I would fully expect that they would not want their budget upped on their large-volume accounts."

And now finally, I think this is an appropriate -- and that's all I have to say on that proposal.

The final thing I am going to touch on is what I alluded to at the beginning of my submissions, which is the perils of unwinding the 2011 deferrals in the context of this proceeding.

And here, I would just ask you to turn to tab 20, which is the Veresen letter which has been lingering in the background of this proceeding since its appearance yesterday morning.

And I think the real question that this letter raises is: How did we get from here to here? You know?

We heard evidence today that Veresen was asked by Union to write it. I don't see how that really changes anything.

I think what's clearly happened is that there was a problem with deferrals. There was frustration, and it has upset the entire billion of the DSM relationship.

And in resetting that balance, I think we have to guard against deferrals. That's going to be very important.

And the last thing I will say, the last thing I will say is that while this is regrettable, that we got here this way, what would be still more regrettable is trying to address this issue, which, you know, has been addressed by

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there are any projects, energy efficiency projects kind of on the margin that would be affected by the availability of DSM funding or not?

MR. RUSSELL: Not at this time, no.

MR. POCH: And you haven't experienced that -- you don't see there's been any in the past?

MR. RUSSELL: No. And I reviewed the economics of those. They all -- the projects are often relatively high capital value, and the efficiency funding has caps.

MR. POCH: And you don't foresee any in the future?

MR. RUSSELL: Not at this time.

MR. POCH: All right. Can I just circle back, then, to the letter from your vice president? Why would your vice president have said these things?

MR. RUSSELL: Yeah.

MR. POCH: The programs are helpful.

MR. RUSSELL: I wasn't directly involved with the creation of that letter.

Again, I am speaking directly about London District Energy, not Veresen as a whole.

MR. POCH: Well, this letter was produced yesterday. I'm sure it didn't go unnoticed by you and your counsel.

Did you not inquire of this person overnight?

MR. RUSSELL: No. I did not have a chance to connect.

MR. POCH: Excuse me. I'm just going to whittle away a few questions here.

MS. CONBOY: Sounds good.

MR. POCH: Okay. I am going to turn to you, Mr.

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GEC Final Argument

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

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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]

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[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

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Ontario

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	Marika Hare	**Member**

DSMVA for the rate 2 and R100 classes. It has been referenced a few times now, but Mr. MacEacheron's evidence was clear, in my view, in terms of what he was hearing loud and clear from the those two classes of customers, that rate stability was a fundamental concern for these customers.

They said, No more surprises, according to Mr. MacEacheron. Mr. MacEacheron acknowledged that the deferral clearing amount was, indeed, a significant amount, according to him.

And, indeed, it was a significant amount, and if we draw your attention to Exhibit K1.6 on the chart entitled "Impact of the 2011 DSMVA on the Average Customer", you will see the average -- the impact on the average T2 customer was close to $600,000, and that indeed is a significant amount.

These customers, these two rate classes, are already paying a great deal towards DSM and they require certainty. And Union has stated that it is likely to exceed its target and that its target in this market is an exceptionally high target. That is what Ms. Lynch told us.

If you look at -- what she also said was, if you look at 2012, it was more than a billion cubic metres.

So without this variance account, this flexibility, this potential volatility, Union is still pursuing aggressive targets. That was the evidence. So it is not like the industrial savings are being abandoned or even discounted in 2013 and 2014.

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One further reason not to entertain reviving this 15 percent overspend in the DSMVA for these two rate classes is that, pursuant to the direct access program structure, Union will be telling customers at the start of the year what their incentive amount is or what it may be.

And adding the 15 percent overspend variance would only add, in my view, less certainty to the program. And that was supported by Union in the transcript at page 39 of the first day's transcript.

So in order to build back trust with these large industrial customers, now is not the time to reinsert the 15 percent variance into the DSMVA for these rate classes, having regard to rate stability and predictability.

And I would just echo the fact that flexibility already exists within these rate classes. As you know, the $500,000 overspend is shifting as between the T1, the T2 and R100s is still there, and that indeed may result in some volatility within these DSM amounts at the end of the year for a particular rate class. So there is flexibility there at the end of the day.

Subject to questions, I will move on to my fourth topic.

IGUA supports GEC's proposal for a multi-year plan with respect to the direct access budget. And just generally speaking, IGUA obviously is in favour of the self-direct plan approach proposed by Union, but only comments upon tinkering with it as between a one-year and two-year proposal.

Now, admittedly, during Union's panel, Ms. Lynch spoke about that the -- and others, quite frankly, about the added level of complexity that would occur if there was an order to facilitate a two-year program, and I certainly acknowledge that.

But Ms. Lynch also confirmed that the math, as it was quoted, wouldn't be hard for Union to do. And Mr. MacEacheron spoke about the increased flexibility that the direct access program provides Union's customers.

On page 47 and 48 of the transcript, he made reference to his conversations with customers where they said:

> "Can you give us greater flexibility to use the incentive funds for activities, energy efficiency activities within our plants?"

And IGUA takes the position that increased flexibility should be extended to the timing when customers can access these incentives.

We heard from Mr. Neme, who opined that a two-year plan would enable more time for planning and provide greater flexibility to customers on a variety of fronts, and it would enable a greater range of projects to be considered by the customer. He said that on page 153 of the day 1 transcript.

Mr. Zarumba, on day 2, agreed that a multi-year plan approach would be more likely to allow effective participation by a customer than a one-year approach. He said that on page 44 of the day 2 transcript.

And we also heard from Mr. Russell, who explained that from his client's perspective budgeting for capital expenditures for a given year occurs in quarter 3, or September and October of the preceding year, and as a result, identifying as late as August of 2013 what funds his employer can earmark to be used for the self-direct plan in 2013 may not be helpful for internal budgeting purposes.

And stepping back, I think there is some good sense that goes into that analysis. It is not uncommon for industrial customers to budget capital expenditures in the preceding year. And a two-year plan would potentially enable these industrial customers to include its DSM incentive into its capital expenditure budget. And this would, in our view, facilitate greater participation in the program. And for this reason, IGUA favours the two-year approach.

During Union's submissions on Friday, Mr. Smith commented on -- and I think at your request -- the timing of the proposed two-year plan, if the Board were to consider such an approach.

And Mr. Smith thought that December 31st of 2013 was appropriate on behalf of Union. And IGUA's submission is that, subject to constraints that can't otherwise be marshalled through, that August 1st of 2014 is a more appropriate time line, because that would indeed allow the customer to -- more flexibility, in terms of earmarking where the incentive may be spent. And I don't think -- if it is August 1st, 2013, I don't see how August 1st, 2014 is not feasible.

Subject to questions, I will move on to my fifth topic. IGUA supports, generally speaking, GEC's proposal that targets be set on a three-year historical approach.

Stepping back, IGUA supports that targets be based upon cubic metres, but using a three-year rolling average, as opposed to data from only one year, in our view would reduce the likelihood of volatility, and for that reason we support that approach.

We take no position on GEC's proposal, which I think on this topic also includes a 5 percent increase or decrease one way, as I recall. But just on the issue of using a three-year historical approach, it is IGUA's position that that seems appropriate.

Moving on to my sixth topic, the submissions of Environmental Defence, generally speaking, during Union's final submissions, Mr. Smith on behalf of his client stated that Environmental Defence's proposal to increase the large-volume DSM budget is "one-sided and will result in a customer backlash against Union's large-volume DSM program". He said that on page 122 at lines 1 to 3, and on behalf of IGUA we endorse that statement.

Union's evidence was clear that the large industrial customers are demanding rate certainty, stability, and predictability, and we need to strike the right balance between customer needs, budget, and rates. Union has acknowledged the importance of trying to achieve this and, indeed, to strike that right balance. And as Mr. Smith

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and as Union has provided its evidence, that it could result in a single customer or a group of customers having a rate increase that cannot be predicted, because you can't predict who is going to opt out or who is not going to opt out, is not consistent with the guiding principles that we think should be paramount.

Subject to any questions on the opt-out, that is our position on the opt-out.

With respect to GEC's two-year proposal, based on Ms. Dullet's cross-examination on behalf of CME, we understand that the two-year proposal would not impact rate stability or rate predictability, that any type of deferral account balances or interest that may be accrued one way or the other would be de minimis, and for that reason we are not taking a position on whether it is or is not appropriate.

Our view is that if the Board feels that a two-year window is more beneficial to customers than a one-year window, so long as it doesn't affect rate stability or predictability, we are not opposing that.

Our only observation is that some customers, I think, will work to deadlines, and so there is a danger that if you give a two-year window instead of a one year window many customers will wait until the end of the two years.

From a deferral account basis, though, that would only result in interest accruing to ratepayers. I don't think that would go the other way.

So again, we don't see that as a threat to rate predictability or stability, but it is a consideration that you will have to weigh. And from our perspective, there is no clear answer on which one is right on that one.

Finally, in terms of the Environmental Defence's potential increase, in our perspective, DSM budgets, and particularly the allocation of DSM budgets once the Board sets an envelope, are best set through negotiations with all the related parties.

The current budget was, at least in part, reached on general consensus. And if -- again, if you review the transcript at K2.3 -- again, this is Mr. MacEacheron, and this is tab 19 of K2.3 -- his experience, based on the consultations, is that the large-volume users -- and this is his quote -- "they would not want their budget" -- referring to the increased budget -- "I would fully expect that they would not want their budget upped on their large-volume accounts".

From our perspective, our members are very sensitive to the increases. They are comfortable with the current budget as it is, and it is consistent from our perspective -- Mr. MacEacheron's observations are consistent with what we are being told by our members.

And so in the absence of evidence to the contrary, where Union's experience is that those in that class are satisfied with the budget and that there are no ratepayer groups representing those particular classes that are suggesting that the budgets are not high enough, we would suggest that the burden is high upon someone to demonstrate

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without significant increases in the energy efficiency of natural gas consumption.

So a larger 2014 budget is not only in accordance with government policy, but it is a necessary component of fulfilling that government policy and reaching the 2020 GHG targets.

Finally, this is a no-net cost method of achieving greenhouse gas reductions. You can compare this with other methods that the government is pursuing to reach -- to achieve greenhouse gas emission reductions, such as the FIT program, where there is obviously a cost, there is a premium paid for renewable electricity. And here there is more than no cost. There is actually a benefit to consumers.

So when we're looking at whether this should be implemented or whether a larger 2014 budget should be required from Union, in comparison to the options, there is actually no cost for achieving these emissions. This is why -- these emission reductions, I apologize. This is why we say that this is one of the best options for achieving that government policy.

MS. HARE: So I clearly don't understand something. How is an increased budget for 2014 not a cost? I mean, those industrial customers will be paying more. So how is that a no-net cost?

MR. ELSON: Because those industrial customers will actually be paying less overall at a ratio of 8 to 1. Although $1 -- one way to think about it is you have to spend $1 to save $8. So over the class, there will actually be an 8-to-1 savings from implementing these programs. So there is no net cost.

MS. HARE: So then I go back to Ms. Conboy's question. If there is a savings of 8 to 1, why aren't these industrial customers doing it anyway? And your response was maybe lack of education.

MR. ELSON: If I could beg your indulgence. Thank you. And Mr. Gibbons has highlighted some important environmental -- sorry, some economic responses to that.

The underlying assumption would be that there is perfect capital markets and perfect information. A theory has been presented to you by the other intervenors. There hasn't actually been presented evidence on that point to conclusively show that these would be implemented regardless.

In fact, the evidence is exactly the opposite. The evidence that has been provided by Union, which has not been seriously challenged by the intervenors, is that there will be a certain free rider amount, that this is incorporated into their calculations, that this is incorporated into their 8-to-1 ratio.

Secondly, those economic assumptions of perfect capital markets and perfect information are not what is actually reflected in actual markets.

So we can't rely on a theory which doesn't match what is happening in the real world, and we can't rely on speculation or theoretical assumptions when the evidence before you is the opposite.

MS. HARE: Thank you.

MR. ELSON: Which actually brings me to and relates to the third point, which is that Union didn't actually examine the potential for a higher 2014 budget. Before moving on, do you have any other questions on that point?

MS. CONBOY: No.

MR. ELSON: Because I think it is an important one.

MS. CONBOY: Thank you. I'm good.

MS. HARE: On the one you're making now?

MR. ELSON: On the previous point.

MS. HARE: No.

MR. ELSON: No. There was a discussion between my colleague Mr. Wanless and Mr. MacEacheron about the DSM budget and budget maximum set out in the guidelines.

Mr. MacEacheron acknowledged that Union did not examine the potential for a higher 2014 budget; thus, they didn't actually look at the benefits or the costs of a higher 2014 budget. There is nothing on the evidence in relation to undue rate increases or the like. And, in our submission, the Board should not be approving the 2014 budget if that has not been examined.

There has also been reference to a customer backlash, and, in our submission, it is too soon and there is a lack of evidence to rely on that potential concern in order to reject the proposal by Environmental Defence. That hasn't been looked at and it wasn't part of -- there hasn't been a negotiation for an increased 2014 budget.

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minute, Mr. Neme's suggestion that you move to a two-year period for this direct access program.

I will give you a chance to address those issues in a minute, so don't feel you need to shove everything into your answer right now, but just on this narrow point about the ability to utilize the 15 percent and manage it in a way.

If we did go to a two-year period and if we did increase the tail part of that period, after you get your plans from your T2 Rate 100 customers and you're into the implementation phase, if we increase the number of months there, that is the period when you would take any unallocated funds and reallocate them amongst projects in the industrial sector.

If we extended that period, I take it that would ease -- to some extent, ease this concern you have about utilizing the 15 percent planning for the spend of that 15 percent?

MR. MacEACHERON: Our concern with respect to the 15 percent and what we heard loud and clear from our customers in the consultation sessions that we had was, We don't want to see a deferral account like 2011 again, ever.

And so we heard loud and clear, Give us predictable costs, minimize the volatility of that DSMVA. They wondered: What is this strange thing that visited these large costs on them? So minimize where you can, Union, the DSMVA.

And the 15 percent, one of the reasons associated with eliminating that was in response to the customer feedback we received regarding the predictability.

MR. POCH: Predictability. So another response you could have taken is to say, We have been spending the 15 percent. In fact, we have been spending the 15 percent of a much larger budget, a budget of all classes or some portion of 15 percent of all classes.

To give them predictability, you could have simply just set the budget a little higher and not have a DSMVA of 15 percent. That would have been another approach which would have given predictability, but preserved your ability to deliver programs at the level you have been delivering them up to now. That would work as an alternative to address predictability?

[Witness panel confers]

MS. LYNCH: We are working within the budget that we had determined for this program area.

MR. POCH: But if the concern was that the 15 percent was -- left some unpredictability, they could have rolled it into the firm part of the budget. If you don't spend it, you will have to return it in the DSMVA, but if it would have been built into rates, it wouldn't have come as a shock to anybody?

MS. LYNCH: You could build it in. It would result in an increase in our overall budget.

MR. POCH: But no more than spending it and picking it up in a subsequent year. You would just build it into rates in a more predictable fashion?

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budget cap on large volume.

And my question is this. Given the customer reaction that you saw to the deferrals in 2011 and APPrO's reaction to that, how do you think APPrO members would react to that proposal; namely, the proposal of simply upping the budget on large volume?

MR. MacEACHERON: They would not want their budget -- I would fully expect that they would not want the budget upped on their large volume accounts.

MR. SMITH: Thank you. Third point, this has to do with the proposition that state-of-the-art energy facilities may have lower scope for improving or for capturing conservation than other facilities.

And my question is: Do you have any examples of state-of-the-art facilities that had that sort of low-hanging fruit opportunity? Can you think of any examples?

MR. MacEACHERON: Yes, I can. The example that I cited earlier in the day where a significant steam leak was observed and a thermal blanket was thrown over that leak largely to prevent the plume from spreading all over the room, that was in a new state-of-the-art CES plant.

I can also talk about insulation observed, and when asked, What is all of this insulation doing? That insulation, the reply was, is going to be used up on the roof to replace what was there before. It's no good.

And that, again, was in a new CES plant.

MR. SMITH: Those are my questions. Thank you.

MS. CONBOY: Thank you very much. We are going to

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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.

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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 th 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

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"metric."

And we're talking about T2 here.

"The upper band has been set at 110 percent of the target to recognize Union has eliminated the ability to overspend the budget by 15 percent for rate T2 and Rate 100 customers once the 100 percent score card is achieved. Within this structure Union must achieve a 10 percent increase above the target with no additional funding above the budget. Therefore, it will be very challenging for Union to drive increased natural gas savings from the target level for this metric."

You may recall that during the course of the hearing and through some of the interrogatories, in fact, that GEC asked some questions about this, and indeed I think Mr. Neme actually provided some direct expert evidence on the topic through his report.

GEC wasn't able to be here today, so I don't know for certain what Mr. Poch will be saying in his written submissions, which haven't arrived yet, but I did discuss this matter with him quickly. And I think he and I are on the same page here, but since I haven't seen his submissions yet, I can't formally adopt them, so I will have to present them myself.

Our submission is that we oppose both the 30 percent discount for the target m3 and the 110 percent upper band. I think one of the things we point out is that Union, to

its credit, has historically been very successful at hitting its target. It has done a very good job in squeezing out m3 savings and TRC savings.

Targets are meant to be aggressive and to ensure efficient program design to maximize savings, and we don't really see a basis for a 30 percent reduction to the target.

The 30 percent number is -- I don't want to say it is pulled out of thin air. They did put some thought into it, obviously, but I wouldn't say there has been rigourous analysis done on how you get to 30 percent, especially since they predicted it will be all the way back up to -- they're not applying any discount in year 2 for 2014, so there is certainly a large swing there.

Then when you look at the 110 percent for the band, these are obviously related issues, but I guess what we would submit is that the upper band of a target is not one that is guaranteed to be achieved. In fact, it should be challenging to get to the 110 percent band. There is an accompanying reward for this. It's supposed to be difficult. It's supposed to be hard.

Indeed, if you look at the Board's DSM guidelines -- this is in section 11. I don't have a copy here, but I will read out the quote. It says:

> "... an incentive payment should be available to the natural gas utilities to encourage them to aggressively pursue DSM savings and recognize exemplary performance."

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> "... an incentive payment should be available to the natural gas utilities to encourage them to aggressively pursue DSM savings and recognize exemplary performance."

"Exemplary" is the word used in the DSM guidelines.

Staff notes that in the past Union has done very well with their programs. Just by way of an example, for 2011 I think it was TRC targets at the time, but the target was about $252 million in TRC savings. They hit almost $380 million in savings, overachieved by something like $127 million in TRC savings. And those are great results. Union shouldn't be punished for that.

We're not suggesting that, but targets are meant to be aggressive. I guess it shows how much the Board Staff believes in Union. We think they can hit an aggressive target. They have done very well in the past.

And we submit that they have done very well off SSM. They have made a lot of money for that, and they should have to jump over a pretty high hurdle to hit that.

So again, I think otherwise I will largely be adopting the position that Mr. Poch has or that I understand him to make, but for those reasons we don't agree with Union's proposal in that single regard.

Does the panel have any questions about that? I am going to move on to the last area, which will take me all of 30 seconds.

MS. CONBOY: I have no questions, Mr. Millar.

MR. MILLAR: Okay. Thank you.

MS. CONBOY: Neither does Ms. Hare.

MR. MILLAR: I think it behooves Board staff to make some comment on opt-out. Obviously that was a big issue in this proceeding, but I will be very brief.

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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

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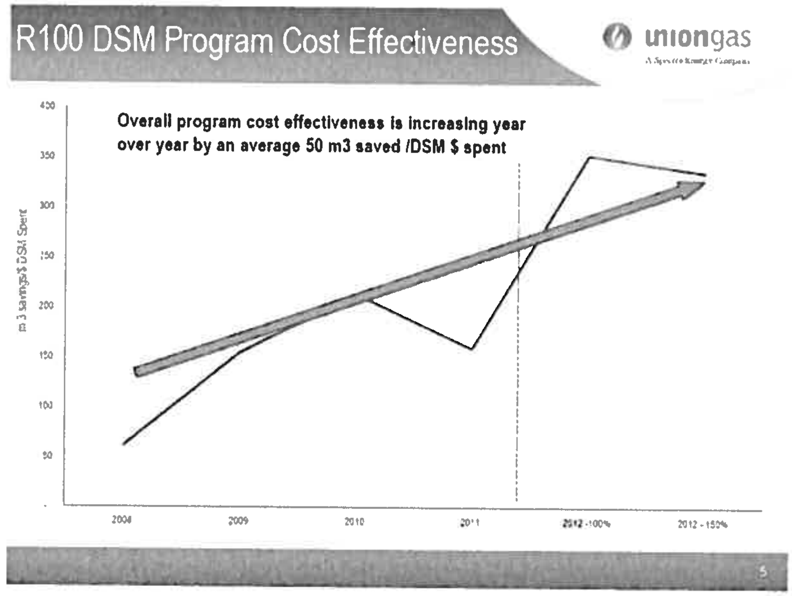

That amounts to an average annual increase of 30-35% since 2009. Thus, Union's own evidence suggests that the target should be increasing (both for T2 and Rate 100), not decreasing.

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.

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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

David Poch
Counsel for GEC

VT INCEPIT FIDELIS SIC PERMANET

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metric."

And we're talking about T2 here.

"The upper band has been set at 110 percent of the target to recognize Union has eliminated the ability to overspend the budget by 15 percent for rate T2 and Rate 100 customers once the 100 percent score card is achieved. Within this structure Union must achieve a 10 percent increase above the target with no additional funding above the budget. Therefore, it will be very challenging for Union to drive increased natural gas savings from the target level for this metric."

You may recall that during the course of the hearing and through some of the interrogatories, in fact, that GEC asked some questions about this, and indeed I think Mr. Neme actually provided some direct expert evidence on the topic through his report.

GEC wasn't able to be here today, so I don't know for certain what Mr. Poch will be saying in his written submissions, which haven't arrived yet, but I did discuss this matter with him quickly. And I think he and I are on the same page here, but since I haven't seen his submissions yet, I can't formally adopt them, so I will have to present them myself.

Our submission is that we oppose both the 30 percent discount for the target m3 and the 110 percent upper band. I think one of the things we point out is that Union, to

its credit, has historically been very successful at hitting its target. It has done a very good job in squeezing out m3 savings and TRC savings.

Targets are meant to be aggressive and to ensure efficient program design to maximize savings, and we don't really see a basis for a 30 percent reduction to the target.

The 30 percent number is -- I don't want to say it is pulled out of thin air. They did put some thought into it, obviously, but I wouldn't say there has been rigourous analysis done on how you get to 30 percent, especially since they predicted it will be all the way back up to -- they're not applying any discount in year 2 for 2014, so there is certainly a large swing there.

Then when you look at the 110 percent for the band, these are obviously related issues, but I guess what we would submit is that the upper band of a target is not one that is guaranteed to be achieved. In fact, it should be challenging to get to the 110 percent band. There is an accompanying reward for this. It's supposed to be difficult. It's supposed to be hard.

Indeed, if you look at the Board's DSM guidelines -- this is in section 11. I don't have a copy here, but I will read out the quote. It says:

> "... an incentive payment should be available to the natural gas utilities to encourage them to aggressively pursue DSM savings and recognize exemplary performance."

3.1 Rationale for Targets

Cumulative Natural Gas Savings Metric Targets

Union has proposed two cumulative natural gas savings metrics. The first measures the m^3 results generated by Rate T2/Rate 100 customers, and the second the m^3 savings generated by Rate T1 customers. For both metrics, Union has based the cumulative natural gas savings targets on the cost-effectiveness of the previous program year. The overall approach is similar to the cumulative natural gas savings targets for 2013 and 2014 in Union's Resource Acquisition scorecard. Through using a formulaic approach, the targets will be adjusted based on the performance of the prior calendar year.

The target calculation for the cumulative natural gas savings metrics are based on post-audit m^3 per customer incentive dollar spent, not m^3 per promotion and incentive dollar spend as is the case for the Resource Acquisition scorecard. In the Resource Acquisition scorecard the programs, and their associated promotion costs, had been included in the calculation of a single metric. In contrast, the Large Volume program scorecard has separate target calculations at a rate class level. As promotion costs are not tracked at a rate class level, they have been excluded from the target calculation.

Union has outlined the reasons for the differences in the cumulative natural gas savings target levels for the Rate T2/Rate 100 metric (Direct Access) and Rate T1 metric (Aggregate Pool) below.

Rate T2/ Rate 100 Cumulative Natural Gas Savings Metric

To reflect the transition in cost-effectiveness between the 2012 and 2013 programming for Rate T2 and Rate 100 customers, Union has applied a 30% discount factor to the 2013 Target for this metric. Union's Direct Access budget mechanism provides these customers the flexibility to fund a greater percentage of incremental project costs, studies and audits than was possible under the 2012 Program. As customers fund a greater percentage of incremental cost through their available incentives, the $m^3/\$$ customer incentive cost-effectiveness will be lower for Rate T2 and Rate 100 than it was in 2012. In addition, these customers will receive incentive funding for developing energy plans that will generate no direct m^3 savings. In response to these changes, Union has applied a 30% discount factor to the 2012 results to establish an appropriate 2013 Target. As the actual 2013 results will reflect the cost-effectiveness of programming under the Direct Access budget mechanism, the discount factor is not included in the 2014 target calculation.

Union has maintained the 2012 25% spread between the Lower Band and Target for this metric. The Upper Band has been set as 110% of the Target to recognize Union has eliminated the ability to overspend the budget by 15% for Rate T2 and Rate 100 customers once the 100% scorecard target is achieved. Within this structure Union must achieve a 10% increase above the Target with no additional funding above the budget. Therefore, it will be very challenging for Union to drive increased natural gas savings above the Target level for this metric.

Rate T1 Cumulative Natural Gas Savings Metric

As the 2013 – 2014 programming for these customers is consistent with 2012, Union has not applied a discount factor to the 100% Target. Union has maintained the 25% spread between the Lower Band, Target and Upper Band for this metric as Union retains the ability to overspend the budget by 15% for Rate T1 should the scorecard achieve the 100% weighted scorecard target on a pre-audit basis.

Rate T2/Rate 100 Percentage of Customer Incentive Budget Spent Metric Targets

This metric measures the percentage of the customer incentive budget funded in rates that is utilized by each Rate T2 and Rate 100 customer for energy-efficiency initiatives, on an individual customer basis. In setting the 2013 targets for this metric, Union established a baseline calculated on a four year average as displayed in Table 5 below. Union did not historically plan its program budget at a rate class level. In prior program years there was no separate Rate

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MR. SMITH: Thank you very much. Those are my questions.

MS. CONBOY: Thank you. Mr. Frank, have you got re-direct?

RE-EXAMINATION BY MR. FRANK:

MR. FRANK: Very brief, Madam Chair.

Just while we're on it, when was the Dundas project actually completed?

MR. RUSSELL: Early 2012.

MR. FRANK: And you said you just received the funds now?

MR. RUSSELL: Yes.

MR. FRANK: Okay. Mr. Poch was asking you certain questions about whether the new program would create enough certainty for you with regard to availability of funds that, for example, you might know by August of a certain year that certain funds are available.

My question for you is: When does LDE budget for capital expenditures or efficiency programs for any given year?

MR. RUSSELL: Generally speaking, for planned efficiency measures, that process takes place in Q3, September/October.

MR. FRANK: Q3 of what year?

MR. RUSSELL: Of the previous -- or of the year prior to the following -- the year in question.

MR. FRANK: So having a determination that certain funds are available in August of 2013, does that assist in any way in the budgeting that LDE does for 2013?

MR. RUSSELL: No.

MR. FRANK: Those are my questions, Madam Chair.

MS. CONBOY: Thank you very much.

The panel is excused with the Board's thanks.

We are going to break for two hours in order for Union to prepare for their argument in-chief.

There were a couple of areas that the Panel would be interested in hearing about, if you are able to cover it, and that is mindful of where we are in 2013, the first day of February and moving forward to getting a decision out as quickly as we can, does that affect the August 1st date that we've been speaking about over the past day and a half?

And, secondly, if the Board were persuaded by GEC's proposal of the two years, how might that affect the August 1st date? And, in fact, Mr. Poch may have covered a bit of that in his cross-examination.

The other thing is, Mr. Poch, I am aware that you are going to be taking off and might not join us after the lunch break, but we are reconvening on Tuesday to receive oral argument from intervenors. So I just wanted to make you -- remind you of that.

MR. POCH: Yes. Board Staff has in fact communicated with counsel, and I think he is taking a poll of who is available. I have indicated on my behalf it is problematic for me to be here, but I will certainly file written evidence that day for you, so hopefully I won't delay

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from his client's perspective budgeting for capital expenditures for a given year occurs in quarter 3, or September and October of the preceding year, and as a result, identifying as late as August of 2013 what funds his employer can earmark to be used for the self-direct plan in 2013 may not be helpful for internal budgeting purposes.

And stepping back, I think there is some good sense that goes into that analysis. It is not uncommon for industrial customers to budget capital expenditures in the preceding year. And a two-year plan would potentially enable these industrial customers to include its DSM incentive into its capital expenditure budget. And this would, in our view, facilitate greater participation in the program. And for this reason, IGUA favours the two-year approach.

During Union's submissions on Friday, Mr. Smith commented on -- and I think at your request -- the timing of the proposed two-year plan, if the Board were to consider such an approach.

And Mr. Smith thought that December 31st of 2013 was appropriate on behalf of Union. And IGUA's submission is that, subject to constraints that can't otherwise be marshalled through, that August 1st of 2014 is a more appropriate time line, because that would indeed allow the customer to -- more flexibility, in terms of earmarking where the incentive may be spent. And I don't think -- if it is August 1st, 2013, I don't see how August 1st, 2014 is not feasible.

Subject to questions, I will move on to my fifth topic. IGUA supports, generally speaking, GEC's proposal that targets be set on a three-year historical approach.

Stepping back, IGUA supports that targets be based upon cubic metres, but using a three-year rolling average, as opposed to data from only one year, in our view would reduce the likelihood of volatility, and for that reason we support that approach.

We take no position on GEC's proposal, which I think on this topic also includes a 5 percent increase or decrease one way, as I recall. But just on the issue of using a three-year historical approach, it is IGUA's position that that seems appropriate.

Moving on to my sixth topic, the submissions of Environmental Defence, generally speaking, during Union's final submissions, Mr. Smith on behalf of his client stated that Environmental Defence's proposal to increase the large-volume DSM budget is "one-sided and will result in a customer backlash against Union's large-volume DSM program". He said that on page 122 at lines 1 to 3, and on behalf of IGUA we endorse that statement.

Union's evidence was clear that the large industrial customers are demanding rate certainty, stability, and predictability, and we need to strike the right balance between customer needs, budget, and rates. Union has acknowledged the importance of trying to achieve this and, indeed, to strike that right balance. And as Mr. Smith

UNION GAS LIMITED

Answer to Interrogatory from
TransCanada Energy Ltd. ("TCE")

Reference:

a) Exhibit A, Tab 1, Page 7, Lines 9 to 12
"Union is proposing to change the customer incentive budget process for Rate T2 and Rate 100 customers to a new Direct Access budget mechanism. Instead of an aggregate pool approach, at the beginning of the year these customers will each have direct access to the full customer incentive budget they pay in rates." (Emphasis Added).

b) Exhibit A Tab 1 Page 7, Lines 17 to 20
"[...] Rate T2 and Rate 100 customers will have enhanced flexibility to access a greater level of incentives for individual large projects or studies. They will know their dedicated amount of customer incentive budget for the program year." (Emphasis Added)

c) Exhibit A Tab 1 Page 28, Lines 5 to 7
"Each Rate T2 and Rate 100 customer will have dedicated access to the customer incentive budget they pay in their rates. Under this model, these customers will know exactly how much funding they have available for each program year." (Emphasis Added)

a) Define how each customer's direct access incentive fund is calculated and provide and example using their respective rate schedule.

b) Explain how each customer will get to know how much funding they have available for themselves if the impact of the DSM budget components of their respective rate schedule is not isolated.

c) Please confirm, if the answers to Interrogatory 5 b) also provides the distribution of the customer's direct access incentive funds, and if not, please explain the difference.

Response:

a) Please see Attachment 1 for the unit rate recovery of 2013 DSM program costs for Rate 100 and Rate T2.

   The direct access DSM incentive amount for Rate T2 customers will be determined for each customer at the beginning of each year and will be an amount equal to approximately 68% of the DSM program costs (excluding Low-income) recovered in Rate T2 transportation demand charges.

Example: Rate T2 Direct Access Incentive Amount for 2013 (excluding Low-income)

Line No.	Proposed Rate T2		
1	Monthly Firm Transportation Demand (10^3m^3/day)	950	
2	Annual Firm Transportation Demand (10^3m^3/day)	11,400	(1)
3	DSM Demand Unit Rate (cents/m^3)	0.9622	(2)
4	Total DSM Paid in Rates ($)	109,691	(3)
5	Direct Access Factor	0.6844	
6	Total Direct Access Amount ($)	75,072	(4)

Notes:

(1) Line 1 x 12 months.
(2) Please see Attachment 1 for the calculation of the DSM Demand Unit Rate.
(3) Line 2 x Line 3 x 10, Low-income costs not included.
(4) Line 4 x Line 5.

The direct access DSM incentive amount for Rate100 customers will be determined for each customer at the beginning of each year and will be an amount equal to approximately 68% of the DSM program costs (excluding Low-income) recovered in Rate 100 demand and commodity charges. Approximately 75% of the DSM program costs are recovered in Rate 100 demand charges, with the remaining 25% recovered in commodity charges.

Example: Rate R100 Direct Access Incentive Amount for 2013 (excluding Low-income)

Line No.	Rate 100		
1	Monthly Firm Delivery Demand (10^3m^3/day)	200	
2	Annual Firm Delivery Demand (10^3m^3/day)	2,400	(1)
3	DSM Demand Unit Rate (cents/m^3)	1.6749	(2)
4	Total DSM Demand Paid in Rates ($)	40,198	(3)
5	Annual Consumption (m^3)	64,650,000	
6	DSM Commodity Unit Rate (cents/m^3)	0.0212	(4)
7	Total DSM Commodity Paid in Rates ($)	13,706	(5)
8	Total DSM Paid in Rates ($)	53,903	(6)
9	Direct Access Factor	0.6844	
10	Total Direct Access Amount ($)	36,891	(7)

Notes:
(1) Line 1 x 12 months.
(2) Please see Attachment 1 for the calculation of the DSM Demand Unit Rate.
(3) Line 2 x Line 3 x 10.
(4) Please see Attachment 1 for the calculation of the DSM Commodity Unit Rate.
(5) (Line 5 x Line 6) /100.
(6) Line 4 + Line 7, Low-income costs not included.
(7) Line 8 x Line 9.

b) At the beginning of each year Union will communicate the incentive amount to each Rate T2 and Rate 100 customer. Please see above for how the incentive amount will be calculated.

c) The response to B4.5 b) does not provide the distribution of the customer's direct access incentive funds. Please see a) above for the formulae by which each Large Volume customer's, Direct Access incentive fund will be calculated and an example of calculating the Direct Access Incentive amount.

a target formula based on the actual 2013 post-audit metric result for the 2014 targets. Therefore, the 2014 targets will be adjusted based on the performance of the prior calendar year to drive continual improvement.

4. DSM INCENTIVE

Table 6 below shows the 2013 – 2014 maximum shareholder financial incentive allocated to the Large Volume Rate T1/Rate T2/Rate 100 scorecard based on the Program budget share. The Program budget and percentage budget share aligns with the values presented in Table 3.

The DSM Incentive is consistent with the Guidelines. It is allocated based on the program budget share and escalated for inflation annually. For 2013, all values in Table 6 have been escalated using the 2013 inflation factor of 2.22%. For illustrative purposes, the 2014 values have been escalated using the 2013 inflation factor. Actual 2014 inflation will be based on the four quarter rolling average GDP-IPI issued by Statistics Canada in the second quarter of 2013 and published at the end of August.

Table 6: Maximum DSM Incentive Allocated to Large Volume Program Scorecard

	2013			2014		
	Budget	Budget Share	Max Utility Incentive	Budget	Budget Share	Max Utility Incentive
	($000)	%	($000)	($000)	%	($000)
Scorecard						
Large Volume Rate T1 / Rate T2 / Rate 100	4,767	16.9%	1,809	4,873	16.9%	1,849
Programs Sub-total (1)	28,153	100.0%	10,682	28,778	100.0%	10,919

(1) Sum of the proposed Large Volume Program budget and the program budgets for all programs approved in the DSM Settlement Agreement (EB-2011-0325).

5. RATES IMPACT

The total amount of DSM spending to be recovered in 2013 rates as compared to 2012 approved rates for Rate T1, Rate T2 and Rate 100 customers is provided at Exhibit A, Tab 1, Schedule 1. DSM costs are included in approved delivery rates and are not separately identified. Although DSM costs are included in approved delivery rates and are not separately identified, Exhibit A,