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June 24, 2014

Ms. Kirsten Walli
**ONTARIO ENERGY BOARD**
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario M4P 1E4

DELIVERED BY EMAIL

Dear Ms. Walli:

**RE: EB-2013-0365 Union Gas Limited**

Please find enclosed the final argument on behalf of the Ontario Greenhouse Vegetable Growers in the above noted proceeding.

Yours very truly,

Michael R. Buonaguro
Encl.

**UNION GAS 2014 IRM RATES**

**ONTARIO GREENHOUSE VEGETABLE GROWERS**

**SUBMISSION ON UNSETTLED ISSUES**

**Board File No. EB-2013-0365**

**June 24, 2014**

## INTRODUCTION

These are the final submissions on behalf of the Ontario Greenhouse Vegetable Growers (OGVG) with respect to the unsettled issues in this proceeding.

OGVG will not be advancing independent argument with respect to the appropriate allocation of Kirkwall Metering Costs. However, OGVG has previewed the submissions of FRPO and support their submissions and those of CME.

Accordingly OGVG's submissions are focused on the other remaining issue before the Board, Issue 11, which was set out in the Proposed Settlement Agreement as follows:

*Are Union's contracting practices with respect to the provision of distribution service that utilizes the Leamington Line Project appropriate (e.g. the practice of requiring customers to commit to a contractual aid to construct or minimum annual volume in connection with the Project)?*

Following a Leave to Construct Application wherein Union sought and obtained approval to construct the Leamington Line Project[1] (the "Project") on the basis of representations to the Board that no Aid to Construct from new customers accessing the added capacity provided by the Project would be required, Union proceeded to contract with new customers, representing to them that they would be required to provide either an Aid to Construct or enter into multiyear contracts using a Minimum Annual Volume (MAV) derived using an allocation of the capital costs associated with the Project to individual customers irrespective of the customers' actual required annual volumes.

In summary, OGVG respectfully submits that individual contracts with greenhouse growers were not negotiated appropriately as they purported to include elements

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[1] Exhibit A Tab 6 page 1, lines 10-13.

that had not been approved by the Board. OGVG submits that under these circumstances the Board has the jurisdiction to require Union to offer customers the option of new contract terms that, *inter alia*, reduce the annual MAV requirements in accordance with the customer's actual gas needs and reintroduce the ability of the customer to terminate their contract on normal terms at the customer's option. In the alternative, if there is a reluctance to order the re-negotiation of all the affected contracts, OGVG respectfully requests that the Board set aside the MAV requirements of these contracts as unenforceable given that they constitute a rate that was not approved by the Board given Union's practice on this project, effectively reducing the MAV requirement for each of these contracts to zero.

In addition OGVG submits that, beyond the specific contracting practices related to the Project in this particular instance, going forward the process for calculating the load forecast that underpins similar projects, the calculation of any required Aid to Construct, the possibility of and process for allocating the costs of a project across multiple customers, the possible conversion of individual responsibility for capital costs associated with a project into multiyear MAV commitments, and the consideration of mechanisms for relieving individual customers of imposed obligations under appropriate circumstances should all considered in a proposal by Union to the Board for Board approval and subsequently documented by Union so that it is available to future customers that may be faced with similar circumstances.

***LEAMINGTON LINE PROJECT***

The record of the Leave to Construct Application (the "Application") for the Project has been included in Union's submissions in this proceeding.[2] Union appears to complain that OGVG did not intervene in the Application;[3] however the result of the Application was approval of the Project as requested, without modification, and with an acknowledgement by the Board based on the submissions of Union that the economics of the Project were such that there was no need for an Aid to Construct to be collected from the new customers that would be accessing the added capacity that the Project provided.[4]

Accordingly, from OGVG's perspective, there does not appear to be any aspect of the outcome of the Application that prejudiced OGVG members insofar as there were OGVG members that were potential customers accessing the capacity associated with the Project. Concern on the part of OGVG members only arose in relation to the Project when, subsequent to Union obtaining Leave to Construct for the Project, Union began contracting with individual customers for access to the added capacity.

Union represented to the Board that no Aid to Construct from customers was required in order for the Project to meet the Board's standard for economic

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[2] Exhibit A Tab 6 Appendixes A, B, C and D.
[3] Union Argument in Chief paragraph 37.
[4] Exhibit A Tab 6 Appendix D page 5.

viability.[5] Despite that representation, Union subsequently required customers seeking gas service that ostensibly[6] accessed the capacity added by the Project to either provide an Aid to Construct or contract for multiple years of service at an MAV that was calculated on the basis of an allocation of the Project Costs as a 100% Aid to Construct from the customer.

In adding these requirements prior to providing service Union was discriminating between new customers utilizing the Project capacity and existing customers who were at liberty to contract at volumes that represented their actual volumetric needs and, if needed, could terminate their gas contracts at the conclusion of any Contract Year;[7] such discrimination is, in OGVG's view, in violation of GDAR which requires non-discriminatory access to gas distribution service[8].

In order to legitimately impose additional obligations on new customers those obligations would have to be sanctioned by the Board as necessary deviations from the presupposition that access will be non-discriminatory; having already represented to the Board that no such obligations were warranted through the Leave to Construct application Union was under an obligation to treat new customers in the same manner as existing customers.

***ESTABLISHMENT OF ACCESS CONDITION TO SERVICE***

The Leamington area greenhouse vegetable growers operate commercial production of vegetables for consumption in Ontario and the United States. Although in the southern most reaches of Canada, the operations are still subjected to the Canadian winters and, as such, significant consumers of natural gas. As a result, almost all greenhouses in this area are either firm, interruptible or both, contract rate customers.

Accordingly to receive either new service or to convert from interruptible to firm service that in either case, ostensibly[9], accessed the new capacity provided by the Project, customers must enter a binding M4 or M5 contract.

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[5] Exhibit A Tab 6 Appendix C paragraph 4.
[6] "Ostensibly" because as described t Exhibit A Tab 6 Appendix A paragraph 2 no customers are directly connected to the Project; as confirmed at Transcript Volume 1 page 78.
[7] Exhibit K1.6 page 3 "Contract Term" illustrates how, for a typical M4/M5 customer there is an ability to Terminate the contract at the end of each Contract Year as long as notice of termination is provided at least 3 months prior to the end of a Contract Year.
[8] Gas Distribution Access Rule section 2.1.1: A gas distributor shall provide gas distribution services in a non-discriminatory manner.
[9] "ostensibly" because in reality the Project added capacity to the local distribution system as a whole, such that all customers, in fact, utilize all capacity on the system equally, as opposed to the Project being only accessible to customers directly connected to it.

As part of that contract, as has been evidenced in this proceeding, customers seeking to access the Project capacity were required to provide an Aid to Construct equal to an allocated portion of the capital cost of the Project, or alternatively agree to the establishment of a MAV that created, for Union, a revenue stream that resulted in the collection of the equivalent of that Aid to Construct through distribution rates over time.[10] These conditions precedent to the contract create access barriers to service under the rate that, in OGVG's respectful submission, are under the Board's authority.

***FINANCIAL CONTRIBUTION OR MAV IS A RATE UNDER BOARD AUTHORITY***

In addition to being an access condition, these conditions precedent also establish a rate under the Board's authority. As was determined recently by the Board[11], a capital contribution is a payment for distribution that is covered by the *Ontario Energy Board Act, 1998 S.O. C. 15 Schedule B*'s definition of "a rate, charge or consideration and includes a penalty for late payment" that falls within the Board's exclusive jurisdiction.

In this case, the upfront Aid to Construct paid by a customer as a condition of obtaining service would clearly fall under the definition of "a rate, charge or consideration . . ." that falls under the exclusive jurisdiction of the Board. Furthermore, in OGVG's view, the alternative option of converting the upfront payment into a mandatory MAV included in the contract continues to fall under the jurisdiction of the Board as a type of rate; consider the fact that if the MAV threshold is triggered for any reason, the customer must pay financial consideration to the utility in relation to the shortfall.

***NEITHER AN AID TO CONSTRUCT NOR A MULTIYEAR MAV WAS BOARD-APPROVED***

While some of the record in this proceeding has focused on the calculation of the Aid to Construct for the Project in accordance with the EBO 188 Guidelines Discounted Cash Flow Analysis, it is clear from the record of the proceeding that the Aid to Construct for the Project required of each customer during the contracting process was not simply an allocation of a shortfall in the economic test. Instead, in addition to any site-specific costs required to feed a customer, Union added the "unitized"[12] cost of the entire Project, allocated on the basis of acreage, to each customer to determine the required upfront Aid to Construct. Union then determined, as an

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[10] Exhibit A Tab 6 Appendix E Letter dated July 18, 2013 from Jackie Caille, page 2 sets out the requirement of either an Aid to Construct or a contract for an MAV that recovers that Aid to Construct through rates over multiple years.
[11] EB-2012-0396 Natural Resources Gas/Integrated Grain Growers Co-operative Inc. dated Feb. 7, 2013
[12] Transcript Volume 1, page 101 lines 4 to 14.

alternative to the upfront Aid to Construct, individually established multiyear MAV's designed to recover that Aid to Construct. This approach was not approved by the Board.

The establishment of a higher MAV to secure financial payment would mean that if a winter was warmer than normal, Union has ensured for that year, the unitized capital cost of the project is collected. While Union stated that these MAV's were provided by the customer, this establishment was done without analysis of DSM implications,[13] without assessment of the impact of the variability heating degree days,[14] and without consideration of the individual customer's actual required consumption per acreage of operation.[15] The result is the probability that many customers will end up with actual consumption materially under their imposed MAV, causing them to pay penalty amounts for consumption minimums they never needed.

Under Union's approach, if in every year of the contract temperatures were considerably warmer than normal and the MAV thresholds were breached, the unitized capital cost of the project would nevertheless be collected. In years when the weather or colder than normal, Union will collect more than the unitized cost. As a result Union's earnings are protected against warmer than normal weather by the MAV while Union continues to enjoy over-earning in colder than normal conditions.

OGVG notes that Union's Distribution New Business Guidelines, which are approved as a component of each of Union's rate proceedings[16], do not set out any process for providing, as an alternative to a legitimate Aid to Construct, a contractual commitment to a multiyear MAV; there is only the option to pay an Aid to Construct or finance an Aid to Construct. Accordingly this practice has not been approved as part of Union's policy for connecting new customers.

Union may argue that, in the EBO 188 Decision, the Board recommended the utilities review their policies on obtaining financial assurances,[17] and that Union's conversion of up front capital contributions into multiyear MAV obligations is an extension of such a policy. OGVG would respectfully submit that the unitization of the capital cost to each customer inappropriately shifts the risk of the Project

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[13] Transcript Volume 1, page 122 Union's contract witnesses did not have knowledge of, let alone consider, the implications of DSM on their contracting practices.
[14] Transcript Volume 1 page 123, lines 3 to 7.
[15] Transcript Volume 1 pages 87 to 91, Union confirms that they assumed consumption of 100 or 125 $M^3$ per acre for all customers when allocating responsibility for the capital costs of the Project, regardless of the underlying actual gas use that each acre may exhibit or the differences in gas use that particular operations may have.
[16] Union's Distribution New Business Guidelines were most recently filed in EB-2011-0210, Exhibit B1, Tab 3, Appendix A; Aids to Construct are discussed at pages 2 and 3.
[17] EBO 188 Decision dated January 30, 1998 paragraph 6.1.3.

completely to the customer and that the conversion of that unitized cost to multiyear MAVs protects Union's shareholder against warmer than normal winters.

In any event, as noted, the process of imposing multiyear MAVs as an alternative to an Aid to Construct is not described in Union's Distribution New Business Guidelines, so has not been approved by the Board.

For all these reasons OGVG respectfully submits that, for customers that have contracted for service that ostensibly accesses the Project's capacity, Union be required to extend the option for those customers to renegotiate the terms of their contracts, allowing customers to:

a) calculate an MAV that specifically takes into account their actual forecast consumption requirements, rather than have the MAV influenced by the need to recover a certain revenue stream over time based on an allocation of the total cost of the Project to the customer based on acreage,

b) reintroduce the ability of the customer to terminate the contract on 3 months notice prior to the end of a Contract Year, and

c) in all other ways allow the customers to contract for M4 and M5 service in the same manner as all existing M4 and M5 customers whose contract terms have been established on the presumption that there is no need to collect anything from the customer other then distribution rates related to their actual consumption needs.

In the alternative, if there is a reluctance to order the option of re-negotiation of the contracts related to the approximately 39 customers in question[18], OGVG respectfully requests that the Board set aside the MAV requirements of these contracts as unenforceable given that they constitute a rate that was not approved by the Board given Union's practice on this project, effectively reducing the MAV requirement for each of these contracts to zero.

## *ADDITIONAL CONSIDERATIONS*

OGVG respectfully submits that the Board should consider the following additional factors when determining the appropriateness of the requested relief.

## *UNION'S REPRESENTATION OF THE CONTRIBUTIONS AND MAV AS BOARD-APPROVED*

Simply put, the genesis of this issue in front of the Board stemmed from inquiries from concerned growers who were told that they needed to pay an Aid to Construct

[18] The number of customers affected is estimated at 39 based on Exhibit A, Tab 6 Appendix C page 4 which provides a summary of the 39 forecast customer attachments.

either up front or in the form of multiyear MAVs and were concerned about the implications. After a number of inquiries to OGVG, the association undertook to understand the requirement and establish clarity for its members in its letter to Union of June 28, 2013. The third paragraph of that letter stated:

> We also understand that you have been communicating with our members with a view to establishing contracts to support the project. Union's letter refers to needing economic feasibility through "long term contractual obligations or financial contributions". While your response to our request for an update on the Board decision may speak to this matter, at this time we feel it necessary that to gain a more complete understanding of the contracting process so that we may better serve our members. We fully respect Union's need to enter into equitable binding arrangements to provide the company with a reasonable expectation of meeting its rate of return on the project. However, it is essential that our members fully comprehend the contracting process to avoid any confusion in the future. We also want to ensure that the financial commitments of this process do not become a barrier to accessing the service that Union's franchise rights provide.[19]

The second page of Union's response provided their answer:

> As with all project expansions, to insure that all project costs are recovered from customers who are requesting natural gas service, customers may be required to provide Contributions In Aid of Construction, also called an "aid to construct". An aid to construct is required when the projected natural gas load revenues are less than the projected costs over the life of the new facilities. In the case of the Leamington Expansion project, there was an aid to construct required to maintain the economic feasibility for the project. This economic feasibility test expansion projects is prescribed by the Board.
> As a result, greenhouse growers who are requesting natural gas service as part of the Leamington Expansion Project are required to provide an aid to construct to recover the costs to build facilities. The project has identified that the aid for this project is $18,000.00 per acre for firm natural gas service and $9,000.00 per acre for interruptible natural gas service. The aid to construct requirement can be satisfied in two ways:
> 1. Pay a onetime up front lump sum payment. A customer choosing this option would then sign a one year gas distribution contract; or
> 2. Spread the payment of the aid to construct over a longer term with the greenhouse grower executing a contract with Union, committing to an annual volume of gas that will recover the required aid. Should the grower choose this alternative, a minimum annual volume (MAV) is negotiated with the customer that will ensure that the amount of aid is fully recovered over the

[19] Exhibit A, Tab 6, Appendix E, letter dated June 28, 2013 from George Gilvesy.

term of the contract. The length of the term will vary depending on the MAV volumes the customer is committing to.[20]

In its response, Union asserts that its request for a contribution was as a result of the Board requirement for economic feasibility. However, some three months prior, Union informed the Board that no such Aid to Construct was required. While Union has advised that they tried to adjust their position in subsequent communication with OGVG, one can see that their organizational communication was inconsistent.

In attempting to clarify what growers were told by Union's agents, OGVG sought provision of written communication with these agents who were actually negotiating the contracts.[21] The response advised that there was no written direction provided which we note as surprising given the change in position on the economic viability that Union provided to the Board. This is even more surprising given the increase in staff added by Union since the Application was approved:

MR. QUINN: So all this communication was verbal.
MS. CAILLE: To the best of my knowledge, yes.
MR. HOCKIN: If it's helpful, it's only two or three people. It would be part of a discussion topic about what happens next.
MS. CAILLE: Actually, at the time it was one. There was only one employee who was servicing this entire market. We now have three, but at the time of this proceeding being approved there was one greenhouse account manager.[22]

Even with Union's testimony that its customer agent(s) were advised verbally that the project did not require an Aid to Construct, Union's written answer to OGVG suggests that the difference between the Board-approved process (which specifically determined that no Aid to Construct was required) and Union's imposed practice (which presumed a 100% Aid to Construct from each customer in the first instance) was blurred by Union when dealing with customers.

## ***NO MATERIAL RISK TO UNION OR RATEPAYERS***

There is no material risk to Union or Ratepayers under the circumstances that warrant an Aid to Construct or multiyear commitments to MAVs.

The EBO 188 Guidelines require a revenue forecast that extends out to a 40 year Horizon, 20 years for large customers.[23]

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[20] Exhibit A, Tab 6, Appendix E, letter dated July 18, 2013 from Jackie Caille.
[21] Exhibit B12.4.
[22] Transcript, page 118, lines 8 to16
[23] EBO 188 Decision Appendix B Ontario Energy Board Guidelines For Assessing And Reporting On Natural Gas System Expansion In Ontario, requires at s. 2.2 b) with respect to forecasting revenue that the distributor use "a customer revenue horizon of 40 years from the in service date of the initial mains (20 yeas for large volume customers).

Union uses a 10 year revenue forecast from the time of attachment; in doing so (as a result of only forecasting attachments out to year 3 from the in service date of the Project) Union effectively forecast zero revenue from years 14 to 20 in the DCF Analysis, and assumes only minimal revenue, associated with only the attachments that occur after year 1, in years 11-13. Updating the forecast to include projected revenues for a full 20-year horizon results in a DCF analysis that meets the Board's threshold for economic feasibility even if it is assumed that the Project is used at considerably less than full capacity.

Furthermore Union advises that not only is the Project capacity fully subscribed, there is a waiting list for capacity in the area, so much so that Union is in the process of considering an additional capacity enhancement project.[24]

Despite the inappropriately conservative estimate of revenues for the Project, and despite every indication that there is more demand for the capacity provided by the project then Union can actually provide, the new customers accessing that capacity are being treated by Union as though it is legitimately necessary for them to individually guarantee the recovery of an allocated portion the capital costs over a certain term of 10 years or less.

**RELIEF RELATED TO FUTURE PROJECT PROPOSALS**

Union has asserted that it is planning to add even more capacity in the area, and that it intends to follow the same process in terms of seeking approval for Leave to Construct for the new capacity and for contracting out that capacity to customers.[25]

Accordingly it is particularly important to OGVG that, going forward, the process related to the economic analysis underpinning added capacity, and the determination of the resulting, if any, obligations on new customers to provide Aids to Construct in relation to a project or to underpin their future consumption using multiyear MAV commitments in lieu of an Aid to Construct are fair and clearly set out in a Board approved process.

***TRANSPARENCY AND DOCUMENTATION***

OGVG notes, for example, that the documents distributed to collect information about the new load that the Project was to address does not speak to the possibility that Union may represent to the Board that no Aid to Construct would be required from customers in order to meet the Board's economic feasibility requirements,

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[24] Exhibit B12.5 c) confirms that the Project capacity is fully subscribed; at Exhibit A, Tab 6, page 7. suggests that Union is currently considering the feasibility of adding additional capacity to meet customer demand, and Transcript Volume 1 pages 140-141 confirm that there is a waiting list for the Project Capacity.

[25] Transcript Volume 1 pages 123 to 124.

while at the same continue to require individual customers to commit to Aids to Construct for portions of the Project or commit to MAVs over multiple years in the alternative.

The documents do not describe how the volumetric needs for each customer will be determined, or what assumptions have been made in lieu of actually determining the needs specific to each customer.[26] There is only reference to "a minimum of one year contractual commitments and or upfront payment for capacity" followed by the assurance that "The facilities, rates and services including in this binding Expression of Interest will be subject to OEB approval",[27] and a cost per acre of either $10,300 or $20,500 for interruptible or firm distribution service without explanation as what that figure represents, how it was derived, or how it would impact a customer's obligations and costs as they relate to obtaining distribution service going forward.[28]

As noted earlier, there is no discussion of the conversion of Aids to Construct into, as an alternative, multiyear MAVs in Union's Distribution New Business Guidelines, let alone details on how that would be done in an appropriate manner.

Accordingly OGVG submits that the Board should require Union to document and seek OEB approval for the details of any process it proposes to use going forward that:

a) allocates portions of the capital costs of a project to individual customers, and

b) translate that allocation of costs into multiyear MAVs requirements on those individual customers,

including the rationale underpinning the allocation of the costs and the rationale for how the multiyear MAVs are to be determined including, for example, the minimum and maximum contract terms.

OGVG notes, by way of analogy, the much more detailed information required for dissemination by the utility in the Storage and Transportation Access Rule[29]; there is no reason why a similar depth of information and detail be provided to

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[26] Exhibit A Tab 6 Appendix A pages 23 to 27 includes the documents distributed to potential customers for the Project prior to the Leave to Construct application, collectively referred to by Union as an Expression of Interest in Gas Service for Commercial and Industrial Customers.
[27] Exhibit A Tab 6 Appendix A page 25.
[28] Exhibit A Tab 6 Appendix A page 27.
[29]The Storage and Transportation Access Rule, section 2.2.1 sets out detail requirements for the offering of transportation service through an open season.

consumers in the context of expansion projects that may require customers to take on obligations beyond those related to the payment of basic distribution rates.

### *LOAD FORECASTING*

Additionally, as part of any such filing, Union should file evidence with respect to the appropriate manner in which to forecast load and related revenues for the purpose of the Discounted Cash Flow Analysis when implementing the EBO 188 Guidelines for the purpose of determining whether an Aid to Construct is required from new customers accessing capacity added in an expansion.

It appeared from the Application that, when representing to the Board that no Aid to Construct was required, Union felt it was sufficient for load forecasting purposes for Union to simply gauge interest in service based on a rough estimate of the added volumes going forward based on a per acre volumetric assumption to forecast revenues out 10 years from the proposed attachments, even though customers had not yet contracted for service.

It became apparent, however, when contracting with individual customers that Union was not itself satisfied with anything less then having either 100% of the capital costs of the Project paid up front, or have new customers contractually commit to volumes at levels that essentially guaranteed the recovery of the equivalent of their allocated portion of the capital costs within 10 years of their proposed attachment to the system.

In OGVG's view, there appears to be a material disconnect between the revenue forecasting methodology contemplated by the EBO 188 Guidelines when determining whether an Aid to Construct is required, and the revenue forecast methodology that Union uses when actually connecting (large) customers to an expansion project. In OGVG's submission Union is inappropriately requiring new customers to guarantee the revenue forecast, which in turn improperly relieves Union of the obligation to forecast the revenue. In OGVG's view it is important for the Board to turn its mind to an appropriate approach to forecasting revenue in the context of decisions that may cause new customers to either pay large Aids to Construct or, if Union's proposal is approved by the Board, convert Aids to Construct related to large projects into contractual terms.

### *ALLOCATION OF COSTS*

OGVG further points out that Union's Distribution New Business Guidelines, page 3, set out how a) the amount of aid to construct charged to the customer(s) will be based on the minimum size facility to serve that customer(s);[30] in OGVG's view Union's allocation of capital costs in this instance on the basis of acreage fails to

[30] EB-2011-0210, Exhibit B1, Tab 3, Appendix A; Aids to Construct are discussed at pages 2 and 3.

appropriately consider the possible variation in load requirements between customers, and therefore fails to consider whether it may be allocating more capacity to a customer (and therefore more of the new facility) than is needed for service.

Union used only two simplistic assumptions with respect the varying consumption patterns of the customers that intended to access the Project's added capacity; Union assumed a consumption rate of 100 $M^3$ per hour per acre for "old" customers and 125 $M^3$ per hour per acre for "new" customers. Union made no investigation into the actual, varying gas use of the different customers intending to access the added capacity related to the Project.[31]

Union then, in seeking to allocate the costs of the Project across the customers intending to access the added capacity, allocated the costs based not on the actual gas needs of the customers, but rather on the basis of their acreage, implicitly assuming that all customers used either 100 $M^3$ or 125 $M^3$ per hour per acre.

Accordingly any customer with actual consumption needs materially lower then the assumed 100 $M^3$ or 125 $M^3$ per hour per acre would be allocated a disproportionately higher cost of the Project relative to their needs, whereas customers whose needs exceeded the assumed 100 $M^3$ or 125 $M^3$ per hour per acre would be allocated a disproportionately lower cost of the Project relative to their needs.

As a result, customers with relatively efficient operations and correspondingly modest gas needs would be compelled to choose between a disproportionately high Aid to Construct obligation prior to accessing gas service, or commit to a MAV that, rather then reflect their actual gas needs, required them to build in consumption they may not require over multiple years in order to access gas service.

Accordingly Union should be compelled to obtain more precise information from its customers with respect to their consumption needs, both in terms of supporting the load forecast that underpins the DCF analysis and the proposed capacity for projects going forward, and in terms of allocating responsibility for Aids to Construct or MAVs related to a project based on actual customer needs, assuming the Board agrees that either is appropriate in a particular instance, so that the differences in customers with respect to consumptions needs are appropriately reflected in the project design, associated DCF analysis and any contracting obligations that are imposed.

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[31] Transcript Volume 1 pages 87 to 91, Union confirms that they assumed consumption of 100 or 125 $M^3$ per acre for all customers when allocating responsibility for the capital costs of the Project, regardless of the underlying actual gas use that each acre may exhibit or the differences in gas use that particular operations may have.

### *RELIEF FOR NEW CUSTOMERS WHEN LOADS REDUCED OR DISCONNECTED*

OGVG further submits that, in the event the Board determines that it is appropriate for Union to compel customers to contract for service using capacity such as that provided by the Project in a manner that essentially imposes on obligation on those customers to guarantee the revenue stream underpinning the entire upfront capital cost, it is necessary for the Board to develop mechanisms to relieve individual customers of that burden where appropriate.

For example, in the present case, as already noted, Union asserts that there is a waiting list for access to the capacity provided for by the Project. OGVG respectfully submits that, in addition to ensuring from the outset that the MAV the customer has committed to (assuming the Board approves the requirement of such a commitment) does not over-allocate costs to the customer relative to their actual consumption needs, there is no reason that such a customer should be required to pay penalties under the contract either as a result of reduced consumption or early disconnection if the released capacity is taken up by new or existing customers, or if the revenue generated by the project is otherwise sufficient.

In terms of both evaluating the need for securing revenue from new customers and developing mechanisms for relieving such customers from obligations in appropriate circumstances, OGVG respectfully submits that there are several factors that the Board should consider, including:

a) the nature of the project in terms of the accessibility of its related capacity (i.e. whether it provides capacity to the local system as a whole or whether it can only be accessed in limited circumstances);

b) the level of aggregation of load (i.e. the difference between providing capacity for one additional, specific large customer vs., as in the present case, providing capacity to dozens of smaller customers whose loads are being aggregated);

c) the prospects of replacing the load of any initial customers that disconnect with new customers (i.e. as noted in the present case there is a waiting list of customers for the added capacity, which is already fully subscribed); and

d) the sensitivity of the discounted cash flow analysis to variations (i.e. in the present case the analysis provides the required Profitability Index of 1.0 based on only 13 years of revenue, such that projecting revenue out to 20 years as set out in the EBO 188 Guidelines suggests a large tolerance for less then 100% utilization of the new capacity while still providing a 1.0 profitability index within an acceptable time frame).

It should be noted that the EBO 188 Guidelines were designed in the first instance to protect existing ratepayers from the impacts of expansions in the event the costs of the expansions do not attract sufficient offsetting revenue; the EBO 188 Guidelines were not designed to provide an opportunity for the shareholder to earn extraordinary revenue. Requiring customers to pay additional amounts, whether in the form of an Aid to Construct or additional amounts in rates as a result of artificially high multiyear MAVs, while at the same time retaining the ability to recover what would be replacement revenue from substitute customers or by allocating unused capacity to existing customers that need additional capacity is not, in OGVG's respectful submission, an intended outcome of the EBO 188 Guidelines.

***SUMMARY OF FUTURE RELIEF REQUESTED***

For all these reasons OGVG respectfully submits that, in addition to the relief specific to the Project and related contracts as already requested, Union should be required to submit to the Board a comprehensive proposal that addresses the transparency, load forecasting, allocation, and relief concerns raised in relation to their current, unapproved practices so that the Board may review their proposal and approve a comprehensive policy for use by Union in the future.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF JUNE 2014**