ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998;*

AND IN THE MATTER OF Union Gas Limited and Enbridge Gas Distribution Inc. Applications for approval of 2015-2020 demand side management plans.

ARGUMENT

INDUSTRIAL GAS USERS ASSOCIATION (IGUA)

1. The Ontario Energy Board's DSM policy has excluded large industrial customers from mandatory ratepayer funded DSM programming since 2011.

2. Union Gas, Green Energy Coalition (GEC) and Environmental Defence (ED) seek to change that through this proceeding. Their requests should be rejected.

Exclusion of Large Industrial Customers from Mandatory Ratepayer Funded DSM

3. In its June, 2011 *Demand Side Management Guidelines for Natural Gas Utilities* [EB-2008-0346], and following extensive consultation, the Board determined that[1]:

> *... large industrial customers possess the expertise to undertake energy efficiency programs on their own. As a result, ratepayer funded DSM programs for large industrial customers are no longer mandatory. If any are proposed, they will be considered on their merits.*

4. At that time, the Board defined large industrial gas customers as those in rate classes 100 and T1 for Union, and rate class 115 for Enbridge.

5. Following the issuance of the 2011 DSM Guidelines, both Union and Enbridge settled their DSM proposals for 2012 through 2014, and the settlements came forward and were ultimately approved by the Board. These Board sanctioned settlements[2], which were reached by a broad array of interested stakeholders, included DSM budgets for rate classes which included large industrial customers; Union's rates T1[3] and 100 and EGD's rates 110, 115 and 170. These budgets were set, and capped, at levels that had been negotiated by all interested parties. As with all settlement agreements, these agreements were the subject of compromise by all concerned, and in the context of the discussions and considerations relevant at the time.

6. On March 31, 2014 the Ontario Minister of Energy issued a directive to the Board to take articulated steps to promote electricity conservation and natural gas DSM. In respect of DSM, the Minister directed that in setting a new DSM framework, *"the Board shall have regard to the following objectives of the government <u>in addition to such other factors as the Board considers appropriate</u>"* [emphasis

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[1] Ibid, page 26.
[2] EB-2011-0327, Settlement Agreement, January 31, 2012, pages 23 to 26; EB-2011-0295, Settlement Agreement filed November 4, 2011, pages 14-15; EB-2012-0394, Settlement Agreement, Filed February 28, 2013, page 15 (as reproduced at Exhibit K9.1, page 15).
[3] At the time Union did not have a rate T2 for their largest customers.

added]. The government objectives enumerated in the direction include the objective:

> *"that the DSM Framework shall enable the achievement of all cost-effective DSM..."*

7. There has been some debate in this proceeding about what *"all cost effective"* as used in this directive means. The record in this proceeding shows that it means different things to different people. IGUA returns to this topic later in this argument. The directive does not define *"all cost effective"*.

8. The directive does, however, state:

> *Nothing in this Directive shall be construed as directing the manner in which the Board determines, under the Ontario Energy Board Act, 1998, rates for Gas Distributors or for [electricity] Distributors, including in relation to applications regarding regional or local electricity demand response initiatives or infrastructure deferral investments.* [Emphasis added.]

9. In referring to *"such other factors as the Board considers appropriate"* and through express deference to the Board's ratemaking discretion, the Minister's directive recognizes that, from a regulatory policy perspective, the Board must balance the *"all cost effective"* DSM direction, and others aspects of the directive issued, with ratemaking considerations and in accord with the Board's own policies and objectives, which policies and objectives include protecting the interests of gas consumers with respect to prices and promoting energy conservation and efficiency with due regard to the consumer's economic circumstances.

10. In October 17, 2014 submissions on the Board's draft DSM Framework [EB-2014-0134] IGUA stated as follows:

> *IGUA's point of departure on ratepayer funded DSM remains that, in general, customers who consume the gas volumes that IGUA's members do, and for whom delivered gas supply costs are such a major component of their input costs, are already economically motivated to be as efficient in their fuel consumption as practical, given budget constraints and*

competitive pressures. That is, these types of gas users, properly informed, intrinsically strike an economically efficient balance between investments in gas use efficiency and associated costs, investing in energy efficiency wherever it is economically efficient to do so. Further, the significant portion of input costs that gas use represents for these customers generally ensures that they will inform themselves properly in order to make these determinations. For the most part, the in-house energy managers at these companies best understand their own equipment, processes, input costs and input uses.

11. IGUA is an association of industrial companies located in the Canadian provinces of Ontario and Québec, who use natural gas in their industrial operations. IGUA has become the recognized voice representing the industrial user of natural gas before regulatory boards and governments at both the provincial and national levels. The association's activities are guided by an active 15 member Board of Directors. The Board of Directors has regularly scheduled meetings at least six times each year. A full time president and other staff are based in a permanent office in Ottawa.

12. In respect of DSM in particular, IGUA has consulted extensively and repeatedly with its members, including as these applications have proceeded and in connection with this Final Argument. There should be no doubt that the positions advanced by IGUA in these submissions are directly reflective of the views and instructions of IGUA's Ontario members.

13. All witnesses examined by IGUA's legal counsel in the current proceeding (for Union, EGD, and GEC) agreed (though EGD's witnesses grudgingly so) that large industrial customers are sophisticated in respect of energy use and competitively motivated.[4]

14. Having considered all of the submissions received on its draft DSM Framework, including those of IGUA as excerpted above, and those of GEC and ED advocating expansion of DSM in general, and of large volume customer DSM in

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[4] Transcript Volume 4, page 52, lines 9 through 18; Transcript Volume 7, page 81, line 1 through page 88, line 16; Transcript Volume 11, page 6, line 28 through page 7, line 18.

particular, the Board again determined, as it had in its 2011 DSM Guidelines, that[5]:

> *... rate funded DSM programs for large volume customers should not be mandated as these customers are sophisticated and typically competitively motivated to ensure their systems are efficient.*

15. The Board indicated that it was concerned with the cross-subsidization issues of large volume customers given the relatively small number of customers in the largest volume rate classes.[6] The Board went on to direct that its conclusions regarding DSM for large volume customers are to be applied to EGD's Rate 125, and Union Rates T1, T2 and 100. The Board specifically noted that these rate classes had *"a very limited number of customers"* (ranging from 5 in the case of Rate 125, to 38 in the case of Union's T1 rate class).

16. EGD has followed this Board direction. It has not proposed any DSM programs for its Rate 125 customers.

17. Union has completely ignored this direction.

18. GEC and ED have sought to re-litigate it.

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[5] EB-2014-0134, Report of the Board *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, page 27.
[6] DSM Framework, page 29.

IGUA Positions

19. In respect of Union, IGUA argues that Union should be directed to adhere to the Board's direction regarding large volume customers, and discontinue ratepayer funded DSM programs to its rate T2, T1 and Rate 100 customers.

20. In respect of both of the Union and EGD DSM proposals, IGUA also argues that:

a. The record in this proceeding supports a direction for re-examination of a more developed mechanism to determine which large volume customers are appropriately exempted from mandatory ratepayer funded DSM, and of how the policy direction in this respect as reconfirmed in the DSM Framework is best implemented. IGUA submits that the Board should so direct.

b. Pending such re-examination, and in order to address the DSM cost and cross-subsidy exposure of industrial large volume customers in other Union and EGD rate classes in the interim, IGUA submits that the Board should direct that actual spending on DSM for each of Union Rates M4, M5 and M7 and EGD rates 100, 110, 115, and 170 be capped at 140% of approved budgets, inclusive of DSM VA access.

c. The Board should provide for review of the implications of expected carbon pricing regulation on both DSM plans promptly once the details of carbon pricing legislation become available.

d. The mid-term review of both DSM plans, as mandated both by the Minister's directive and by the DSM Framework, should include full discovery regarding, and review of, the "net to gross" and IRP studies to be completed and filed by the utilities, and of the implications of the results of those studies for the DSM plans.

21. IGUA further argues that the positions of GEC, ED and any others to the effect that DSM spending should be increased beyond the levels mandated by the DSM Framework should be rejected.

Adherence by Union to the Board's Direction Regarding Large Volume Customers

Rate T2 & Rate 100

22. Union's rationale for continuing to offer ratepayer funded DSM programs to its largest volume customers in its Rate T2 and Rate 100 classes appears to be *"direct customer feedback"*, and nothing more.[7]

23. One need but review the transcript of Ms. Kyriazis' examination on behalf of APPrO of Union's Panel 3 – Transcript 4 pages 134 through 139 – to realize that the feedback from Union's largest volume customers regarding ratepayer funded DSM was, at best, equivocal. Comments like *"we have our own expertise"*, *"doubtful whether Union Gas could provide sufficiently specialized expertise"*, *"oppose embedded DSM program costs in rates"* and *"prefer removing DSM program costs from rates"* indicate significant opposition among these largest customers to continuation of any ratepayer funded DSM for them. And these were just the large volume customers that Union chose to solicit comments from[8], and as Union itself has summarized them.

24. Union's "large customer panel" witnesses acknowledged that Union's employees would never be as expert in an industrial process as the industrial's own employees. Union's employees are not as expert at steel making processes as someone who runs a steel plant, nor as expert at mining as the miners themselves, and similarly for chemical production and pulp and paper.[9]

25. Nonetheless, in the face of this strikingly weak support among Union's largest customers for ratepayer funded DSM, and expertise that admittedly does not approach the level of the industrials themselves, Union proposes to continue offering its T2 and Rate 100 customers a DSM program focussed on training and

[7] Union Evidence, Exhibit A, Tab 3, page 64, lines 5 and 6.
[8] Transcript 4, page 174.
[9] Transcript 4, pages 60 and 61.

expert advice, the cost of which would total approximately $4 million over the plan period.[10]

26. Union does not propose to recover any shareholder incentive for this T2/Rate 100 program.

27. In light of the (at its highest) ambivalence of the targeted customers for this program and the lack of any shareholder incentive to provide it, one wonders why Union is proposing to offer it at all.

28. If Union is genuinely of the view that its T2/Rate 100 customers value the programs being proposed, then the DSM Framework provides a mechanism under which such programs can be compliantly offered:

> *...If a gas utility, in consultation with its large volume customers, determines that there is substantial interest in the gas utility providing expertise and a value-added service to help improve the energy efficiency levels of these customers' facilities, the gas utilities are able to propose a fee-for-service program which the Board will approve on its merits.*[11]

29. Union has made no genuine attempt to follow this guidance and explore a fee for service program.

30. During IGUA's examination on the "fee for service" notion, Union's witnesses asserted that "fee for service" means consulting engineering services for execution of a particular project. Such specific engineering engagement was distinguished by Union's witnesses from Union's proposed DSM efficiency advisory involvement in *"early identification discussion, or early problem identification and early solution process"*.[12]

31. When GEC's witnesses Messrs Neme and Chernick were asked about this, their view was that there was, and has for decades been, a significant amount of energy efficiency expertise available for hire all over the world, to assist with any

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[10] Union Evidence, Exhibit A, Tab 3, page 71.
[11] EB-2014-0134, Report of the Board *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, page 27.
[12] Transcript Volume 4, pages 57 through 59.

and all stages of consideration of efficiency initiatives, including at early identification and efficiency solution discussion stages.[13]

32. Indeed, the existence of external expertise in precisely the services that Union proposes to offer to its Rate T2/100 customers is apparent in Union's own evidence that a large part of the cost of the proposed program for these customers relates to the external trainers that Union would retain to offer courses in locations near their customers' plants.[14]

33. Union further testified that one of the benefits to customers of these training courses would be that the customers would save time and money relative to attending such courses more remotely from their plants[15]. If customers would value such training, close to their plants, why could Union not charge for such training on a "fee for service" basis, as they have been directed to do? Then those who value it would take it, and those who don't (and would not attend but for the fact that they have already paid for it in rates) would not be forced to pay for it. Union did not even explore that option with the large volume customers with whom they chose to consult.[16]

34. Another part of the services that Union is proposing to provide at a cost of $4 million over the plan period is visits to the customers' plants. For its largest contract customers, Union regularly does this anyway.[17]

35. While Union states that there was no interest on the part of its large volume customers in a "fee for service" program, the Union Panel 3 testimony indicates that Union did not even explain to its customers what that would mean.[18] Without agreement on what that would mean, how could Union conclude that there was no interest? IGUA can only conclude that Union did not genuinely consider the

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[13] Transcript Volume 11, pages 8 through 10.
[14] Transcript Volume 4, page 80, line 27 through page 81, line 3.
[15] Transcript Volume 4, page 81, lines 4 through 12 and page 143, lines 20 through 27.
[16] Transcript Volume 4, page 79, lines 13 through 16.
[17] Transcript Volume 4, page 86, line 23 to page 87, line 3.
[18] Transcript Volume 4, pages 78 – 79.

options available to it, and its customers, under the "fee for service" model directed.

36. Union also assumed that the "fee for service" charges for such a program would be Board approved.[19] There is nothing in the Board's DSM Framework that indicates that would be the case. What the DSM Framework says is that such services could be offered based on an agreement as between Union and its interested customers on *"an appropriate fee"*.[20]

37. Union has simply ignored the Board's direction on exploring "fee for service" offerings for its large volume customers. IGUA submits that it would be premature for the Board to abandon this policy direction without any evidence that it is not correct or executable.

Rate T1

38. In respect of its T1 customers, Union proposes to reintroduce conventional mandatory ratepayer funded DSM programming to them. The basis of this proposal is that following the split of the old Rate T1 into a Rate T2 for larger large volume customers and Rate T1 for smaller large volume customers, the *"significant differences between Rate T1 and Rate T2 in terms of daily contracted demand and annual consumption"* justifies reintroduction of 36 T1 customers[21] into the conventional DSM stream. Union further justifies this proposal on the basis that the new T1 rate class customers have contract demand and consumption levels that more closely mirror those of its M4 and M7 customers, and EGD's Rate 100 customers, none of whom are identified by the Board in the DSM Framework for exclusion from mandatory ratepayer funded DSM.[22]

39. In determining that Union's 36 Rate T1 customers should be included on the "non-mandatory" side of the mandatory/non-mandatory ratepayer funded DSM

[19] Exhibit A, Tab 3, page 63, line 11.
[20] EB-2014-0134, Report of the Board *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, page 29.
[21] Exhibit K4.1, page 1.
[22] Union Evidence, Exhibit A, Tab 3, pages 52 through 63.

determination, the Board was well aware of the consumption characteristics of these customers. These consumption characteristics are expressly referenced in Table 1 (page 28) of the Board's *Demand Side Management Framework for Natural Gas Distributors (2015-2020)* report [EB-2014-0134].

40. While the facts cited by Union indicate that the consumption levels of Rate T2 and Rate T1 customers are different, these facts do not indicate why or how the Board was wrong in concluding that these T1 customers should be included on the non-mandatory side of the line.

41. The Board should reject Union's proposal and direct that Union include T1 customers in the rate classes for whom ratepayer funded DSM should not be mandatory.

Remaining Large Volume Customers Subject to Ratepayer Funded DSM

42. While submitting that the Board should reject Union's proposal and direct that Union maintain T1 customers in the rate classes for whom ratepayer funded DSM should not be mandatory, IGUA does recognize that Union's argument presents a bit of a conundrum.

43. As pointed out by Union, there is not much of a distinction in terms of gas consumption volumes between IGUA's members who take service under Union Rate T1 and those who take service under Union Rates M4, M5, M7 or EGD Rates 100, 110, 115, and 170. All of these rate classes (along with Union's T2 and Rate 100 classes and EGD's Rate 125 class) are large volume "contract" classes.

44. Union argues that its Rate T1 customers should be treated, for DSM purposes, in the same manner as its M4, M5 and M7 customers, on the basis (*inter alia*) that in many cases these customers can choose any of, and in fact shift back and forth between, all of these rate classes, given similar consumption characteristics.

45. For IGUA, the similarities in consumption volumes and potential interchangeability among rate classes between Union's Rate T1 customers and Union's Rate M4, M5, M7 customers, and similar characteristics of these customers with EGD's Rate 100, 110, 115 and 170 customers, does <u>not</u> dictate exclusion of Rate T1 from the non-mandatory DSM grouping. Rather these similarities suggest to IGUA, and IGUA respectfully suggests to the Board, that these facts suggest that we should start thinking of the value of mandatory ratepayer funded DSM according to a customer's gas usage characteristics, rather than according to their gross volume levels and resulting rate class assignment.

46. Rather than reversing Board policy and moving 36 T1 customers out of the existing exemption from mandatory ratepayer funded DSM, IGUA submits that

these facts commend consideration of the application of existing Board policy to other large volume contract customers who should be brought within the ambit of that exemption.

47. The essential basis of the current exemption of certain customers from mandatory ratepayer funded DSM is that these large volume customers are sophisticated in their gas consumption. That is, these customers know their own businesses processes and equipment requirements best, and are competitively motivated towards energy use efficiency.[23]

48. IGUA acknowledges, however, that there may be a difference between industrial customers and other ("commercial" or "manufacturing") large volume customers.

49. Industrials make things.[24] They use gas for process load. The cost effectiveness of those processes are at the heart of what they do, and how they compete.

50. "Commercial or "manufacturing" large volume customers typically use gas for heating. The focus of their businesses and expertise is not on gas use, but rather on other things.

51. These essential gas use characteristic differences have historically resulted in different DSM program approaches for industrial versus commercial customers.[25]

52. IGUA recognizes that Union's M4, M5 and M7 rate classes and EGD's 100, 110, 115, and 170 rate classes all include, in addition to industrial customers, other customers who, while large volume, use gas primarily for heating rather than processes.

53. IGUA does not represent manufacturers, and so will not opine on whether gas use for these types of heating customers is as "front and centre" an input cost management issue for these commercial customers as it is for industrial process

[23] EB-2014-0134, Report of the Board *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, page 27.
[24] Transcript Volume 4, page 62, lines 5 through 8; Transcript Volume 7, page 77, lines 7 through 13.
[25] See, for example, Transcript Volume 7, pages 77-78, where EGD's large volume customer witnesses discussed these distinctions.

customers, and thus whether mandatory ratepayer funded DSM programs are of more use and value for large volume manufacturers than they are for large volume industrials.

54. The new DSM Framework, like its 2012-14 predecessor, distinguishes between customers for whom mandatory ratepayer DSM remains appropriate and those for whom it is no longer appropriate based on consideration of the nature of the customer, and how they use gas in their business. It determines that customers who are sophisticated in respect of energy use and competitively motivated to ensure that their systems are efficient should not be subject to mandatory ratepayer funded DSM programs.

55. This policy rationale is not necessarily correlated with the customers' rate class placement based on volume or physical connection to the system. (Mr. Tetrault for Union testified regarding rate class placement of customers on main versus customers served through distribution infrastructure, but in the end did not assert that these physical connection differences commended any different DSM treatment.[26])

56. The point is well illustrated by reference to implementation of this policy determination for EGD. The DSM Framework directs that only one EGD rate class – Rate 125 – be excluded from mandatory ratepayer funded DSM. EGD's rate 125 customers are all power generators. None of IGUA's large industrial members take service under rate 125.

57. Despite the clear policy rationale that large, energy sophisticated and competitively efficiency motivated customers should be excluded from mandatory ratepayer funded DSM, and while many IGUA members who fit this description are served in Union's T2, T1 or rate 100 rate classes and are thus excluded from mandatory ratepayer funded DSM programs and charges, <u>none</u> of IGUA's members served by EGD are excluded from mandatory ratepayer funded DSM programs and charges.

[26] Transcript Volume 4, pages 69-70.

58. In EGD's service territory, only power generators are excluded from mandatory ratepayer funded DSM, whereas in Union's service territory the same Board policy results in exclusion of both power generators and gas intensive industrials. This anomalous result illustrates the randomness of using rate classes to determine which large volume customers should be excluded from mandatory ratepayer funded DSM and which should be included.

59. IGUA has members served by EGD in rate classes 110, 115 and 170. Following is a table which sets out the number of customers in each of EGD's 110, 115 and 170 rate classes. All of these customers are considered by EGD to be "large" customers, they are all contract customers. The table also identifies the subset of 34 customers in these classes who consume more than 10 million m^3 of gas per year in their operations[27], a number of whom are IGUA members.

EGD Rate Class	Total Number of Customers	Customers Consuming > 10 million m^3/year
110	186	11
115	31	12
170	34	11

60. This data illustrates that there are very large volume customers in these rate classes who should fit within the Board's policy for exclusion from mandatory ratepayer funded DSM and associated charges, but who are not so excluded.

61. Further, two of these rate classes include the same (small) number of customers overall as Union's T1 rate class, which has been exempt from mandatory ratepayer funded DSM since 2011 expressly out of concerns regarding resulting forced anti-competitive cross-subsidies among these customers, from those already more efficient to those who have yet to make similar efficiency investments.

62. Determination of which large volume customers are sophisticated and competitively motivated towards energy input efficiency should be based on customer types and gas use characteristics, not on volume breakpoint or

[27] Data sourced from Exhibit K9.1, page 3, and Exhibit J9.7.

physical configuration of connection to the system. As pointed out by Mr. Lister during examination on this topic, it may be inappropriate *"to paint all customers with one brush"*[28].

63. One approach to alignment of practice with policy is to exempt additional rate classes from mandatory ratepayer funded DSM (i.e. the contract rate classes; Union rates M4, M5, M7 and EGD rates 100, 110, 115, and 170).

64. IGUA recognizes that there has not been much discussion in this proceeding of excluding additional rate classes from mandatory ratepayer funded DSM. IGUA also recognizes, as noted above, that there are customer types ("commercial" or "manufacturing" customers) in these rate classes that use gas differently from the way IGUA's members do, and might not want to be removed from mandatory ratepayer funded DSM.

65. Another approach would be to allow "opt out".

66. IGUA also recognizes that the Board has recently rejected a proposal for DSM "opt out" by large volume customers. (IGUA was not actively advocating opt out in that proceeding.) IGUA thus elected not to pursue "opt out" in this proceeding. Nonetheless, the record as it has been developed in this proceeding suggests that this approach be considered again.

67. In particular:

a. As reviewed above, consideration of the rationale presented by Union to support its proposal for reinstatement of mandatory ratepayer funded DSM for Rate T1 customers leads to the conclusion that it is customer gas usage and business characteristics, rather than gross consumption, that commends exclusion from mandatory DSM, or not.

b. GEC's witness, Chris Neme, has suggested that an opt out provision (or a bill credit mechanism in lieu thereof) would be an appropriate way to

[28] Transcript Volume 7, page 88, line 28.

address concerns by large industrial customers that they are doing sufficient energy efficiency on their own.[29]

68. IGUA thus explored with both EGD and Union witnesses the utilities' abilities to track DSM expenditures at a customer level, and the scope and status of their respective proposed new DSM driven IT investments. This exploration has validated that:

a. EGD and Union do track customers' DSM activities at a customer level[30];

b. Payment of customer DSM incentives is already executed through the bill, or at least in line with the utilities' billing systems[31]; and

c. the proposed DSM driven IT systems are in their early stages of specification (and thus still amenable to specific development priority direction), and are intended to facilitate greater sophistication in customer level tracking and reporting, including enhanced DSM/billing system interfaces[32].

69. IGUA's examination of Mr. Neme also identified a number of U.S. jurisdictions which include "opt out" provisions of some kind for larger volume customers.[33]

70. IGUA respectfully submits that the record in this proceeding supports a direction for re-examination of a more developed mechanism to determine which large volume customers are appropriately exempted from mandatory ratepayer funded DSM, and of how the policy direction in this respect reconfirmed in the DSM Framework is best implemented. IGUA submits that the Board should so direct.

71. IGUA submits that the mid-term review would be an appropriate forum for the reconsideration of "opt out" and/or alternative mechanisms for better implementation of the policy regarding mandatory ratepayer funded DSM for large volume customers.

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[29] Exhibit L.GEC.1, pages 32 (bottom)–33.
[30] Both utilities have custom project or self-direct programs for their larger customers; see also Transcript Volume 7, page 93, line 24 to page 94, line 3.
[31] Transcript Volume 13, page 32, line 27 through page 33, line 11.
[32] Transcript Volume 4, page 92, line 19 through page 94, line 6.
[33] Transcript Volume 11, pages 41 *et seq.*

72. IGUA makes this submission on the premise that the Hearing Panel:

a. Determines that the Board will stay its current policy course regarding exemption from mandatory ratepayer funded DSM of Union's Rate T2, T1 and Rate 100 customers and EGD's Rate 125 customers; and

b. rejects arguments by GEC, ED and any others to increase DSM spending levels beyond those directed in the DSM Framework.

If this Hearing Panel does not so determine, then IGUA's concerns regarding application of the Board's current policy in this area will be heightened and the mid-term review would be too long for IGUA to wait to bring these concerns back before the Board.

73. IGUA notes that, by the time of the mid-term review, the result of implementing the exclusions currently directed by the Board will also be apparent, and could inform proper consideration of whether or not such exclusions should be expanded to additional customers, and if so how.

74. In order to address the DSM cost and cross-subsidy exposure of industrial large volume customers in the interim, IGUA submits that the Board should direct that actual spending on DSM for each of Union Rates M4, M5 and M7 and EGD rates 100, 110, 115, and 170 be capped at 140%[34] of their approved budgets, inclusive of DSMVA access. This is the model that was adopted in the EGD 2012-14 DSM settlement to address the concerns of large volume customers (and as a compromise) regarding their ultimate potential rate exposure to DSM costs. The Board should further direct that each of Union and EGD continue manage spending in these rate classes, within these caps, so that access to DSM programs for the non-industrial customers in each of these rate classes is not unduly compromised (again, as was agreed in the EGD 2012-14 DSM plan settlement).

[34] The 140% of approved budget spending cap per rate class proposed above was derived by rounding up a simple average of approximately 137% in turn derived from data provided in Exhibit J9.8 regarding the EGD rate class spending caps as a percentage of rate class DSM budget for the years 2013, 2014 and 2015, but excluding Rate 170 for 2015, which appears to be an outlier in the current year, a fact which was not explored during the hearing.

75. EGD has indicated that it can operate within the foregoing parameters.[35] IGUA submits that Union has so operated since 2012, and should be able to continue to so operate (and, of course, recognizes that Union will indicate otherwise in its reply argument if that is not the case).

[35] Transcript Volume 7, see discussion starting at page 100, and culminating at page 112, lines 2-3.

Expansion of DSM for Large Volume Customers

76. Beyond Union's proposal to ignore the Board's policy and reintroduce mandatory ratepayer funded DSM for large volume customers in rate classes T2, T1 and 100, IGUA anticipates that GEC and ED will propose not only reintroducing mandatory ratepayer funded DSM to these rate classes, but also adding back in EGD rate 125 and significantly increasing DSM spending for all rate classes, including in particular large volume rate classes.

77. IGUA applauds and appreciates both GEC and ED being proactively clear on their respective positions through the course of this proceeding. This has allowed IGUA to address those positions, at least at a high level, in this argument.

78. IGUA fully and strongly disagrees with those positions.

79. IGUA disagrees with the positions that the rate impact guidance provided by the Board in the DSM Framework ($2/month per residential customer, and proportionately similar impacts for other customer types) should be calculated net of a list of speculative benefits, including; i) a rate reduction factor due to avoided infrastructure costs; ii) a rate reduction factor due to Ontario landed gas price suppression resulting from the gas consumption reductions attributable to Union and EGD DSM programs; and iii) avoided rate costs of carbon regulation compliance resulting from reduced carbon reduction requirements as a result of DSM driven gas consumption/carbon emission reductions.

80. Other parties will be arguing further details regarding each of these proposed offsets to rate impacts from ratepayer funded DSM. IGUA defers to those arguments.

81. IGUA simply notes that the DSM Framework does <u>not</u> direct, or contemplate, or allow for, calculation of a "net" rate or bill impact on customers of utility DSM activities. Rather, the Board clearly and deliberately directs that *"DSM <u>costs</u> (inclusive of both DSM budget amounts and shareholder incentives) for a typical*

residential customer of each gas utility should be no greater than approximately $2.00/month".[36]

82. The Board did not say "net costs", the Board did not say "net rates", the Board did not say "net bills". The Board said *"DSM costs".*

83. The Board said so expressly in reference to balancing the value (customer specific and societal) of ratepayer funded DSM against its statutory mandate to protect the interests of consumers, expressly including DSM non-participant consumers, with respect to prices of gas service. As already noted, the Minister's directive which initiated the Board's revised DSM Framework expressly acknowledged the Board's mandate in this respect.

84. The OEB is not the first, nor the only, regulator seeking to reflect an *"all cost effective efficiency"* government policy within a mandate to ensure that rates for energy consumption are just and reasonable, including reasonably affordable and competitive.

85. In an attachment to a technical conference undertaking response (Exhibit JT4.15), Synapse provided a 2014 ACEEE published paper which canvassed the 7 U.S. states which the paper authors believe have chosen an *"all cost effective"* efficiency mandate.

86. IGUA has not reviewed these regulatory regimes in detail. For example, IGUA has not investigated whether these mandates relate to, and/or are driven by, electricity policy, gas policy, or both.

87. IGUA has reviewed the legislative language used to convey this mandate in each of these states as set out in Table 1 in the paper. Review of this table indicates that:

[36] EB-2014-0134, Report of the Board *Demand Side Management Framework for Natural Gas Distributors (2015-2020)*, page 17.

a. 4 of the 7 states direct *"all cost effective"* through language aimed at least cost resource planning/procurement. (Connecticut, Maine, Rhode Island, and Vermont)

b. An additional one of these 7 jurisdictions (Massachusetts) actually prescribes a specific charge - a tenth of a cent/kwh (obviously this mandate is in relation to electricity usage).

c. An additional one of these 7 jurisdictions (California) directs development of an estimate of all potentially available *"cost effective"* electricity and natural gas efficiency savings, and then directs the state energy commission to establish targets for annual efficiency savings for a 10 year period, though does <u>not</u> actually direct that the targets must equal the estimate. One can presume that would be a matter in the commission's discretion.

d. Only one state of the 7 jurisdictions (Washington) seems to have a mandate to actually procure *"all cost effective"* conservation.

88. The paper also indicates that, as at the time of the study (April, 2014), there were an additional 18 states which had "full funded" energy efficiency resource standard policies, and which did not have *"all cost effective"* efficiency requirements (as interpreted by the authors of the paper).

89. In the end, then, only <u>one</u> state out of 25 states with fund DSM programs seems to have an actual *"all cost effective"* energy efficiency mandate (possibly) un-tempered by rate impact and affordability considerations.

90. It seems that the phrase *"all cost effective"* as applied to conservation has different meanings to different people.

91. The Ontario Minister's directive to the Board did not define *"all cost effective"*. However, the Minister did, in his covering letter to the Board, characterize the directive as requiring the Board to *"take steps to promote electricity conservation and demand management and natural gas demand side management consistent with the Government of Ontario policy of putting conservation first"*. The concept of *"putting conservation first"* was highlighted again in the body of directive (section 5) in directing the Board to take steps to implement *"conservation first"* as a principle in gas and electricity distributor infrastructure planning. To IGUA,

this connotes that *"all cost effective"* as used in the directive should be considered in reference to principles for infrastructure planning and cost effective energy services (including efficiency measures).

92. Once the results of the directed utility IRP studies are available, the Board will be better positioned to evaluate the feasibility of higher DSM spending in lieu of gas supply infrastructure investment.

93. Until then, the Board is, in IGUA's respectful submission, entirely justified in directing ratepayer funded DSM spending, including rate classes to be included in such spending, in the context of balancing the directive to facilitate *"all cost effective"* DSM with its mandate to protect the interests of ratepayers, including non-participants, with respect to the price of gas service by directing the level of DSM costs to be included in rates. This is what the Board has deliberately and thoughtfully done in the DSM Framework.

94. It is also instructive that, as noted at the outset, while the Board has excluded certain large volume customers from mandatory ratepayer funded DSM programming since 2011, the Minister's directive does not express any concerns about that.

95. We also know that GEC raised concerns with the Ministry directly about this directed exclusion of large volume customers from mandatory ratepayer funded DSM.[37] Of course, the Board's refreshed DSM Framework expressly confirms this exclusion. Yet when the Minister wrote to the Board on February 4, 2015 to specifically provide feedback on the new DSM Framework that had by then been issued, and to further request that the Board consider certain matters in connection with implementation of that framework, the Minister did <u>not</u> express any concerns about this directed exclusion of large volume customers.[38] This despite the fact that the Minister did in his letter specifically address another

[37] Transcript Volume 11, page 4, lines 11-14.
[38] Exhibit K1.2, page 12.

matter which GEC had raised with the Ministry; gas price suppression benefits of DSM.[39]

96. Despite having been specifically alerted by GEC to both the gas price suppression issue and the exclusion of large volume rate classes from mandatory ratepayer funded DSM, the Minister has expressed a view only about the former, and no concerns about the latter.

97. Mr. Neme, who has been working with GEC for some time, including in respect of the Board's refreshed DSM Framework and this proceeding, confirmed that he is not aware of any expression of concern by the Ontario government with the Board's determination to exclude large volume customers from mandatory ratepayer funded DSM.

98. The Board can thus conclude that, from a policy perspective, the Minister is not concerned about the Board's determination in this respect.

99. Similarly, given that the Minister has not questioned nor expressed any concern regarding the DSM spending levels determined by the Board to be appropriate, the Board can reasonably conclude that the Minister is not concerned with this aspect of the DSM Framework either.

100. Arguments for any such spending increases, like arguments for re-inclusion of large volume customers in mandatory ratepayer funded DSM, including arguments based on required or expected consistency with government policy, should be rejected.

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[39] Transcript Volume 11, page 4, lines 7-10.

Issues for Mid-Term Review

101. The Minister's March 31, 2014 Directive to the Board requiring development of the DSM Framework directs a mid-term review. The Board's DSM Framework makes provision for such a review. There has been some discussion in this proceeding regarding the appropriate scope of that review.

102. The DSM Framework (pages 3-4) expressly includes within the scope of the mid-term review the following:

   a. Assessment of the utilities' performance against, and the appropriateness of, the long-term DSM targets.

   b. Annual metrics, budget levels, impacts on customer rates and shareholder incentives.

   c. Review of progress in implementing the priorities outlined in the Minister's March, 2014 directive, the Ontario government's Long Term Energy Plan, and the DSM Framework itself.

   d. Review of the DSM Framework in light of *"the overall conservation landscape, including any new or revised government direction"*.

   e. The appropriateness of the provision of guidance on the nature of the gas utilities' DSM activities beyond 2020, and in particular whether the framework should be extended.

103. IGUA agrees with CME that the process for the mid-term review should not be constrained now. Rather, the appropriate process will depend on the issues engaged at the time.

104. IGUA has argued that the Board should direct the utilities to review the method of implementation of the Boards policy for exclusion of large-volume customers from mandatory ratepayer funded DSM. IGUA anticipates that such a review would be of significant interest to a number of parties, and that a full discovery and testing of the utility positions on that issue would be appropriate.

105. The DSM Framework (page 36) directs that the utilities' work on the role of DSM in future infrastructure planning should be finalized in time to inform the mid-term

review. IGUA submits that this work should be subject to full discovery and consideration (including through cross-examination, as may be reasonably requested) when reviewed by the Board. IGUA is supportive of obtaining better information on when investment in gas use efficiency is a cost effective alternative to infrastructure investment. If investing in efficiency is cheaper than investing in infrastructure, for comparable results, then IGUA would be fully in favour of ramping up efficiency investments, the costs of which would then appropriately be recovered from all who benefit from avoided higher infrastructure costs.

106. The utilities are also preparing a "net to gross" study, which will examine, among other things, the large volume customer "free ridership" question which attracted some attention by Board Staff, and others, during this proceeding.[40] IGUA is interested in the results of that study, and submits that those results, and their implications for DSM programming, should also be reviewed and fully tested as part of the mid-term review (if not earlier).

107. The Board should also consider whether the mid-term review would be appropriately used to approve a rolling forward of the utilities DSM plans, with appropriate adjustments. This approach of a "rolling" DSM plan approval would preclude the timing and transition issues that resulted in the first year of this new framework being essentially a continuation of the previous set of approved DSM programs. Such an approach, too, would commend a more complete review in which proposals for program modifications could be understood and tested by interested and affected parties.

[40] Transcript Volume 4, page 168.

Carbon Regulation & DSM

108. There has also been some discussion during the hearing about whether consideration of the impacts of the yet to be detailed Ontario carbon regulation program can be deferred to the mid-term review.

109. If such details are available later this year or early next, as they are currently expected to be, IGUA does not believe it would be appropriate to delay consideration of impacts on DSM plans until the mid-term review.

110. It is anticipated that IGUA member companies will be designated as "large final emitters" under the proposed carbon cap and trade scheme, and will thus be directly subject to emission limits. Once that is the case, these companies will have to invest in reductions in gas consumption and/or buy offsets to meet their compulsory regulatory obligations. To the extent that such investments require the assistance of external expertise, these companies will have no choice but to pay the fees for such services.

111. While details are not yet publicly confirmed, IGUA anticipates that major reductions in emissions will be required, and there will be significant economic penalties if these are not achieved. IGUA's members are already pursuing fresh efficiency measures in anticipation of, and are already making step changes in corporate priorities as a result of, this new regime.

112. When these regulations come into effect, anticipated no later than 2017, utility incentives to implement reductions in gas consumption and rate funded training and analysis would be completely redundant for the large users directly subject to carbon regulation. Recovery by these customers through rate funded DSM programs of 70% or less of the DSM costs included in rates[41], and compulsory (through rates) contribution to shareholder DSM incentives and utility DSM administrative costs would needlessly exacerbate the compliance costs which these companies will have to bear in any event.

[41] Exhibit J, 4.7.

113. Union's Ms. Lynch has considered this, and agreed that large industrial gas customers directly subject to cap and trade won't need any incentives or encouragement.[42] Ms. Lynch also agreed that it would be appropriate for the Board to look at this issue once there is clarity, and not necessarily wait for the mid-term review.[43]

114. IGUA strongly agrees, and urges the Board to make provision for timely review of the impacts on approved DSM programs of carbon regulation once the details of such regulation are known.

[42] Transcript Volume 4, page 96, lines 9 through 14.
[43] Transcript Volume 4, page 97, lines 2 through 5.

A Final Comment: Large Industrial Customer Resistance to Mandatory DSM

115. Before concluding this argument, IGUA would like to comment on the ongoing tension regarding ratepayer funded DSM that has been apparent for some time, and has come to a head in this proceeding, between conservation advocates and large industrials. Mr. Neme acknowledged this ongoing tension in testimony.[44] IGUA anticipates that the arguments of other parties will reflect it.

116. Mr. Neme opined that much of this tension arises from the different time frames within which DSM advocates and large industrial gas consumers evaluate investments.

117. Large industrial gas consumers are capital constrained, competitively pressured, and shareholder responsible, and evaluate investments in 1-3 year paybacks to their operations.[45]

118. Conservation advocates consider energy efficiency investments from an "energy system" perspective, which by definition entails time frames of decades.[46]

119. Considered another way, simply because IGUA's members are among the largest consumers of gas does result in an ability to shoulder the overall social costs associated with broader and longer term total resource or societal benefits. It is trite, but perhaps important, to observe that while the exodus of industrial capital from Ontario would certainly reduce emissions, no party to this proceeding would advocate such a result.

120. Environmental Defence has repeatedly referenced Ontario's investment in electricity efficiency (CDM) for our largest electricity customers. What ED has not addressed is that costs for the social benefits provided by Ontario's industrial CDM initiatives are socialized across all of Ontario's ratepayers. (This also begs a question about whether rates or transparently determined taxes are a more

[44] Transcript Volume 11, page 25, line 9, *et seq.*
[45] Transcript Volume 11, page 27, lines 4 through 16; Transcript Volume 7, page 120; Transcript Volume 4, page 95, lines 12 through 18.
[46] Transcript Volume 11, page 26.

equitable and appropriate mechanism for collecting these costs, which question IGUA will not address here.) Ms. Lynch acknowledged this key difference between DSM funding mechanisms and CDM funding mechanisms in her testimony.[47] Recovering $500 million dollars to pay for efficiency which yields benefits over 2 or more generations from ratepayers at large is a very different proposition than recovering $500 million from industrials whose immediate business survival requires focus on a time frame of no more than a few years.

121. The $500 million in CDM funds will also be "amortized" for recovery through the global adjustment. There was some tentative discussion in this proceeding regarding amortizing DSM costs over time to match the timing of broader DSM benefits[48], though the topic has not been considered in any significant detail.

122. To be crystal clear, IGUA's members are not opposed to "cost effective" energy efficiency. Industrials define "cost effective" with reference to benefits accruing to them. The market context in which they "live" requires them to do so. For example, to the extent that investments in energy efficiency can avoid or defer material gas infrastructure investment, at lower overall cost, IGUA's members would be vocal advocates of such an approach.

123. Beyond near term cost effectiveness from a customer perspective, as a matter of principle the directing minds of IGUA's members, and the industrial corporate cultures themselves, do support longer term investments in environmental and global sustainability for the broader good. IGUA's members do make investments in broader social and environmental initiatives, which is both good for society and good corporate policy. However, competitive realities dictate limits to their ability to do so.

124. Further, mandatory contribution towards utility administrative costs and utility shareholder profits, constraints on how and for what uses efficiency funds can be accessed, and administrative costs associated with recovery for use towards

[47] Transcript Volume 4, page 88, lines 11 through 20.
[48] Transcript Volume 11, page 30.

efficiency initiatives of money collected in rates, all seems to IGUA a counterproductive use of constrained industrial capital if the objective is to maximize the benefits achievable from that capital.

125. To the extent that benefits of broader DSM investments accrue to society as a whole, so too should the costs. Ontario's industrials would be glad to participate in broader social and environmental initiatives for the greater good. They cannot, however, afford to shoulder the cost of those initiatives alone.

126. If society at large, through their elected officials, is prepared to pay for $500 million to harness these benefits, then IGUA members would be happy to help achieve them. Focussing that social tax on the handful of Ontario's largest industrial gas consumers is itself not a sustainable policy.

127. More to a point relevant to these proceedings, if the Board is persuaded that spending DSM dollars on industrial efficiency is the most cost effective way to achieve social or system benefits that the Board believes are within its mandate to foster, then IGUA would be happy to work with the utilities and DSM experts to fashion a model through which industrials could contribute in a manner proportional to the benefits that they receive, and other ratepayer groups could contribute in a manner proportional to the benefits which they, and their children and grandchildren, will receive. The manner in which the current DSM Framework recovers DSM costs is not such a model.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:

GOWLING LAFLEUR HENDERSON LLP, per:
Ian A. Mondrow
Counsel to IGUA

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