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Ontario Energy Board
2300 Yonge Street
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May 31, 2018
Our File: EB20170224

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0224/255/275 – Cap & Trade 2018 Compliance Plans – SEC Final Argument

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No.4, this is SEC's Final Argument on the applications by Enbridge Gas Distribution Inc. ("Enbridge"), Union Gas Ltd. ("Union"), and EPCOR Natural Gas Limited Partnership, for approval of their 2018 Cap and Trade Compliance Plans. While all three utilities are seeking approval of their applications in this combined proceeding, SEC has focused its participation in the proceedings, and its submissions, on Enbridge and Union (the "utilities").

The Board's primary task in this proceeding is to determine if the proposed cost consequences of the Compliance Plans are reasonable and appropriate (Issue 1). Similar to the review of the 2017 Compliance Plans, SEC is not in a position to provide assessment on the central issues due to confidentiality restrictions in place in this proceeding.[1] SEC reiterates its view that the Board should re-visit the scope of what information should be considered market sensitive and thus is considered strictly confidential. The market-sensitive information should be treated the same way it is treated in other proceedings, confidential pursuant to the *Practice Direction on Confidential Filings* but not strictly confidential in the sense of being secret from even the customers that are bearing the costs. This issue becomes more important going forward as the next Compliance Plan will be two years in scope, not just one.

Due to these limitations, SEC is only able to provide submissions on a few narrow areas of the applications.

[1] The strictly confidential information includes not just information relating to participation in auctions for which disclosure is restricted under the *Climate Change Mitigation and Low Carbon Economy Act,* but also information the Board has determined is market sensitive.

A. <u>Administrative Costs</u>

i) 2016 Administrative Costs

Both Enbridge and Union are seeking recovery of administrative costs incurred in 2016 in the lead-up to the start of the Cap and Trade program that are currently recorded in their respective Greenhouse Gas Impact Deferral Accounts ("GGIDA"). SEC does not take issue with the reasonableness of the balance of either utility, but does believe that the Board should deny recovery for Union as the amount is below its materiality threshold as set out in its approved IRM plan.

In its *Decision and Accounting Order* in EB-2015-0367, while approving the creation of Union's GGIDA ("Union GGIDA"), the Board stated that at the time disposition is sought, it would "review the costs for prudence and will determine <u>whether the costs are appropriate for recovery from ratepayers in the context of Union's IRM framework</u>".[emphasis added][2] Under Union's approved IRM framework, which governs its rate-setting between 2014 and 2018, a new deferral or variance for non-commodity costs can be approved in the context of a Z-factor.[3]

SEC agrees that the purpose of the account, as well as the costs included, meet all the requirements of a Z-factor, with the exception of the materiality threshold for 2016. The costs are directly related to the Cap and Trade program, the imposition of which is outside of Union's control (requirement 1), relate to a new legal requirement in respect to which Union could not have taken steps to mitigate (requirement 2), and are incremental to costs included in its current price cap index (requirement 3). SEC does not challenge the prudence of the specific 2016 costs (requirement 4). As Union confirmed, the proposed 2016 amount of $2.232M does not meet the $4M net delivery revenue requirement materiality threshold (requirement 5).[4]

Unlike Union, Enbridge's GGEIDA was established initially by the Board in its Custom IR decision (EB-2012-0459) in which there was no materiality threshold for the purpose of recovery.[5] SEC submits that recovery of the 2016 balance of $840K is appropriate.

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[2] *Decision and Accounting Order*, (EB-2015-0367 - Union Gas Ltd), April 6 2016, p.2 (See Appendix A)

[3] EB-2013-0202, Union Gas Limited Settlement Agreement, July 31 2015, Ex.A-2, section 8 (See Appendix B), Approved in *Decision and Order* (EB-2013-0202), October 7, 2013:

> "The parties agree that for prospective or historical cost increases/decreases to qualify for pass through as a "Z factors", the cost increases/decreases must:
>
> 1. causally relate to an external event that is beyond the control of utility's management;
> 2. result from, or relate to, a type of risk;
>   a. for which a prudent utility would not be expected to take risk mitigation steps; and,
>   b. which is out of the realm of the basic undertaking of the utility (per EB-2011- 0277 Decision, page 13);
> 3. not otherwise be reflected in the price cap index;
> 4. be prudently incurred; and,
> 5. meet the materiality threshold of $4.0 million of annual net delivery revenue requirement impact per Z factor event. Net delivery revenue requirement will be defined in the same manner as set forth in Section 6.6 above.

[4] Tr.1, p.55

[5] While technically the 2016 Enbridge GGEIDA was established in its 2016 rates proceeding (EB-2015-0114), this was due to Enbridge's past practice, which has subsequently been eliminated, of re-establishing all previously approved deferral and variance accounts annually. The original establishment of the account for the purposes of

ii) 2018 Administrative Costs

Both Enbridge and Union are seeking certain determinations with respect to their respective 2018 administrative costs, while both recognizing that they are not seeking inclusion of any of the costs in rates at this time.

Union specifically asks the Board to determine that its 2018 administrative costs are "just and reasonable", consistent with its view of the approvals that were granted in the 2017 Cap & Trade Compliance Decision.[6] Union appears to misread the Board's Cap and Trade Compliance Decision. While the Board did find that the 2017 forecast administrative costs were "consistent with the expectations established in the Cap and Trade Framework", it made no findings with respect to reasonableness.[7] In fact, the decision reflects quite the opposite. What the Board stated was that the "actual costs for each of the Gas Utilities to meet their Cap and Trade compliance obligations will be assessed for cost-effectiveness and reasonableness when they are filed as part of the 2019 Compliance Plan proceeding".[8]

Similarly, the Board should assess the reasonableness of the 2018 administrative costs when Enbridge and Union seek disposition of those costs in a future proceeding.

SEC does agree that it would be helpful to the utilities for the Board to provide general comments regarding their forecast administrative costs to help guide the utilities, recognizing that ultimately, the determination will occur upon disposition. In doing so, SEC submits the two areas of greatest concern are the duplicative nature of the utilities' administrative costs considering their new affiliate relationship, and the proposed Low Carbon Initiative Fund ("LCIF"),

Affiliate Utilities Should Share Services

SEC submits that the 2018 administrative costs are *prima facie* unreasonable. There is no reason for Enbridge and Union to operate two separate Cap and Trade teams anymore. Enbridge and Union are affiliates due to their common ownership. As regulated entities of the Board, they should be sharing and rationalizing costs as appropriate. This should include their 2018 administrative costs. The pending MAADs application may be relevant to explain why they are two separate entities, but it is not a justification for not working together to reduce costs through sharing of services.

In 2017, there were legal restrictions in place under O.Reg 144/16 which precluded Enbridge and Union from working together regarding most aspects of Cap and Trade compliance.[9] This may be a relevant rationale for the lack of cooperation and rationalizing of the 2017 administrative costs, but it is not a basis for the failure to do so in 2018. The relevant provisions of the regulation were revoked for 2018, and with it, the basis for ratepayers to pay for two of everything for these affiliates is gone.

Enbridge's 2014-2018 rates framework was in the Board's Custom IR decision where Board agreed with the request to establish this new account (See *Decision with Reasons* (EB-2012-0459 Enbridge), July 14 2014, p.70); Enbridge Argument-in-Chief, p.8

[6] Union Argument-in-Chief, para 74

[7] *Decision and Order* (EB-2016-296/300/330 – 2017 Cap and Trade Compliance Plans), September 21 2017, p.16

[8] Ibid

[9] See previous sections 65(3)(4) of O.Reg 144/16; Interrogatory Response EGD SEC.8; Interrogatory Response Union B.SEC.7

SEC is not suggesting that the total combined administrative costs for Union and Enbridge would be half of the forecasted amounts. A significant portion of the forecast costs such as incremental bad debt expenses, OEB costs, billing system update, and customer education costs would not be expected to materially change, regardless of the new affiliate relationship. Other spending areas can be reduced, and the resources shared between the two utilities. There is an opportunity for both utilities to share personnel resources, for example, to avoid the need for an additional 6.1 FTEs to be added in 2018.[10]

There is also no need for each utility to retain consulting firms to provide market intelligence and offset protocol planning. These functions are generic across both Utilities. As just one example, Union has retained BlueSource and is forecast to spend $100,000 to provide "expertise on the offset market, interpretation of offset protocols and regulations, and insight with respect to the developing offset market in Ontario and WCI".[11] Enbridge has forecast to spend $50,000 on similar "[o]ffset protocol response" consulting.[12] Enbridge and Union worked together in developing the Abatement Construct so there is no reason the Board and ratepayers would not expect these affiliates to work together in all aspects of their Cap and Trade compliance plans to reduce costs. They are part of the same corporate enterprise.

While there is no precise way to determine what the appropriate amount of a reduction is to each proposed Cap & Trade budget, SEC recommends that 25% of the budgets exclusive of the LFIC fund (addressed separately below), would be appropriate. This 25% reduction is an average across both utilities, of a reduction of 40% in the proposed budgets in areas where the Board should reasonably expect resources to be rationalized (staffing, market intelligence and consulting support, and 'other' cost categories). [13]

Low Carbon Initiative Fund

Enbridge and Union are individually seeking approval to spend up to $2M each to fund various research and development activities relating to future carbon abatement activities, technologies and initiatives.[14] These LCIFs would fund activities in stages 1 (conceptualize) and 2 (formulate) of the utilities' jointly created Abatement Construct.[15]

While SEC is not opposed to the utilities undertaking abatement development activities entirely, we do have significant concerns with the proposed LCIF, and the specific spending that is forecast in 2018.

The evidence demonstrates that much of the proposed spending in 2018 is inappropriate and/or premature. As Union and Enbridge demonstrated during their proceeding, there are little to no work

[10] Interrogatory Response Union B.SEC.15, Table 1
[11] Interrogatory Response Union B.Staff.12(d)
[12] Interrogatory Response EGD Staff.13(b)
[13] Interrogatory Response Union B.SEC.15
[14] Tr.1, p.29
[15] Interrogatory Response Union B.Staff.21

plans regarding the proposed initiatives they plan to undertake in 2018. No business case, research summary, or detailed work plans have been developed for any of the forecasted initiatives.[16] While Union was able to provide a basic budget and simple project schedule[17], Enbridge does not even have that information.[18] Union's own plan for the LCIF is to spend 58% of the $2M amount that it is forecasting.[19]

If the Board does believe that some form of a research and development effort is appropriate for the Utilities, there should be specific rules, criteria, and expectations on what type of initiatives should be funded through the Cap and Trade administration budget. Those criteria should include:

- ***Utilities Must Demonstrate Sufficient Planning Before Undertaking Initiatives.*** Both Union and Enbridge have done little to no planning for their 2018 initiatives. No business case, research summary, or detailed work plans have been developed for any of the forecasted initiatives.[20] Each project should be supported by a formal project work plan and business case that demonstrates that the project meets appropriate criteria, before the amounts are approved. Neither utility has adequately undertaken this preparatory work. With respect to ensuring the initiatives meet the criteria they themselves created in their Abatement Construct, Union admits it has not formally ensured that their proposals meet them[21], and Enbridge could only point to a template document it created after the Technical Conference, after questions on this issue were raised.[22] Before ratepayer funds are spent, it is incumbent on Enbridge and Union to have a formal plan for each initiative, and for the Board to review it.

- ***Initiatives Should Be About Abating Customers or the Utilities' GHG Emissions, Not the Emissions of Others.*** Under the Cap and Trade Framework, the utilities have the obligation to manage the GHG emissions generated by their own facilities' and those of non-program participating[23] customers' GHG obligations.[24] Abatement activities that do not go to abating those GHG emissions should not be funded by ratepayers. For example, Enbridge has proposed funding $300,000 for the natural gas vehicle demonstration project.[25] Increasing natural gas vehicles' adoption will abate the province's overall GHG emissions since it is more carbon effective as opposed to other forms of transportation fuel, but it will not abate the emissions of Enbridge's natural gas customers. While the expansion of natural gas vehicles may be a worthy endeavor for Enbridge, it is not the type of activity that should

[16] Tr.1, p.91; Interrogatory Response Union B.SEC.10; Interrogatory Response Union B.Staff.2;1 b).Technical Conference Tr.2, p.76,

[17] Undertaking JT1.17

[18] Tr.4, p.9

[19] Tr.1, p.30; Undertaking JT1.17

[20] Tr.1, p.91; Interrogatory Response Union B.SEC.10; Interrogatory Response Union B.Staff.2;1 b).Technical Conference Tr.2, p.76,

[21] Tr.1, p.37-38

[22] Tr.4, p.6; Undertaking J4.1;

[23] Cap & Trade program participating customers are those who are large final emitters' or voluntary participants.

[24] *Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (EB-2015-0363), September 26 2016, p,.1; EGD Exhibit C, Tab 5, Schedule 1, p.1; Union, Ex.4, Tab 1, p.2

[25] Interrogatory Response EGD Staff.23

be funded by existing ratepayers through the compliance plan. It does not abate their GHG emissions.

- ***Initiatives Should Not Be Used For Competitive and/or Non-Regulated Activities.*** Since Enbridge and Union have unregulated affiliates, the LFIC should not be an opportunity to underwrite the risk of research and development activities that are either currently, or may become, unregulated competitive activities or products. The fund should not be used as a new business development activity.

  For example, Enbridge's natural gas vehicle initiative, which involves demonstration projects for small fleets, is already an activity that its unregulated affiliate, Union Energy Solutions, does.[26] Union Energy Solutions and Union Gas share employees.[27] It is also an activity that Enbridge admits it has been doing for a "very long period of time".[28] The LCIF initiative is simply marketing that product to a specific sub-group (small fleets); a sub-group that it admits it has targeted in the past.[29]

  Union is proposing to undertake pilot projects with respect to ground-source heat pumps, a technology that Enbridge believes is a "mature technology" and is developed enough that it has made its way to the implementation stage of the Abatement Construct.[30] Such an activity is clearly not appropriate for spending through the LCIF. It is also an activity that appears to exist already in the competitive market and should not be regulated. At the very least, it is a live issue in the Board's EB-2017-0319 proceeding.[31]

  While there were numerous questions at the oral hearing regarding the need for ratepayers to benefit from any intellectual property that may be transferred to an unregulated affiliate that is not a central concern,[32] SEC assumes that this would only occur if the intellectual property that is derived from the LCIF work is successful and valuable. Transfer of intellectual property between the regulated utility and affiliates is governed by the Affiliate Relationship Code.[33] The issue is not when the research and development activities work out, but when they do not. Ratepayers are always on the hook for those costs, and never the shareholder.

- ***LCIF Must Be The Fund Of Last Resort.*** Enbridge and Union must ensure that the LCIF funding is used as a funding source of last resort. With significant new public funding

[26] Exhibit K1.3, Tab 3; Tr.3, p.67-72

[27] The Vice-President of Union Energy Solutions is also the Vice-President of Sales, Marketing, and Customer Case of Union. See, Tr.1, p.84

[28] Tr.3, p.71

[29] Tr.3, p.71

[30] "Enbridge believes geothermal systems are a mature technology and if designed, sized and installed properly, they work very well." (See Enbridge response to interrogatory " EGDI.SEC.7 in EB-2017-0319

[31] *Procedural Order No.2*, (EB-2017-0319), April 23 2018, Schedule A - Final Issues List, Issue 1.2 :

> "Should the new business activity – Geothermal Energy Service Program – be considered as part of the utility's regulated business?"

[32] See for example Tr.3, p.62

[33] Ontario Energy Board, *Affiliate Relationship Code for Gas Utilities*

resources available for GHG abatement such as GreenON, Green Initiative Fund, the Climate Change Action Plan, and others funds and participants, the utilities should ensure they have sufficiently looked to those sources before seeking funding from ratepayers. As an example of failing to do this, each utility has a forecast LCIF spending on Power to Gas projects. At the same time, the IESO is undertaking work in this area.[34]

Before reaching into their customers' pockets, the utilities must ensure they have looked at all other sources of funding available, including those already provided to them by the Board. This includes funds such as the Collaboration and Innovation fund approved by the Board as part of the 2015-2020 DSM Plan proceeding that is to promote innovation, research and pilot projects, in the area of energy efficiency.[35]

- ***Data Should Be Made Public.*** SEC submits that if ratepayers are funding research and development activities, then the results from that research should be theirs, not the utilities. Enbridge appears to have no issue making reports publically available, subject to concerns regarding commercial sensitivity and third-party data[36], whereas Union's position is that it will only provide that information in the context of a future Board proceeding.[37] A *condition* of approval of any LCIF funding should be subject to *reasonable* restrictions (privacy or third-party information), the data and research from these initiatives should be made available to the public so that others can learn from and potentially build off the work done by the utilities. This should include not only summary reports, but also raw data, where appropriate. Both utilities should be required to place this information on their website soon after the completion of each major stage of their work. This should include data that may be commercially sensitive to the utilities (as opposed to third parties), since it is ratepayers funding that work. If they want to hoard the information, they should fund its development with shareholder, not ratepayer, funds.
  .
- ***No Duplication.*** Enbridge and Union must ensure that there is no duplication between any of the work conducted between them. In may even be preferable that there be a single fund. Upon disposition the amounts spent could be allocated 50-50 between the two GGEIDA accounts regardless of whose 'employees' actually undertake the work, unless it can be demonstrated that the work is truly focused on a unique aspect of one of their distribution systems.

B. Incremental Abatement Activities

A significant amount of the oral hearing was dedicated to the issue of the lack of incremental demand-side management ("DSM") abatement activities proposed by Enbridge and Union. The evidence of Mr. Neme appears to show that there is incremental cost-effective abatement that can be undertaken by the expansion of the utilities' DSM programs.[38]

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[34] Exhibit K1.2, p.23-27

[35] Interrogatory Response Union B.Staff.21(f)

[36] Tr.4, p.19;

[37] Tr.1, p.46-47; Interrogatory Response Union B.SEC.11(c)

[38] Exhibit L, Direct Testimony of Chris Neme (Energy Futures Group), p.31-32

Consistent with the submissions filed in the Phase 1 of the DSM mid-term review, and our letter filed in response to Environmental Defense[39], the relationship between the utilities' GHG obligations and their DSM programs raises a number of complex issues. Right now, those issues exist in a vacuum, because the Board does not have before it any evidence as to what can be achieved by Enbridge and Union through incremental action to reduce customer gas use (and thus GHG). For the Board, as a fundamentally evidence-driven body, this is a significant barrier to dealing with the issues. Similar to our submissions in last year's Cap and Trade Compliance proceeding, the mid-term DSM review is the most appropriate form to consider these issues.

The utilities should be invited to provide incremental GHG reduction plans, essentially incremental DSM programs, in a proceeding in the context of the DSM mid-term review. This will allow for a hearing of all parties on this issue, and reviewing it in the context of actual proposed plans. If Mr. Neme and those who support his evidence are correct, waiting until after the current DSM framework has ended to consider incremental abatement activities, may lead to the over-spending of tens or even hundreds of millions in allowances, offsets, and other products in the market.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicants and interested parties (by email)

[39] SEC Letter dated May 11, 2018 re: DSM Mid-Term Review (See Appendix C)

A

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ACCOUNTING ORDER

EB-2015-0367

UNION GAS LIMITED

Request for approval to establish the Greenhouse Gas Emissions Impact Deferral Account

BEFORE: Allison Duff
Presiding Member

April 7, 2016

1 INTRODUCTION AND PROCESS

Union Gas Limited (Union) is a major Canadian natural gas storage, transmission and distribution company serving about 1.4 million residential, commercial and industrial customers in communities across northern, southwestern and eastern Ontario.

Union filed an application on December 17, 2015, with the Ontario Energy Board (OEB) seeking approval to establish a deferral account to record the cost impacts of government requirements related to greenhouse gas emissions (the Greenhouse Gas Emissions Impact Deferral Account).

In Procedural Order No. 1, the OEB granted intervenor status and cost eligibility to a number of parties. The OEB also scheduled dates for filing interrogatories, responding to interrogatories, and filing submissions.

The OEB received submissions from OEB staff, the Building Owners and Managers Association – Greater Toronto (BOMA), the Canadian Manufacturers and Exporters (CME), the School Energy Coalition (SEC) and a reply submission from Union.

The OEB approves Union’s request to establish the Greenhouse Gas Emissions Impact Deferral Account and approves the Draft Accounting Order as filed.

2 GREENHOUSE GAS EMISSIONS IMPACT DEFERRAL ACCOUNT

Background

In its application, Union noted that the Ontario Government announced the future implementation of a Cap and Trade program as part of its strategy to reduce Ontario's greenhouse gas emissions.

Union stated that the costs that it intends to record in the account are outside the base upon which its rates were derived and management's control.

Union provided the following examples of the types of costs that it intends to record in the proposed deferral account:

- Emissions reporting compliance costs
- Billing system changes
- External consultant costs
- Costs associated with participating in OEB Cap and Trade consultations
- Implementation costs, including additional staff costs and the purchase of allowances

Union noted that while the magnitude of the costs are unknown, the costs are expected to be material.

Union stated that it is not seeking any determination on the potential disposition of the costs that will be recorded in the proposed deferral account as part of this proceeding. Union noted that it will seek recovery of any costs recorded in the Greenhouse Gas Emissions Impact Deferral Account in a future deferral account disposition proceeding.

Union filed a Draft Accounting Order for the proposed deferral account with its application.

None of the parties that filed submissions in the proceeding opposed the establishment of the proposed Greenhouse Gas Emissions Impact Deferral Account.

Findings

The OEB approves the establishment of the proposed Greenhouse Gas Emissions Impact Deferral Account requested by Union. The OEB also approves the Draft Accounting Order as filed.

On February 24, 2016, as this proceeding was ongoing, the Ontario Government introduced new legislation on climate change. The proposed *Climate Change Mitigation and Low Carbon Economy Act* builds on Ontario's recent actions to fight climate change. The government's Cap and Trade program is designed to put a limit on the amount of greenhouse gases that businesses, institutions and households can emit. The objective of the Cap and Trade program is to reduce greenhouse gas emissions in the province and encourage the development of clean technologies.

The establishment of the proposed deferral account will enable Union to record costs that it incurs related to the Ontario Government's Cap and Trade program.

The OEB finds that Union has demonstrated the need for the account and does agree that the expected costs are likely to be material. The precipitating event – i.e. the government's new Cap and Trade program – is clearly outside of management's control. The actual costs that Union incurs to meet its new obligations are to some extent within management's control, and they will be reviewed by the OEB when the account is brought forward for disposition.

The OEB approved a similar deferral account for Enbridge Gas Distribution Inc. (Enbridge) in its 2016 rates proceeding (EB-2015-0114). The OEB finds that it is appropriate for Union to have a deferral account for the same purpose as Enbridge.

In both the Enbridge and Union proceedings, parties indicated concern regarding the type of expenses that may be recorded in the deferral account. The issue of which expenses are appropriate for recovery from customers will be reviewed by the OEB when the deferral accounts are brought forward for disposition. At the time that Union brings forward a request for disposition of the balances in the Greenhouse Gas Emissions Impact Deferral Account, the OEB will review the costs for prudence and will determine whether the costs are appropriate for recovery from ratepayers in the context of Union's IRM framework. In the deferral account disposition proceeding, parties will have the opportunity to review and test the evidence filed by Union in support of its disposition requests. Until the OEB approves the disposition of the balances in the Greenhouse Gas Emissions Impact Deferral Account, the risk of disallowance is borne by the distributor.

3 COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. The OEB notes that filings related to cost awards shall be made in accordance with the schedule set out in the Order section of this Decision.

4 ORDER

THE BOARD ORDERS THAT:

1. Union shall establish the Greenhouse Gas Emissions Impact Deferral Account (No. 179-152) in accordance with the OEB's findings.

2. Union shall maintain the Greenhouse Gas Emissions Impact Account (No. 179-152) in accordance with Schedule A.

3. Intervenors shall file with the OEB, and forward to Union, their respective cost claims by **April 21, 2016**.

4. Union shall file with the OEB, and forward to intervenors, any objections to the claimed costs by **May 5, 2016**.

5. Intervenors shall file with the OEB, and forward to Union, any responses to any objections for cost claims by **May 12, 2016**.

6. Union shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto April 7, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A

DECISION AND ORDER

UNION GAS LIMITED

EB-2015-0367

APRIL 7, 2016

UNION GAS LIMITED

Accounting Entries for
Greenhouse Gas Emissions Impact Deferral Account
Deferral Account No. 179-152

Account numbers are from the Uniform System of Accounts for Gas Utilities, Class A prescribed under the Ontario Energy Board Act.

Debit	-	Account No.179-152 Other Deferred Charges – Greenhouse Gas Emissions Impact Deferral Account
Credit	-	Account No. 728 General Expense

To record, as a debit (credit) in Deferral Account No. 179-152, the impacts of provincial and federal regulations related to greenhouse gas emission requirements.

Debit	-	Account No.179-152 Other Deferred Charges – Greenhouse Gas Emissions Impact Deferral Account
Credit	-	Account No. 323 Other Interest Expense

To record, as a debit (credit) in Deferral Account No. 179-152, interest on the balance in Deferral Account No. 179-152. Simple interest will be computed monthly on the opening balance in the said account in accordance with the methodology approved by the Board in EB-2006-0117.

B

EB-2013-0202

UNION GAS LIMITED

SETTLEMENT AGREEMENT

July 31, 2013

("LRAM"). The LRAM deferral account will continue to be used to capture lost volumes for the contract rate classes, but will no longer apply to M1, M2, R01 or R10.

Further, parties agree to establish a Normalized Average Consumption deferral account to capture the variance between forecast NAC in rates and what is observed on an actual basis for the same year. This deferral account will be disposed of annually through the non-commodity deferral accounts and earnings sharing proceeding. The draft NAC accounting order can be found at Appendix F.

The following parties agree with the settlement of this issue: BOMA, CCC, CME, Energy Probe, FRPO, IGUA, Kitchener, LPMA, OAPPA, SEC, Union, VECC

The following parties take no position: APPrO, Six Nations, TCPL

6 **<u>Y FACTORS</u>**

(Complete Settlement)

The parties agree that the costs associated with identified Y factors will not be adjusted by the PCI but will be passed through directly to rates. Each of the Y factors is subject to deferral account treatment. The Y factor deferral accounts capture the variances between the costs/revenues included in rates compared to the actual costs/revenues. The principle is that neither Union nor its ratepayers should gain or lose with respect to variances recovered from ratepayers on account of Y factor items. This principle will be determinative in any conflict between the application of the principle and the wording of any particular deferral account.

Items that will be treated as Y factors are:

- Upstream gas costs
- Upstream transportation costs
- Incremental DSM costs (as determined in EB-2011-0327 and in any subsequent DSM proceeding)
- LRAM for the contract rate classes
- Unaccounted for gas ("UFG") volume variances
- Major Capital Additions (as defined below)

These Y factors are each described in more detail below.

6.1 Upstream Gas Costs

The parties agree that changes in upstream gas costs, as approved through the QRAM process, or as otherwise determined by the Board, will be passed through to ratepayers through the gas commodity deferral accounts cleared during the QRAM process, through rates during the annual rate setting or through the earnings sharing and deferral accounts clearing processes. That is, the pass-through of upstream gas costs will be unchanged in both substance and procedure from the 2013 Board-approved pass-through mechanisms.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, CME, Energy Probe, FRPO, IGUA, Kitchener, LPMA, OAPPA, SEC, Union, VECC

The following parties take no position: Six Nations, TCPL

6.2 Upstream Transportation Costs

The parties agree that changes in upstream transportation costs that underpin Union's gas supply plan will be passed through to ratepayers through the gas supply deferral accounts or as otherwise determined by the Board, and through rates during the annual rate setting or the earnings sharing

8 Z FACTORS

(Complete Settlement)

The parties agree that for prospective or historical cost increases/decreases to qualify for pass through as a “Z factors”, the cost increases/decreases must:

1. causally relate to an external event that is beyond the control of utility’s management;
2. result from, or relate to, a type of risk;
    a. for which a prudent utility would not be expected to take risk mitigation steps; and,
    b. which is out of the realm of the basic undertaking of the utility (per EB-2011-0277 Decision, page 13);
3. not otherwise be reflected in the price cap index;
4. be prudently incurred; and,
5. meet the materiality threshold of $4.0 million of annual net delivery revenue requirement impact per Z factor event. Net delivery revenue requirement will be defined in the same manner as set forth in Section 6.6 above.

The parties agree that changes in the amounts of taxes payable by Union through the 2014-2018 IRM term resulting from changes to Federal and/or Provincal legislation and/or regulations thereunder are Z factors and will be shared 50:50, as applied to the tax level reflected in rates. Treating 50% of tax changes as a Z factor is consistent with the Board’s findings in its EB-2007-0606/EB-2007-0615 Decision (dated July 31, 2008).

As during the 2008-2012 IRM term, Union will continue to calculate the variance between current year tax rates and calculation methods/rules to those used in current Board-approved rates. This variance will be allocated to rate classes using 2013 Board-approved rate base as the allocation factor. Any variance between taxes using the actual rates and calculation methods/rules and the approved rates and calculation methods/rules in Union's rates will be captured in a new deferral account. The draft Tax accounting order can be found at Appendix F.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, CME, Energy Probe, FRPO, IGUA, Kitchener, LPMA, OAPPA, SEC, Union, VECC

The following parties take no position: Six Nations, TCPL

9 **TERM OF THE PLAN**

(Complete Settlement)

The parties agree that the term of the IRM plan shall be 5 years, being the calendar years 2014 to 2018 inclusive.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, CME, Energy Probe, FRPO, IGUA, Kitchener, LPMA, OAPPA, SEC, Union, VECC

The following parties take no position: Six Nations, TCPL

10 **OFF-RAMPS**

(Complete Settlement)

The parties agree that in light of the settlement on earnings sharing set out in Section 11 below and the other IRM parameters there should be no off ramps for this IRM plan. Union and each of the other parties hereto agrees not to apply for rates applicable to Union for any of the years 2014-2018 except rates that are in all respects consistent with this Agreement.

C

Shepherd Rubenstein

BY EMAIL and RESS

Jay Shepherd
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May 11, 2018
Our File No. 201701227

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0127 – DSM Mid-Term Review

We are counsel for the School Energy Coalition. We have had an opportunity to review the letters to the Board in the last two days from Environmental Defence, BOMA, and VECC, and are writing to express our support for the procedural steps they are proposing.

As SEC noted in our submissions to the Board on September 1, 2017 (copy attached), the relationship between the utilities' GHG obligations and their DSM programs raises a number of complex issues. Right now, those issues exist in a vacuum, because the Board does not have before it any evidence as to what can be achieved by Enbridge and Union Gas through incremental action to reduce customer gas use (and thus GHG). For the Board, as a fundamentally evidence-driven body, this is a significant barrier to dealing with the issues.

SEC believes that requiring the utilities to develop and present GHG reduction plans that, essentially, are incremental DSM programs, allows the Board to hear from them, and from their customers, and from other interested parties, in the rigorous setting of a hearing. Other parties will also likely provide evidence. The result should be, as with the Community Expansion proceeding last year, an opportunity for the Board to look at all facets of a complex situation. The unfortunate silo-ing that happens when Cap & Trade and DSM are dealt with separately, despite the underlying connections, would be avoided.

SEC cannot at this point say what our final positions would be on those utility proposals, as no-one has seen them yet. They still have to be developed, reviewed, and tested. What we can say is that the procedural steps proposed by other parties would be an effective way of moving this forward.

Waiting until the next Framework, as some will likely suggest, is just an unnecessary delay. If as ED and others believe, incremental conservation can replace some of the allowances that would otherwise have to be purchased on the market, the customers could be over-spending tens or even hundreds of millions of dollars each year that a delay continues. Better, in our view, to look at this sooner rather than later.

Thus, SEC agrees that requiring incremental utility DSM proposals at this time, and establishing a discovery and hearing process to deal with them, is a good procedural step, and should be implemented by the Board.

All of which is respectfully submitted.

Yours very truly,
SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties

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September 1, 2017
Our File No. 20170127

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0127/8 – DSM Mid-Term Review – Preliminary Questions

We are counsel for the School Energy Coalition. Pursuant to the Board's letter of June 20, 2017, this letter constitutes SEC's comments with respect to the two preliminary questions posed by the Board.

Introduction

In the context of the Mid-Term Review of the 2015-2020 DSM Framework for Union and Enbridge, the Board has asked interested parties to provide comments on two issues:

1. ***Implications of DSM programs for large final emitters ("LFEs").***
   "*Consideration of the relationship between the current suite of DSM programs and actual C&T activities of customers with their own compliance obligations.*"

2. ***Interplay between DSM programs and carbon abatement programs.***
   "*Consideration of the attribution of costs and savings to ratepayer-funded DSM programs where natural gas utilities offer carbon abatement programs in the market.*"

In responding to these two issues, SEC starts with the second one first, because the implications of the first flow from the analysis of the second.

In summary, our conclusions are the following:

- The utilities should cease to offer DSM programs for LFEs.
- A separate category of "carbon abatement program" should not be established. All customer-funded conservation programs from the utilities should be carried out under the DSM Framework.
- The addition of carbon compliance obligations and the resulting price on carbon will make achievement of DSM targets easier. The DSM targets should be adjusted upward to reflect this reality. Additional budget may also be appropriate.
- Carbon compliance obligations should not generate additional shareholder incentives. The way to implement this is to keep the incentive levels as they are currently, while raising the targets.
- The Board should order a study of accounting for long term DSM/CA spending by utilities to reflect the fact that LFEs and their non-LFE competitors will have different accounting rules for their compliance costs.

Interplay Between DSM Programs and Carbon Abatement Programs

DSM and CA Programs Fundamentally the Same. SEC starts from the basic fact that both DSM programs and carbon abatement ("CA") programs are ratepayer-funded utility activities to reduce the use of natural gas by customers. At the broadest level, they are indistinguishable from each other.

Important Differences Between DSM and CA. However, there are a number of important differences as well, which will necessarily affect how the Board regulates the two activities, including the following:

a. ***Measurement.*** For the purposes of both cost-effectiveness, and achievement of goals (including incentives), DSM is mostly measured on a bottom-up basis. While there is a growing emphasis under the current Framework on before and after measurement/ metering, for the most part the cubic meters saved in DSM are still built up from engineering, behavioural, and other assumptions. It is a constant (and expensive) subject of conflict and uncertainty. CA is measured, if at all, on the basis of the overall throughput of the utility. The utility is required to have allowances or offsets for every tonne of carbon it produces, directly or through its customers (excluding LFEs). CA activities reduce throughput, and therefore reduce the calculation of the tonnes of carbon. There are no assumptions. It is what it is.

b. ***Causation.*** The success of DSM programs is based on rules and assumptions about the extent to which the programs "caused" reductions in natural gas use. This includes various aspects of attribution, such as free ridership and spillover. The utility does not get "credit" for savings that have actually occurred, unless they are determined to be the result of utility actions. Causation is irrelevant to CA programs. Because of the top-down nature of the measurement, only the final throughput matters. This has effects, not just on how results are viewed, but also on concepts like LRAM, discussed below.

c. ***Time Frames.*** Under the DSM Framework, a cubic meter that is forecast to be saved thirty years into the future has the same value as a cubic meter saved this year, and both are counted in the results. The utility's obligations for carbon are based on a legislated compliance period. While avoided cubic meters after the current compliance period will undoubtedly matter, they will not matter in the same way, nor will they have the same implicit value.

d. ***Motivation.*** Utilities are encouraged to carry out aggressive DSM programs by a comprehensive shareholder incentive mechanism, driven by scorecards that measure results. DSM is driven by the profit motive. Conversely, CA is a regulatory obligation. The utility must reduce gas use, or buy allowances or offsets, and must do so in a prudent manner. If the CA activities are more successful than expected, there is no incentive to the utility. This is not symmetrical, however. If they are less successful, there is the potential for a penalty if the incremental cost of additional allowances is not recoverable from customers.

e. ***Targets.*** The DSM Framework includes explicit targets that the utilities represent they can achieve, with incentives riding on success. CA programs will also have targets, which may or may not be as explicit, but subject to the prudence issue they do not appear to have consequences.

f. ***Budget.*** DSM budgets are fixed in advance, subject to limited flexibility but only if targets are achieved. CA programs are part of the overall cost of complying with legislated and regulatory obligations with respect to climate change, and are implicitly trued-up at the end of each plan period. Current expectations (which may change, of course), are that there will generally be no penalty for overspending (subject to the prudence review).

g. ***Cost-Effectiveness.*** The DSM Framework includes the TRC-plus test, which incorporates an add-on for environmental impacts. It is conceptually a test of cost-effectiveness from the point of view of all affected parties, not just the utility or its customers alone. CA programs are tested by reference to the cost to the utility of alternatives to meet the utility's carbon obligations. Those alternatives are solely from the utility's point of view, e.g. the cost to acquire allowances at auction. This is more like the Program Administrator test, which is generally not determinative of the cost-effectiveness of DSM programs.

h. ***Large Customers.*** Although it has been the subject of some debate, the DSM Framework still includes programs for large volume customers, and in fact a high percentage of the lifetime cubic meters saved comes from those large customer programs (whether large industrials, or other large natural gas users). The utility's carbon obligations do not include the emissions of LFEs, and so for many large gas users no CA programs are appropriate, even though DSM programs have CA impacts.

Different Types of CA Programs. In addition, it is useful to note that even the CA programs are themselves not one single category. There are potentially three types of CA programs a utility might offer:

1. ***Customer-Funded.*** The carbon compliance plans of each utility are paid for out of rates, and that would, at least notionally, include CA programs, even if they are similar, or identical, to DSM programs.

2. ***Government-Funded.*** It is expected that the utilities may be delivery agents for programs funded by the government, whether through the Green Ontario Fund or otherwise out of the proceeds of allowance auctions (consistent with the Climate Change Action Plan). These programs reduce throughput, and therefore carbon compliance obligations, but will likely have profit margins, and also risks associated with budgets, etc.

3. ***Competitive.*** Utilities may from time to time offer their services to LFEs and others in the competitive market, selling their expertise and being paid by the end-users. This may not be a regulated activity, but even if it is not regulated it raises issues of cost allocation and shared services.

Allocating Activities to Categories of Program. In SEC's submission, the various categories into which similar activities can be placed creates a regulatory problem for the Board.

At the simplest level, it is clearly not suitable to allow the utilities to decide where each activity should be placed for regulatory purposes. There are big differences in the regulatory rules for what are essentially similar programs.

Why, for example, would a utility embark on any CA activities? They have no profit margin. It is much better to funnel the same money into additional DSM activities, as long as it is possible to do so within the budget including adders already approved. Increasing the DSM results can generate additional profits. In addition, the relatively more forgiving (because they are bottom up) measurement rules for DSM would apply.

Conversely, if the DSM programs run into budget limits, but targets are not being met, the utility can shift the less productive DSM activities into CA programs, so that additional money can be spent within DSM to chase more productive activities. Doing the reverse – implementing productive programs as CA activities – reduces the ability to profit. Better to cherry pick the good stuff for the DSM programs.

In a more Machiavellian sense, the utilities are implicitly incented to allocate higher risk programs to CA, since the cost will be trued up anyway, and the test of cost-effectiveness is by reference to the cost of allowances, which is relatively easy to control or forecast.

Throughout all of this, including all three categories of CA programs, there will be common costs. Allocation of those costs to the various categories (including DSM) will have rate and profitability impacts, especially during an IRM period.

SEC believes that whether or not a utility actually games the system, the fundamental ambiguities inherent in the categories will create confusion and increase regulatory costs. That includes all of the categories, but is by far the most critical when dealing with the two customer-funded categories, DSM programs and customer-funded CA programs.

Merger of DSM and CA Programs. In previous submissions last year (EB-2015-0363, June 22, 2016), SEC took the position that

> *"DSM-type programs directed at abatement [i.e. CA programs] should not be treated in the same way as standard utility DSM programs. First, the programs need to be compared to GHG compliance alternatives, not to TRC or similar tests. While the latter may be relevant to identifying the other benefits of the programs, the incremental spending is justified by its ability to deliver GHG reductions at a lower cost. Second, there is no reason to have a shareholder incentive for these programs. Just as there is no incentive for purchasing allowances, or reducing facilities emissions, so there should be no incentive for incremental DSM that meets a statutory obligation."*

SEC still believes that there are significant differences between CA programs and DSM programs, as noted earlier, but those differences are not fundamental. Their goal and focus is essentially the same. The differences are mostly in the framework within which they are offered.

Given the similarity of DSM and CA programs, in our submission the DSM Framework should be expanded to include CA programs, rather than creating a separate regime for what are largely identical activities. To the extent that there are differences that have to be recognized, those differences should be dealt with through the way the CA programs are merged into the DSM Framework.

In combining DSM programs and CA programs, there are four basic issues: budgets, targets, incentives, and LRAM.

In dealing with each of these issues, SEC is excluding existing and future DSM programs and activities directed at LFEs. Those are dealt with separately in our answer to Question 1, later in these submissions.

Budgets. SEC proposes that the gas utilities be invited to propose expansions of their DSM programs, starting in 2018 or 2019, to take account of carbon abatement activities.

The activities that are to be funded using the additional funds should be justified from a cost-effectiveness point of view in the same way that any other DSM activities are justified, i.e. the TRC-plus test. It is no more appropriate to invest in DSM that fails the test if it is for carbon abatement than if it is not. The TRC-plus test looks at whether it is good social and energy policy to spend further dollars on additional DSM. Although the cost-effectiveness results for any given activities will be affected by the additional cost of carbon, the basic concept that activities failing the test are not a good use of funds is still correct.

On the other hand, the incremental budget must also be shown to be less expensive, from a program administrator point of view (assuming costs are amortized over the full lifecycle of the savings), relative to the cost of allowances and offsets. From a technical perspective, this means the utilities should calculate the carbon abatement impact of the existing suite of DSM activities, including both the amount of carbon abated and the cost per tonne to do so. They should then calculate the cost of the revised and expanded suite of DSM activities in the same way. In that way, it is possible to calculate the cost of the incremental tonnes of carbon being avoided through the incremental activities, and compare that to the cost of acquiring allowances or offsets. This is, in effect, what the MACC does, so utilities already have forecasts of the incremental cost per tonne for specific abatement activities.

Cost Allocation. One of the related issues that arises relating to the budgets is cost allocation. The basic paradigm being used for the cost of carbon compliance for customer-related obligations is that the cost is the same for each cubic meter consumed, regardless of an individual customer's rate class. A tonne of carbon is a tonne of carbon.

DSM program costs are not allocated that way. The costs of programs directed to residential customers are allocated to the residential rate classes, and so on. That way, those that benefit pay the cost, a pretty basic regulatory concept. That means the unit costs are different for different rate classes.

If DSM budgets are expanded to achieve carbon abatement, in SEC's view they should still be considered to be DSM program costs. Thus, they should be allocated to customer classes in the same way as existing DSM budgets, following the principle that those who benefit pay the cost. Although it is true that everyone benefits from carbon reduction, customers who are incented to reduce gas use – even if the utility goal is carbon abatement – will still benefit from lower costs. Therefore, rate class allocation should, in our view, still be used.

Targets. Additional DSM budgets should mean increases in targets, including minimums, maximums, and base target levels, for all scorecard components that are affected by the increased budgets. If Enbridge, for example, proposes to spend an additional $100 million on residential DSM to reduce carbon emissions, there would also be a forecast of the cubic meters saved by those additional funds. As noted above, the forecast savings and budget would be compared to assess the cost-effectiveness of the incremental spending using the TRC-plus test. In addition, the incremental cost would be compared to the costs of allowances and/or offsets. The end result of this process is a cubic meter increment that should be added to the existing targets for each scorecard element that is affected. The same would be true of non-cubic-meter scorecard metrics.

Aside from increasing the targets to reflect the increased spending, SEC is not proposing any changes in how targets are calculated or used. It is more appropriate, in our view, to leave that review to the next DSM Framework.

Incentives. Despite proposing to increase the budgets and targets, SEC does not believe that the incentives should be increased. Both the incentive if the target is reached, and the maximum incentive, should remain the same. They would just be earned at higher scorecard levels.

We say this for three reasons.

First, carbon compliance is an obligation. The utility should not be paid an incentive out of ratepayer funds to meet a legal obligation. To avoid the potential for gaming, and to keep the regulatory framework manageable, DSM and CA are merged in our proposal, but by increasing targets without increasing incentives, SEC is seeking to achieve the result that the CA component is effectively not incented. While from a mathematical point of view it is (since CA savings would count towards targets), the lack of any incremental incentive means that complete success with the DSM+CA programs generates the same total incentive as complete success with the old DSM programs alone, and so on.

Second, it should be easier to meet existing targets, because carbon pricing makes DSM more attractive for many customers. It is not just the additional cost, which already reduces paybacks and increases cost-effectiveness. It is also because it will be an additional justification ("fighting climate change") for the activities needed to reduce load. SEC anticipates that the utilities will be speaking to a more receptive customer base as a result of the government's policy direction, and the public acceptance of it. Earning their existing shareholder incentives should be easier, absent any increase in targets. By increasing the targets, the Board would be equalizing the effort and level of success needed to earn those same incentives.

Third, carbon compliance is in some senses a survival activity for the gas utilities. Their business is the distribution of a fossil fuel, so in a lower carbon future their business will be under siege. Their obvious strategy – even absent carbon compliance obligations – is to ensure that their use of natural gas, and that of their customers, is as efficient as possible. Waste increases the extent to which their legacy gas distribution business may be in jeopardy. Thus, in the longer term the gas distributors are protecting their own enterprise by pursuing DSM, and therefore carbon reduction, aggressively.

LRAM. The point of the LRAM is to remove the demand destruction disincentive from utilities engaging in DSM programs. For this reason, it only applies to reductions in throughput that arise out of utility programs. To the extent that price elasticity, technical standards, or other factors reduce throughput, those reductions are not made whole through the LRAM.

In Ontario, declines in use for the general service classes are adjusted through a normalized average use adjustment. That obviates the need for an LRAM for those classes. For the contract classes, there is a forecast at every rebasing, but in between the utilities are protected from some declines – those directly resulting from DSM programs – using an LRAM. It is then reset at each rebasing.

At least in theory, demand destruction arising out of CA programs should not be protected through an LRAM. The demand destruction is coming because of carbon compliance, an obligation of the utility. If the CA program were not the compliance method, it would be allowances or offsets, the cost of which would cause throughput to decline. That is, after all, the whole point of cap & trade, i.e. the reduction of emissions through price signals. If it becomes more expensive to emit, you emit less. Since the declines in demand arising from those price signals are not protected, why would there be protection from the same declines arising from CA programs?

SEC believes, however, that the LRAM should include all DSM programs for the contract classes, including the additional CA programs added to the DSM Framework. We propose that for practical reasons. Some of the benefits of managing DSM programs and CA programs together would be lost if the utilities were still forced to make an artificial distinction for LRAM purposes.

We also note that, if the Board agrees with our submissions on LFEs, the LRAM would in any case decline for that category of customers.

Conclusion on the Second Question. SEC submits that the interplay between DSM programs and CA programs should be resolved, from a regulatory point of view, by requiring CA programs to be treated as DSM programs, subject to certain specific adjustments and calculations as outlined above.

Implications of DSM Programs for Large Final Emitters

LFEs vs. Large Volume Customers. While it is a convenient shorthand to treat LFEs as equivalent to the large volume customers that have been the subject of some debate in the past (essentially, the members of IGUA or, for Union, the T1, T2 and R100 customers), that is not in fact correct. While some of the LFEs are and will be large industrial users, others will not.

For example, some large users that are not required to be LFEs can become voluntary participants. It is likely that some – consider University of Toronto, for example, or a major hospital complex, or a large greenhouse business – will opt to do that. On the other side, gas generators are large volume users, but are not allowed to be LFEs, mandatory or voluntary.

DSM for LFEs. In the past there has been a debate over whether it is good policy to provide utility incentives for large industrial customers to do DSM. Union has gone to a Direct Access program to deal with that, but some stakeholders – in particular IGUA – continue to oppose DSM programs for these customers. SEC has in the past supported IGUA's position on this, and we continue to believe that it has merit.

Further, when the 2015 and 2016 evaluation reports are published, the Board will have more up to date and specific information on the extent to which these customers are free riders on utility programs, and by implication the extent to which money spent on those programs is not currently producing the benefits we want.

That debate must, however, change now that the government has divided customers up between a category of LFEs, who are responsible for their own carbon obligations, and non-LFEs, whose carbon obligations are managed by the gas utilities on a collective basis.

In SEC's submission, the utilities should now stop offering customer-funded DSM programs to LFEs. By defining the LFE category, the government has effectively carved out a category of customer, and decided that those customers can manage their own carbon obligations (and, by implication, their own natural gas use). Just as the utilities do not need to help them with their carbon obligations, they should not need to help those customers with their DSM activities. Those customers will already be reducing their use to respond to price signals. The existing free ridership will almost certainly increase due to carbon obligations and carbon pricing.

Further, the ability of utilities to engage LFEs will decline under this new reality. Large volume customers already have limited interest in utility engagement, as seen by the fact that they are unwilling to pay utilities to provide them with advice on gas conservation. As LFEs seek to expand their focus on demand management due to carbon obligations, their perceived need for utility assistance will decline further, and they will become a less receptive audience.

Finally, the Green Ontario Fund will be offering significant incentives to LFEs to make major long term changes to reduce carbon. In that context, the ability of the utilities to add incremental value will be negligible.

For these reasons, SEC submits that the Board should order termination of LFE-directed DSM programs (which would likely include all Large Volume programs) commencing in 2019 at the latest. LFEs would continue to pay their share of administrative costs for carbon compliance, as the Board has already ordered, and their share of the cost of low income programs. They would, however, be exempt from all other DSM-related costs, including the cost of CA programs included in the DSM portfolio.

Accounting Issue. One of the issues that will arise with LFEs is that, as they manage their own natural gas use and carbon obligations, long term investments in efficiency or reductions in gas use will be amortized over an extended time frame. Their annual cost associated with efficiency and carbon reduction will not be their full cost, but only the component of that cost allocable to that year. This is standard accounting treatment.

Where a utility offers DSM programs and CA programs, it is usually achieving reductions in gas use and carbon emissions over a long period of time. However, from the customer's point of view the full cost to do so is charged to the customer through their delivery line as a current expense. This has the effect that the annualized cost of carbon reduction, and energy efficiency, to non-LFEs will necessarily be higher, on a unit basis, than for LFEs.

There is an obvious competitiveness issue where an LFE competes with a non-LFE, one that particularly disadvantages the smaller upstart company trying to compete against a larger company.

In addition, though, this difference highlights the fact that DSM and CA spending is inherently about investing for the future, but is accounted for on a current basis.

SEC does not believe it is appropriate to deal with this issue right now. The time to deal with it is during the development of the next Framework. However, we are flagging it because it may be useful for the Board to direct the utilities to study this issue, and develop proposals in time for the next Framework consultation. Alternatively, the Board may wish to put such a study on its own agenda for implementation over the next year or two.

<u>Conclusion</u>

SEC thanks the Board for the opportunity to comment on these important issues, and hopes that these comments are of assistance.

All of which is respectfully submitted.

Yours very truly,
SHEPHERD RUBENSTEIN PROFESSIONAL CORPORATION

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties