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September 18, 2008

ONTARIO ENERGY BOARD  
2300 Yonge Street, 27th Floor  
Toronto, Ontario  
M4P 1E5

**Attention: EB2008-0150LowIncomEnergy@oeb.gov.on.ca**

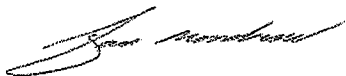
Dear Sirs/Mesdames:

**Re: EB-2008-0150 - Consultation on Energy Issues Relating to Low Income Consumers**  
**Overview of IGUA's Position**

Please find attached the Overview of IGUA's position for the above-noted proceeding. This Overview is submitted pursuant to the request to participate in the Ontario Energy Board letter dated September 5, 2008.

Yours truly,

**MACLEOD DIXON LLP**



Ian A. Mondrow

Encl.  
IAM/sc

c: Murray Newton  
All Participants in Consultation Process EB-2008-0150

## Consultation on Energy Issues Relating to Low Income Consumers

### Overview of IGUA's Position

September 17, 2008

#### Introduction.

By way of a letter to participants dated September 5, 2008, the Board provided directions regarding the conduct of the Stakeholder Conference in this consultation, which Stakeholder Conference is scheduled for the week of September 22<sup>nd</sup>. The Industrial Gas Users Association (IGUA) has been scheduled to make a presentation at the Stakeholder Conference on the morning of September 22<sup>nd</sup>. In its September 5<sup>th</sup> letter, the Board asked parties to provide an overview of their presentations, to enable other participants to prepare questions for the presenters.

IGUA will be presenting a brief overview of its general position on the matter of the implementation by the Ontario Energy Board of policies, programs or other measures designed to assist low income energy consumers. This submission frames IGUA's general position.

#### Summary of IGUA's Position.

*The Ontario Government, and not the Ontario Energy Board, should determine if it is in the public interest to provide dedicated financial assistance to low-income energy consumers. If such assistance is determined by the Government to be in the public interest, then it should be funded from government sources, and not through regulated electricity or natural gas rates.*

IGUA recognizes, however, that there may be a role for the Board, as the energy regulator in the province, in implementation of any government policy on low-income energy consumer assistance. Further, as noted below, there may be instances in which utility programs or policies designed to address the needs of low-income consumers can also avoid costs associated with serving low-income consumers and thus benefit all ratepayers, or at least not require subsidy from other ratepayers.

As demonstrated through review of the research paper provided by Concentric Energy Advisors, there are many variations and nuances to potential policies and programs to address the particular needs of low-income energy consumers. IGUA anticipates that its views on the appropriate role of the OEB and the province's distribution utilities in considering the circumstance of low-income energy consumers will be informed by the consultation, and that IGUA will refine its views through comments provided following the Stakeholder Conference, as contemplated in the directions provided in the Board's September 5<sup>th</sup> letter.

## **IGUA's Interest in the Consultation.**

IGUA is an association of industrial companies who use natural gas in their industrial operations located in the Canadian provinces of Manitoba, Ontario and Québec. IGUA was first organized in 1973 and it provides a coordinated and effective public policy and regulatory voice for those industrial firms depending on natural gas as a fuel or feedstock. It has become the recognized voice representing the industrial user of natural gas before regulatory boards and governments at both the provincial and national levels.

IGUA's members receive regulated gas supply, balancing and delivery services from Ontario's natural gas distributors. Energy input costs for IGUA's members have been steadily rising, as have energy costs for all consumers, including the low-income consumers that are the subject of this consultation. Rising energy and other input costs, a strong Canadian dollar, and other North American and global market developments have presented significant challenges for many of IGUA's members. Any measures that would further exacerbate the already high cost of energy to industrial consumers, such as measures to assist low-income consumers that would be subsidized by other customer groups, would be of concern to IGUA.

As difficult as rising energy and other input costs are for industrial consumers, IGUA is, of course, sensitive to the personal hardship faced by Ontarian's living in low-income households as costs for the basic necessities of life, including energy for heating, cooling, cooking, washing and lighting, rise. Indeed, as large employers IGUA's members are acutely aware of the impact of economic pressures (including job losses) on Ontario's citizens. IGUA thus has an interest in understanding, and contributing to the discussion of, whether there are non-subsidized programs that might ease these personal burdens without exacerbating the energy cost pressures faced by Ontario businesses and industry.

## **Government Policy vs. Regulatory Policy.**

From the outset, a distinction should be made between government policy and regulatory policy. The distinction, and relationship, between government policy and regulatory policy was illustrated in a recent speech by the OEB Chair<sup>1</sup>:

*Invariably, the objectives of the OEB's regulatory policy are dictated by the Board's fidelity and commitment to its mandate and responsibilities. The substance of the OEB's regulatory policy development is guided by the legislation, regulations and directives, but flows from the independent exercise of the Board's discretion.*

*Acting independently, within the broad ambit of its legislative mandate and the public interest, the Board formulates regulatory policy which provides the details required to implement the law and the government's broad policy objectives. Through various tools,*

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<sup>1</sup> Speech by Howard I. Wetston, Chair, to the Ontario Energy Network (OEN) Luncheon Meeting on May 9, 2007, in Toronto.

*the Board establishes the regulatory framework that shapes specific outcomes to accord with government policy objectives and sound regulatory principles.*

The distinction, in IGUA's view, is that it is up to the government to determine what is often referred to as "social" or "public" policy. This is policy regarding what is the collective public good for society, and is properly determined by the representatives elected by, and accountable to, the members of that society to govern, and make such decisions. The Board is an economic regulator, rather than a formulator of social policy.<sup>2</sup> The role of an economic regulator, such as the OEB, is to implement the public policy determined by the government within the regulator's own sphere of responsibilities and expertise.

It is IGUA's view that determination of whether it is in the public interest to provide dedicated and subsidized financial assistance to low-income energy consumers is a matter of government policy.<sup>3</sup> Were the government to determine as a matter of social policy that low-income energy consumers should be provided with access to subsidized electricity and natural gas services, then the government should also determine the most appropriate delivery program to achieve that social policy. Generally, social and public policy initiatives related to energy use should be funded through government revenues (taxes) or revenue measures (such as tax credits), rather than the natural gas distribution rates regulated by the Ontario Energy Board.

Subsidizing low-income energy consumer rates through higher rates for other regulated rate customers is fraught with difficulties, and incentive distortions, as discussed in the Concentric research paper. The Board should not be put in a position to determine which customers should subsidize, and which should be subsidized. Ontario's industrial and commercial natural gas consumers can also claim, on behalf of their employees and suppliers, to be suffering financial hardship. It is not the Board's role to determine which hardships merit redress, at whose expense, and which do not. These are properly matters for the government to determine, and redress through a range of fiscal and economic policies better suited to striking the appropriate balances.

### **The Board's Legislative Mandate.**

In considering the matters in issue in this consultation, it is instructive to bear in mind the Board's legislative mandate. It is also relevant to consider the recent ruling of the Ontario Divisional Court regarding the Board's jurisdiction to consider ability to pay in fixing rates. Neither the Board's legislative mandate nor the Court's recent ruling are conclusive on the issue of whether the Board should (as opposed to could) consider ability to pay in setting rates, or for that matter in any other respect of its regulation of utilities.

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<sup>2</sup> *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, Ontario Superior Court file no. 273/07, Decision dated May 16, 2008, para. 49.

<sup>3</sup> *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, Ontario Superior Court file no. 273/07, Decision dated May 16, 2008, paragraph 49.

The Board has a general mandate to "*protect the interests of consumers with respect to prices*", which objective applies in both the regulation of natural gas and electricity.<sup>4</sup>

In setting rates the Board is required to fix rates that are "*just and reasonable*".<sup>5</sup> This is a basic tenant of economic utility regulation. An economic regulator is put in place to govern natural monopolies. In so doing, the regulator functions as a proxy for competition in balancing the interests of consumers in lower rates and those of the utility in higher returns.<sup>6</sup> It is this balance that has traditionally been viewed as fulfilling the requirement that monopoly utility rates be set at levels that are "just and reasonable".

The Board is further provided with the authority to "*adopt any method or technique that it considers appropriate*" in setting distribution rates (both gas and electricity).<sup>7</sup>

The Ontario Divisional Court has recently considered the totality of the Board's authority, including specifically the legislative provisions noted above, in concluding that the Board could "*take[] into account income levels in pricing to achieve the delivery of affordable energy to low income consumers*".<sup>8</sup>

At the same time, the Court expressly noted that it was not opining on whether the Board should do so, merely that the Board had the jurisdiction to do so. In particular, the Court expressly reiterated: "*The Board is engaged in rate-setting within the context of the interpretation of its statute in a fair, large and liberal manner. It is not engaged in setting social policy.*"<sup>9</sup>

### **Additional Considerations.**

As noted at the outset of these submissions, it is IGUA's view that it is not the Board's role to make social policy regarding whether it is in the public interest to provide dedicated financial assistance to low-income energy consumers. Nor is it the Board's role to determine how any such assistance as may be directed by government policy should be funded.

However, IGUA is open to the view that there may be areas which don't entail rate subsidies and in which the Board can properly consider ability to pay. Such areas might include the formulation and application of utility conditions of service and/or some types of utility programs.

For example, providing conservation and demand management programs targeted to low-income energy consumers might not only assist those consumers, but might lower overall energy costs and thus benefit all consumers. No subsidy of low-income consumers by other consumers would

<sup>4</sup> *Ontario Energy Board Act, 1998*, ss.1.(1)1. and 2.2.

<sup>5</sup> *Ontario Energy Board Act, 1998*, ss. 36.(2) and 78(3).

<sup>6</sup> *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, Ontario Superior Court file no. 273/07, Decision dated May 16, 2008, paras. 39 and 52.

<sup>7</sup> *Ontario Energy Board Act, 1998*, s.36.(3) and 70.(2)(e).

<sup>8</sup> *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, Ontario Superior Court file no. 273/07, Decision dated May 16, 2008, para. 55.

<sup>9</sup> *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, Ontario Superior Court file no. 273/07, Decision dated May 16, 2008, para. 56.

necessarily be entailed. As another example, the Concentric research report describes the high costs of customer account management in instances of arrears, disconnection and reconnection. It may be that conditions of service fashioned with particular attention to the circumstances of low-income consumers could alleviate such costs, again to the benefit of all consumers and without subsidy of low-income consumers by others.

IGUA is also sensitive to the view that the regulator should ensure that basic necessities of gas and electricity service remain available to all customers during extreme weather or personal circumstances. Such considerations fall within the Board's mandate to ensure safety and reliability of energy service. In some circumstances such assurance may entail a cost ultimately borne by other customers. Such considerations are quite different, both in substance and in scale, from broader "social policy" regarding a continuing program of subsidized energy rates.

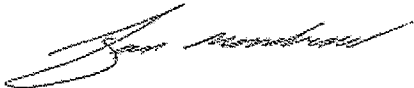
#### **Conclusion.**

IGUA looks forward to further consideration and understanding of the many and disparate views that it anticipates will be brought forward in this consultation, and appreciates the opportunity to participate in the discussion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Macloed Dixon, LLP

per:



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