

Consultation on Energy Issues Relating to Low Income Consumers

**Industrial Gas Users Association (IGUA)
Post Stakeholder Conference Comments**

October 31, 2008

Introduction.

In its September 5, 2008 letter providing directions regarding the conduct of this consultation, the Board requested written comments following the completion of the stakeholder conference. The written comments are intended to allow parties to summarize their views after having had the benefit of the views of other participants as developed during the consultation.

Summary.

Having had the benefit of the views developed and information provided through the consultation, IGUA advocates that the Board consider:

1. Reviewing distributor security deposit practices in reference to the particular circumstances and exigencies faced by low-income consumers.
2. Mandating provision of equal billing plans for low-income consumers.
3. Evaluating enhanced CDM focus on programs that would assist low-income consumers to better manage and afford their energy use.
4. Examining ways that the OEB could facilitate the collection and dissemination of information on existing programs that address energy affordability.

What the Board should not do is engage in consideration of subsidized distribution rates for low-income consumers that are funded through regulated charges to other energy consumers.

IGUA professes no particular expertise regarding the challenges facing low-income households in respect of energy consumption or any other necessary or discretionary household activity. In an effort to be helpful to the Board, IGUA has focused its concluding comments in areas with which IGUA is familiar; relevant regulatory principles, utility conditions of service and utility CDM programs.

Relevant Regulatory Principles.

Much was made by those advocating subsidized low-income distribution rates of two propositions regarding the scope of regulation by the OEB: 1) The Ontario Superior Court in the recent decision in *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*¹ (the *LIEN Decision*) has determined that the Board can consider ability to pay in setting rates; and 2) considering ability to pay in setting rates comports with the Board's primary legislative mandate to set rates that are "*just and reasonable*".

There is no doubt that the *LIEN Decision* expressly endorses the proposition that the OEB could "*take into account the ability to pay in setting rates*"². However, immediately following the first statement of this finding³ the Court states:

*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.*⁴ [Emphasis added.]

In the specific context of considering low-income rate assistance, the Superior Court defined "social policy" as addressing "*distributive justice through a differentiation of rates on the basis of income*"⁵. In so doing, the Court explicitly recognized that; "*Any program to subsidize low income consumers would require a source of funding which is a matter of public policy.*"⁶ [Emphasis added.]

The Superior Court has found that the Board can take into account ability to pay, but that the Board is not engaged in determining distributive justice through social cross-subsidies. One obvious way to reconcile these findings is for the Board to focus on making regulated energy services more affordable for low-income consumers through measures which do not entail redistributing wealth from one set of ratepayers to another. A number of suggestions for such measures have been put forward in this consultation. IGUA has highlighted four in this submission.

There is a very practical reason for leaving funding of social assistance to the government. The government has a broader range of funding tools, and a broader sweep of funding sources, available to it. Seeking to effect wealth redistribution through regulated utility charges is fraught with complicating limitations.

For example, recovery of funding within geographic distribution territories could result in greater burdens on those least able to afford them. Where a utility serves a relatively less affluent community the funding need would be greater, but remaining residents may have relatively less ability to absorb additional charges. Conversely, in relatively more affluent communities where residents are more able to absorb higher costs, there may be less of a funding need. There could also be imbalance as between fuel sources. If more low-income consumers use electricity rather

¹ Court File no. 273/07, Decision dated May 16, 2008.

² *LIEN Decision*, para. 61.

³ *LIEN Decision*, para. 55.

⁴ *LIEN Decision*, para. 56, see also para. 49.

⁵ *LIEN Decision*, para. 47.

⁶ *LIEN Decision*, para. 49.

than gas, more affluent gas consumers would, as a group, be relatively less involved in funding rate assistance programs. On an even broader scale, energy intensive industries would, under a rate funding scheme, absorb significantly greater funding responsibility than less energy intensive sectors, though the less energy intensive sectors may actually be relatively more able to absorb additional social costs.

In short, regulated energy charges are a mechanism ill suited to effect distributive justice.

More broadly, those advocating subsidized rates for low-income consumers cited the express legislative mandate of this Board to set rates that are "*just and reasonable*".⁷ The economic regulatory concept of "just and reasonable rates" does not engage considerations of ability to pay or distributive justice. Rather it indicates the fundamental tenet of economic regulation that rates should be set to provide the shareholder with a reasonable return while protecting the collective interest of all ratepayers in reasonable rates.⁸ Economic regulation acts as a proxy for the pricing disciplines of competition which are absent for monopoly service providers.⁹

The Board has also sought to inform itself regarding low-income support programs administered by regulators in other jurisdictions. The Concentric Energy Advisors Supplemental Report (October 21, 2008) (the *Supplemental Report*) has provided information on the authority under which other regulators who have implemented low-income assistance programs have done so.¹⁰ It appears that, with one exception, in all of the jurisdictions in which regulators have mandated low-income rates subsidized by other ratepayers and for which Concentric obtained information, there is express legislative authority for doing so. That is, in these jurisdictions the government has made the policy decision to direct subsidies, and the economic regulator is implementing that decision.

The one exception is Pennsylvania Power & Light (PPL), in respect of which the *Supplemental Report* notes a commission decision as authority for a "universal service rider" applied to all residential customer bills. As it turns out, Mr. Tim Dahl of PPL was kind enough to attend the Stakeholder Conference at the invitation of OEB Staff. Mr. Dahl described in more detail the basis for his utility's low-income assistance programs.¹¹ Of the 5 low-income assistance programs administered by PPL, two rely on government funds. While the other three programs rely on funds raised in rates, in allowing for such funding the commission specifically expects that, over time, the utility programs will pay for themselves, and be "revenue neutral" to other customers.

LIEN has also provided information on ratepayer funded low-income energy assistance programs in other jurisdictions.¹² The New Jersey and California programs cited are reportedly mandated by statute. The Ohio and Indiana programs are reportedly mandated under the regulator's inherent authority. IGUA has not investigated the basis for, or parameters of, these authorities, or the resulting regulatory requirements. As illustrated by consideration of the

⁷ *Ontario Energy Board Act, 1998*, ss.36(2) and 78(3).

⁸ *LIEN Decision*, paragraph 40.

⁹ *LIEN Decision*, paragraph 39.

¹⁰ Appendix A to the *Supplemental Report*.

¹¹ See September 23, 2008 Transcript, pages 74 to 76 and pages 85 (bottom) through 88.

¹² See LIEN presentation materials, pages 41 through 43.

Pennsylvania programs, however, care must be taken prior to concluding the extent to which such regulator initiated programs are funded pursuant to a policy of ongoing cross-subsidy of low-income rate payers by other rate-payers.

Considering all of the foregoing, IGUA submits that the weight of the authority indicates that the Board should decline to embark upon consideration of mandating subsidized low-income rates. In considering the information and views provided by participants during this consultation, it is apparent that there is ample opportunity for the Board to exercise the jurisdiction confirmed for it by the Superior Court and consider ability to pay without treading into areas of distributive social policy traditionally reserved for, and best directed on a comprehensive basis by, the government.

Utility conditions of service.

For example, the Board could review distributor security deposit practices in reference to the particular circumstances and exigencies faced by low-income consumers. Others, including LIEN and LPMA/BOMA have provided comment in this area. IGUA defers to their comments, and endorses the view that security deposits should neither be a barrier to accessing distribution services nor the cause of unnecessary affordability challenges.

As a second example, the Board should consider mandating the provision of equal billing plans for low-income consumers. It may even be appropriate to replace or waive some or all of otherwise required security deposits for qualifying low-income consumers who opt for an equal billing plan.

As a third example, the Board could direct those distribution utilities seeking rate recovery for CDM program costs to evaluate their programs with a view to increasing emphasis on low-income households. For example, it might be worth reevaluating the wisdom of allowing recovery in rates for relatively small financial incentives paid to higher income households or to businesses to adopt energy efficiency measures that it would be otherwise economic for them to adopt. High income households can probably afford setback thermostats and compact fluorescent light bulbs without small utility financial incentives. Such financial resources might be better targeted to low-income households where they would not only assist in energy affordability but could also maximize energy efficiency benefits. Facilitation, perhaps even mandation, of cost effective energy efficiency programs for low-income energy consumers would fall within the Board's authority and expertise in the promotion of cost effective energy use [*OEB Act*, s. 1(1)2.].

Informing low-income consumers.

A fourth example of an area in which the Board is uniquely placed to assist in addressing low-income energy consumer issues is the collection and dissemination of comprehensive information on existing energy affordability programs. The Board has a specific mandate to promote communication within the gas industry and the education of consumers regarding natural gas services [*OEB Act*, s. 2(6)]. The Board has also been considering a broader consumer information mandate going forward, as energy issues and choices become more complex and of

greater financial consequence to Ontario consumers. The Board Chair offered the following observations in this regard in a recent speech¹³:

We will try to improve and enhance our efforts to educate consumers with respect to industry structure, energy policy and price; inform consumers about their energy choices, their rights and responsibilities; reduce confusion; and ensure that the consumers' toolbox is sufficiently equipped so they are better able to take advantage of conservation and demand initiatives and time-of-use rates, fulfilling the government's policy objectives. Consumers want us to paint a clearer picture for them – of the industry, their rights and their options. And we have been attempting to do that. Through the "Energy Choice is Yours" campaign, we have put together materials that cut through some of the clutter and empower consumers to make more informed choices about their energy consumption and supply, choices that are right for them. And later this year we will be launching a new website devoted to consumers and their energy options.

The relevance of these observations to the considerations in this consultation was highlighted by comments from the Chair during the stakeholder conference. Those comments elicited a discussion generally supportive of the possibility of an enhanced role for the Board in this area.¹⁴

Concluding comments.

IGUA appreciates that those advocating that the OEB assume a "distributive justice" role in favour of low-income energy consumers feel a moral compulsion to search for money to support individuals that, without doubt, require that support. At the same time, IGUA would respectfully point out that these interests have not generally stressed the OEB's unique ability to do so or its special expertise in the area.

One of the things revealed through the four days of stakeholder presentation and discussion is that there already exists a plethora of social service and non-profit agencies and programs aimed at serving the needs of low-income consumers. The discussions have further revealed that to provide the most efficient and effective support for low-income energy consumers, a first hand knowledge of their particular needs and circumstances is required.¹⁵

Another theme canvassed in the discussions at the Stakeholder Conference was the value of more sustainable and "proactive" measures to address exigencies facing low-income energy consumers.¹⁶ Energy consumer education, thoughtfully designed and delivered conservation programming, and more sensitive utility security deposit and disconnection policies would all be examples of areas which fall within this Board's unique expertise and mandate, and in which there appears to be a programming "gap" worth addressing. One time expenditures in these areas would likely yield more valuable and sustainable results for program recipients, as compared to rate subsidies which do not contribute towards providing customers with control of their own energy consumption or household expenditures. It is commonly believed that energy prices will

¹³ Speech by Howard I. Wetston to the Ontario Energy Association Annual Conference, September 17, 2008. http://www.oeb.gov.on.ca/OEB/_Documents/Speeches/speech_oea_wetston_20080918.pdf

¹⁴ See September 22, 2008 Transcript, pages 134 to 144.

¹⁵ See, for example, discussion at September 24, 2008 Transcript, pages 117 through 121; pages 139 (bottom) through 141.

¹⁶ See September 22, 2008 Transcript, pages 70 through 75.

only continue to rise. Measures that allow customers to manage energy expenditures are thus significantly more cost effective than subsidies for energy consumption the cost of which will only increase over time.

IGUA submits that the Board should focus its energies and expertise in these more proactive areas in order to most meaningfully contribute towards addressing low-income consumer issues.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Macloed Dixon, LLP

per:

A handwritten signature in dark ink, appearing to read "Ian Mondrow", is written over a horizontal line.

Ian A. Mondrow
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