



uniongas

A Spectra Energy Company

October 31, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Consultation on Energy Issues Relating to Low Income Consumers
Written Comments - Board File No. EB-2008-0150**

In response to the Board's request for written comments following the completion of the September 22-25, 2008 stakeholder conference, Union Gas Limited provides the attached submission which summarizes Union's views on specific topics discussed at the stakeholder conference after having had the benefit of hearing the views of other participants.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

[Original signed by]

Patrick McMahon
Manager, Regulatory Research and Records

**Ontario Energy Board
on Energy Issues Relating to
Low Income Energy Consumers
(EB-2008-0150)**

**Submission
of
Union Gas Limited**

October 31, 2008

Introduction

This submission is in response to the Board's request for written comments following the completion of the September 22-25, 2008 Ontario Energy Board on Issues Relating to Low Income Energy Consumers ("the consultation"). This submission summarizes Union's views on specific topics discussed after having had the benefit of hearing the views of other participants.

The submission will be limited to the following topics discussed during the stakeholder consultation:

1. Should the Board implement policies, programs or other measures designed to assist low income energy consumers?
2. Are there programs in place now, including emergency assistance programs, to assist low income energy consumers and if so, are there agencies and organizations that currently work with utilities to co-ordinate to administer these programs? What more, if anything, should be done?
3. Rate-related measures and issues associated with the implementation of rate-related measures to assist low income energy consumers;
4. Customer Service Issues (Payment Period, Disconnection Rules, Security Deposits and Specific Service Charges) and Arrears Management Programs;
5. Conservation Demand Management and Demand-Side Management Programs for Low Income Consumers.

Should the Board implement policies, programs or other measures designed to assist low income energy consumers?

It is Union's view that the Board should not implement policies, programs or other measures to assist low income energy consumers that would require the utilities to:

1. Establish special rates or special rate classes for low income consumers;
2. Waive portions of a rate, penalties or other fees based on income level; and
3. Incur human resource and infrastructure costs associated with administering programs to low income consumers.

Union recognizes the significant challenges facing low income consumers. Prices for all goods and services, including energy, are rising. The ability to access social benefits is confusing and complicated. Further, the level of social assistance appears inadequate. These issues were all raised during the consultation. It is clear to Union that many of the issues facing low income consumers extend beyond energy and the mandate of the Board.

To properly address the issues faced by low income consumers, an integrated approach among government and social service agencies is required. A singular focus on energy delivery service pricing and terms of service will not address the underlying issues facing low income consumers. While utilities play a role in developing and delivering energy conservation programs that provide short and long term benefits to low income energy consumers, community and government agencies have the knowledge, skill and infrastructure to deliver social assistance programs to low income consumers.

Policies and programs to address the needs of low income consumers are the responsibility and accountability of government – not the utilities of Ontario. This is not an area of expertise that exists currently within the Board or the utilities. Union’s expertise lies in the safe and reliable delivery of distribution, transportation and storage services. As is likely the case for most utilities, Union does not have the infrastructure (personnel or systems) that would allow us to administer or maintain low income support programs. The costs associated with adding personnel and making the required system changes would be significant and necessarily recovered from other customers.

The determination of the need for additional financial assistance for low income consumers is best made by the Ontario government. Only it, and not the Board, has the ability to consider the full range of existing assistance programs, as well as a wide range of funding options. The Ontario government also has the infrastructure in place to deliver social assistance programs.

The relative advantages of a legislative body in establishing social programs of the kinds proposed during the stakeholder consultation are well described in the following excerpt from a decision of the **Oregon Public Utility Commissioner** (*Re: Rate Concessions to Poor Persons and Senior Citizens* (1976), 14 PUR 4th 87 at p. 94):

“Utility bills are not poor persons’ only problems. They also cannot afford adequate shelter, transportation, clothing or food. The legislative assembly is the only agency which can provide comprehensive assistance, and can fund such assistance from the general tax funds. It has the information and responsibility to deal with such matters, and can do so from an overall perspective. It can determine the needs of various groups and compare those needs to existing social programs. If it determines a special program is needed to deal with energy costs, it can affect all energy sources rather than only those the commissioner regulates.

With clear authority to establish social welfare policy, the legislative assembly also can monitor all state and federal welfare programs and the sources and extent of aid given to different groups. Without such overview, as independent agencies aid various segments of society, the total aid given each group is unknown, and unequal treatment of different groups becomes likely.”

As indicated above, utilities do have a role to play in the development and delivery of conservation programs for low income consumers. As will be discussed later in this submission, it is Union view that conservation programs (“DSM programs”) targeted at low income consumers should be continued and enhanced. The delivery of DSM programs is complementary to, and consistent with, our expertise of delivering safe and reliable distribution, transportation and storage services. Reducing overall energy use results in long term, sustainable savings for low income consumers. It

also is effective in that it reduces the portion of the bill attracting the highest cost – the commodity cost.

The Board also has knowledge and expertise as it relates to DSM programming. Accordingly, the Board should continue to encourage utilities to develop and deliver DSM programming to low income consumers by ensuring the appropriate incentives exist (or that disincentives do not exist) for utilities to make DSM investments.

With respect to the positions of parties taken during the consultation, Union notes that several other parties took the position that the Board has no role in implementation of policies, programs or other measures designed to assist low income energy consumers. Key excerpts from the submissions of some of these parties are provided below.

Federation of Rental Housing Providers of Ontario

“Our position is that the energy rate base is ill-suited for funding energy -- for funding assistance programs, and there are other provincial agencies which are more appropriate for setting policies and implementing programs for improving affordability.” (Transcript – September 22, 2008 – Page 20, Line 27 – Page 21, Line 3)

Consumers Council of Canada

“We believe that any new social welfare programs should be mandated by the Provincial and Federal Governments. They are the ones who are accountable to their respective legislatures. Social welfare is not within the mandate of the Ontario Energy Board. This is the job of government. The Council believes that new programs should be funded through general revenue and delivered by existing social agencies. These programs are rightly the responsibility of the taxpayer. They should be coordinated with existing programs.” (Transcript – September 22, 2008 – Page 37, Lines 9-18).

Industrial Gas Users Association

“...we see this entire issue, the appropriateness, whether or not low-income consumers are given some sort of ratemaking relief through rates that the OEB regulates, we distinguish between public and regulatory policy when we're talking about that. And from our perspective, this issue is clearly a social policy. It's a public policy issue. It's not a regulatory policy issue. And I will talk about that a little bit more in other slides. Public or social policy, in our view, ought to be developed by and determined by elected government officials who are accountable to the public. And to the extent those programs are considered to be in the public service and -- or public interest and are implemented, they ought to be funded through public funding. If it's in the public interest, the public ought to -- you know, society as a whole ought to fund those kinds of programs.” (Transcript – September 24, 2008 – Page 3, Lines 4-20).

Taking the contrary position, the Low Income Energy Network (“LIEN”) which stated that:

“...the Board does have the relevant expertise to implement policies, programs, and measures” (Transcript – September 22, 2008 – Page 6, Lines 10-11) and that *“...assistance directly from government, while another possibility, is less flexible, less certain, and one of the things that we look for in a rate system is certainty with respect to all of the consumers”* (Transcript – September 22, 2008 – Page 6, Lines 13-16).

There is no evidence to support this assertion. The Board has not implemented policies, programs and measures directed to the public interest in social or distributive justice through a differentiation of rates on the basis of income. That need has been and should continue to be met through other mechanisms and programs legislated by the Provincial or Federal governments, for example, by refundable tax credits and social assistance. For example:

- The Provincial income tax legislation previously provided for public tax expenditures to assist low income consumers with rising electricity costs. This was done through an "Ontario home electricity payment" by reference to income levels. *Income Tax Act*, R.S.O. 1990, c.1.2, s. 8.6.1, as rep. by *Income Tax Amendment Act (Ontario Home Electricity Relief)*, 2006, S.D. 2006, c. 18, s. 1.
- The Federal government has provided a one-time relief for energy costs to low income families and seniors in Canada through the *Energy Costs Assistance Measures Act*, S.C. 2005, c. 49.

Further, LIEN suggests that the Board should establish a low income assistance program that is "fuel neutral" meaning that the program should be made available to all low income energy consumers regardless of which fuel they use for space and water heating (e.g., electricity, natural gas, propane, wood, fuel oil, etc.). As was raised by the Consumers Council of Canada during the stakeholder consultation (Transcript – September 22, 2008 – Page 38, Lines 20-24), the Board only regulates two forms of energy (natural gas and electricity) so a Board-mandated program would not provide relief to customers that rely on other energy sources.

In summary, it is Union's view that the responsibility and accountability for social welfare programs lies squarely with the government because it is the government that has the knowledge, skill and infrastructure to develop and deliver social welfare programs. This knowledge, skill and infrastructure do not exist at the Board or in the utilities.

There is a role for the Board and the utilities in developing and offering DSM programs to low income consumers. These types of programs produce long term sustainable reductions in total energy use which clearly is in the interest of low income consumers.

Are there programs in place now, including emergency assistance programs, to assist low income energy consumers and, if so, are there agencies and organizations which currently work with utilities to co-ordinate to administer these programs? What more, if anything, should be done?

During the stakeholder consultation, a number of programs targeted at low income consumers were discussed including the Winter Warmth Fund ("Winter Warmth"). Winter Warmth is funded by Union, Enbridge Gas Distribution, Hydro Ottawa, Enersource Hydro Mississauga, Powerstream and Toronto Hydro and administered by the United Way. Eligible low-income households that have energy bills that are currently in arrears or about to go into arrears can receive assistance from the Winter Warmth Fund.

As indicated above, the United Way administers the program through a network of over 40 community-based agencies across the province providing up to \$650,000 in financial assistance to individuals and families struggling to pay their winter heating and hydro bills. The amount that

goes to each United Way agency is based on the size of the community and the historical level of need.

Union Gas contributed \$217,340 to the Winter Warmth program for the 2007-2008 heating season. Union paid out nearly \$184,000 in Winter Warmth grants to just over 500 applicants (net of the fees paid to agencies to administer the program). Some areas used up allocations within the first month, while others had funds remaining at the end of the program. Union re-evaluates the allocations each year to respond to the level of need in each community. In instances where there are funds remaining from an allocation made to a specific community, these allocations are rolled over into the Winter Warmth program in that community for the following season. Just over \$17,230 was rolled over to the 2008-2009 Winter Warmth programs.

Envirocentre had the following exchange with Mr. Kaiser (Transcript – September 22, 2008 – Pages 151-152, Lines 20-13):

“MR. KAISER: But the long-term issue is that they're poor. And we can't do anything about that. I mean, the Winter Warmth is a cash subsidy to help them pay their bills. And they pay their bills; the money goes back to the utility. Is there anything wrong with that? It wouldn't be any different if they had a special rate. It would be a subsidy to help them pay their bill.

DR. SILK: What's wrong with it is that we're spending a lot of time talking about the Winter Warmth fund in the guise of, this is something that's really helping low-income households, and it doesn't. If you look at whom it helps the most, it helps the utilities the most. They're getting their debts paid. And they're getting good PR as a result. The households that really need help aren't getting the help. They're just going from one problem to another. In fact, as one of -- somebody else indicated this morning, a disproportionate number of low-income households now are forced to move, because that's the only way they can get out of the debt. They have to move and put the new hydro account or the new gas account in somebody else's name, which is an increasingly serious issue.”

Union disagrees with Envirocentre's position that the Winter Warmth program does not help low income households. It is in fact contrary to the evidence and Union's experience. There were over 500 low income households in Union's service area that were helped by the Winter Warmth fund in 2007-2008 in the form of financial assistance that was used to pay off outstanding bills for service. This means that more money was made available in low income households to pay bills for other needs.

Rate-related measures and issues associated with the implementation of rate-related measures to assist low income energy consumers.

The Board should not require utilities to implement special rates for low income consumers. Requiring utilities to design and implement rates based on income would be contrary to established principles of rate design that have been used by the Board for many years when approving just and reasonable rates.

In its May 22, 1991 Decision with Reasons in the E.B.R.O. 467 proceeding, the Board determined that it must use generally accepted ratemaking principles in determining just and reasonable rates:

“The Board has a great deal of sympathy for the customers on the Fort Frances System and appreciates the efforts made on the part of the representatives of the Fort Frances area in articulating their concerns. To be faced with a potentially large rate increase, particularly during a recession, is naturally a cause for great concern. However, in establishing just and reasonable rates the Board must apply general rate-making principles. Under such principles the unique characteristics of a utility's customer or group of customers are not considered in setting rates unless there is potential "rate shock" as a result of the Board's decision. In such case the Board will attempt to mitigate the effect of the rate shock.”
(paragraph 12.3.27)

In its April 22, 1992 Decision with Reasons in the E.B.R.O. 474 proceeding, the Board again stated the need to comply with generally accepted ratemaking principles:

“While the Board has a great deal of sympathy for Centra's customers in the Fort Frances delivery area, the Board wishes to reiterate that taking into account the economic or financial circumstances of ratepayers in a particular region of a utility's franchise area is not consistent with generally accepted ratemaking principles because it places an undue burden on the remainder of Centra's customers. Nor is it a proper principle of postage stamp rate design to base rates in a particular area on a cost of service study for that area only.”
(paragraph 9.6.16)

In its EB-2004-0542 Decision with Reasons dated May 19, 2005, the Board stated (page 5, emphasis added):

“Over the years, the Board has had many requests for special status for a customer group or a customer. The Board has been consistent in its response to such requests by adhering to its established principles in dealing with cost allocation and rate setting. Principled ratemaking involves the creation of a unified and theoretically consistent set of rates for all participants within the system. It begins with the establishment of a revenue requirement for the regulated utility and proceeds to design rates for the respective classes according to well-recognized and consistent theory respecting such elements as cost allocation. This is an objective and dispassionate process, which is driven by system integrity and consistent treatment between consumers on the system. Principled ratemaking typically does not involve a ranking of interests according to a subjective view of the societal value of any given participant or group of participants. This approach is not unique to Ontario. A departure from these principles should only be undertaken where the evidence and all other circumstances outweigh the inherent virtue of an objective process.”

These rate setting principles are followed in other jurisdictions as well. In its Board Order 17/04 (dated February 6, 2004) regarding an application by Manitoba Hydro for an order approving an increase in electricity rates in remote communities served by diesel generation, the **Manitoba Public Utilities Commission** stated:

“The Board remains extremely sensitive to the rising costs of living in Northern Manitoba, and the ability to pay issue. However, the Board also has a duty and responsibility to Hydro and to the large population of all of Hydro's customers to set rates for diesel communities that are just and reasonable, within the mandate of the Board in applying the principles of rate regulation. It is the Board's view that the ability to pay issue is one that lies outside of the regulatory arena, and lies more appropriately within the Provincial and Federal Social Policy area. Hydro grid customers presently subsidize electricity rates in remote diesel communities to a significant degree. The Board refers to the Governments of Canada and Manitoba the need for improved social policy to address the ability of people living in remote northern communities to pay for essential services. It is not within the mandate of this Board to use utility rates to effect social policy.”

In its Opinion (dated June 12, 2007) regarding an application of CenterPoint Energy for authority to increase natural gas rates in Minnesota (Docket No. G-008/GR-05-1380), the **Minnesota Public Utilities Commission** stated:

“The Commission's statutory purpose is to set cost-based utility rates. It is not to redistribute wealth through utility rates. The redistribution of wealth is an objective that the elected branches of our government can pursue at their option, but it is not a goal that appointed government officials should pursue.

The Commission is aware that certain advocates of low-income individuals argue that utility bills should be based on an individual's ability to pay instead of the cost of service. However, these advocates should know that the Commission is prohibited from setting rates on the ability to pay of certain ratepayers. Rates are cost-based, not based on a ratepayer's income. Individuals in need of welfare assistance to pay their energy bills should turn to their federal or state elected officials to obtain assistance from taxpayer-funded programs such as LIHEAP.”

In Union's view, it is undisputed that a common, if not universal, feature of ratemaking for a natural monopoly is the application of the same charges to all consumers within a given consumer classification based upon cost of service (i.e., cost causality). The Board is tasked with the responsibility of setting different rates for different classes of consumers based upon the costs of serving those consumers. Separate rate classes are a necessity to ensure that consumers with similar loads and load profiles pay costs associated with service they receive.

Utility rates have traditionally been designed with the principled objective of having each rate class pay the costs that class imposes upon the utility (i.e., the Board has sought to avoid inter-class and intra-class subsidies). Consistent with this approach, the Board has refused the establishment of a special rate class to provide redress for aboriginal consumers. In its Decision with Reasons in the EBRO 493 proceeding, the Board denied a request by the Ontario Native Alliance ("ONA") to order a utility to evaluate the establishment of a rate class for the purpose of providing a special rate class (with lower rates) for aboriginal peoples. At pages 316-317, the Board stated:

“The Board is required by the legislation to "fix just and reasonable rates", and in doing so it attempts to ensure that no undue discrimination occurs between rate classes, and that the principles of cost causality are followed in allocating the underlying rates. While the board recognizes ONA's concerns, the Board finds that the establishment of a special rate class to

provide redress for aboriginal consumers of Centra does not meet the above criteria and it is not prepared to order the studies requested by ONA”.

The issue of addressing proposals for low income rate assistance and the reasonableness of cost-based rates for low income consumers was recently addressed in Nova Scotia. In May 2004, Nova Scotia Power applied to the Utility and Review Board for a rate increase. Dalhousie Legal Aid intervened and requested that the Board approve a program featuring power rate credits for low income customers (based on “fixed credit” evidence written by Roger Colton).

The Board declined the DLA request. The Board was of the view that the legislation did not authorize the Board to reduce power rates based on the income level of the customer. The Board also said:

“All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions.

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. .

After reviewing the submissions of DLAS, Board Counsel and the relevant provisions of the Act, the Board finds that it does not have the statutory authority to approve a RAP. The Board has the authority given to it by the Legislature to perform its duties in accordance with the provisions of the Act. The Board’s role is to make decisions, based on fact and law, within the parameters of the statutory authority it has been given by the Legislature. The Board’s duty is to follow public policy decisions made by the Legislature and expressed in statutes. The Board does not have jurisdiction to establish public policy. That is the role of elected officials who are accountable to the public for this function. It seems almost certain that the RAP, as described by Mr. Colton, would result in the electricity bills of certain customers, depending on their income, being subsidized by other customers. In the Board’s view, this is a social and public policy question which falls within the purview of the Legislature rather than the Board. Should NSPI and DLAS wish to pursue this matter with Government, the Board would be pleased to offer assistance with respect to regulatory and ratemaking principles.”

(NOVA SCOTIA COURT OF APPEAL, Citation: Dalhousie Legal Aid Service v. Nova Scotia Power Inc., Docket: CA 248695, Judgement Date: June 20, 2006, Pages 4 and 5)

The Utility and Review Board accepted that, “all customers, regardless of income, receive ‘substantially similar’ electrical service from NSP”.

Dalhousie Legal Aid appealed submitting that the Board is mandated to consider whether a rate assistance program for low income customers is “just”. The Court of Appeal ruled that the Board did not err in its conclusion and dismissed the appeal without costs.

Any rates designed specifically for low income consumers would not be based upon economic principles of regulation but rather on the social principle of ability to pay. Any program to

subsidize low income consumers would require a source of funding which is a matter of public policy.

A low income rate affordability program would necessarily lead to treating consumer groups on a differentiated basis with higher prices for a majority of residential consumers and subsidization of the low-income subset by the majority group and/or other classes of consumers.

If the Board were to reduce the rates for one class of consumers based upon an income determinant, the Board would have to increase the rates for another class or classes of consumers. In effect, such a rate reduction would impose a regressive indirect tax upon those required to pick up the shortfall. Such an approach would arguably be a dramatic departure from the Board's traditional approach to ratemaking. While acknowledging that there is some degree of cross-subsidization in existing Board-approved rates, Union does not support moving away from the cost causality basis for rate design.

From a practical perspective, utilities would be in a difficult position to design rates without the private income information currently in the possession of social services agencies. Income is not a factor used in the allocation of costs or rate design because it is not available to utilities.

The Board should continue its long-standing practice of approving rates established on principles of rate design; that is, class rate-making where customers of similar load and load profile are treated similarly and pay similar rates for similar service. Rates should not be based on income or other demographic thresholds such as age or physical ability since this introduces discriminatory pricing. Rates designed and administered on this basis require one ratepayer group to subsidize another. It would amount to wealth redistribution, and wealth redistribution is best left to the tax system, and not utility rate design.

Finally, LIEN in its presentation on this topic states:

- Under the OEBA, the Board must approve or fix “just and reasonable rates”.
- The Divisional Court has decided that the Board has the jurisdiction to take ability to pay into account in setting rates.
- The Board cannot deny this jurisdiction and refer the matter to be dealt with by Government.
- The Board does not have an unfettered discretion – it must still produce just and reasonable rates and affordability into account in that exercise.

During the stakeholder consultation, LIEN said:

“...the Board has responsibility for natural gas and electric utility regulation, and a mandate to set just and reasonable rates” (Transcript – September 22, 2008 – Pages 5-6, Lines 28-3), “The Court has held, as everybody will know, that it's within the jurisdiction of the Board to look at ability to pay as part of its jurisdiction. So we can say that's always been part of the jurisdiction” (Transcript – September 22, 2008 – Page 68, Lines 7-11) and that “it is entirely open to the Board to determine rates according to ability to pay, if it determines that that is appropriate in the cause of making a just and reasonable rate” (Transcript – September 24, 2008 – Page 23, Lines 16-19).

While the May 16, 2008 decision of the Divisional Court did say that the Board has the jurisdiction to take into account the ability to pay in setting rates, it also indicated that this was simply another consideration that the Board could take into account “at its discretion” and that the Court’s determination was on the issue of jurisdiction and not how the Board should exercise that jurisdiction:

“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.

This is not, of course, to imply any preferred course of action in rate setting by the Board. The Board in its discretion may determine that “just and reasonable rates” are those that follow from the approach of “cost causality” once the “cost of service” amount is determined. That is, the principle of equality of rates for consumers within a given class (e.g., residential consumers) may be viewed as the most just and reasonable approach. A determination by the Board that all residential gas consumers (with relatively minor deviations through such programs as the “Winter Warmth Program”) pay the same distribution rates is not in itself discriminatory on a prohibited ground. Indeed, it can be seen as a non-discriminatory policy in terms of prices paid.

Nor is it to suggest that as a matter of public policy, objectives of distributive justice or conservation in respect of energy consumption are best achieved by rate setting as compared to, for instance, tax expenditures or social assistance devised and implemented by the Legislature through mechanisms independent of the operation of the *Act*. It is noted that the Minister is given the authority in s. 27 of the *Act* to issue policy statements as to matters that the Board must pursue; however, the Minister has not issued any policy statement directing the board to base rates on considerations of the ability to pay. Moreover, the power granted to a regulatory authority “must be exercised reasonably and according to the law, and cannot be exercised for a collateral object or an extraneous and irrelevant purpose, however commendable.” *Re Multi Malls Inc. et al. and Minister of Transportation and Communications et al* (1977), 14 O.R. (2d) 49 at 55 (C.A.). As we have said, cost of service is the starting point building block in rate setting, to meet the fundamental concern of balancing the interests of all consumers with the interests of the natural monopoly utility.

Nor does our conclusion presume as to what methods or techniques may be available in determining “just and reasonable rates.” Efficiency and equity considerations must be made. Rather, this is to say only that so long as the global amount of return to the utility based upon a “cost of service” analysis is achievable, then the rates/prices (and the methods and techniques to determine those rates/prices) to generate that global amount is a matter for the Board’s discretion in its ultimate goal and responsibility of approving and fixing “just and reasonable rates.”

The issue before the Court is that of jurisdiction, not how and the manner by which the Board should exercise the jurisdiction conferred upon it.”
(Ontario Superior Court of Justice – Divisional Court, Court File No. 273/07, May 16, 2008, pages 11 – 12, paragraphs 56-60)

The discretion that the Board has is to determine just and reasonable rates given all of the facts and circumstances brought to its attention. The Board is not required to take into account rate

affordability or income in the rate setting process. Further, it is Union's view that the Board should continue to apply the principles it has consistently relied on.

Customer Service Issues (Payment Period, Disconnection Rules, Security Deposits and Specific Service Charges) and Arrears Management Programs

Union understands the challenges that customers face when paying their utility bills and the impact that this can have on them and their families. That is why Union works with its customers and social service agencies to keep the natural gas service connected. Disconnecting a customer is always a measure of last resort.

If a customer cannot fully pay their bill within 16 days from when the bill is issued, they can contact Union to make payment arrangements. These arrangements are mutually agreed upon with the customer and are structured with the overall objective to pay off the total amount due. As long as the customer meets the arrangements and progresses towards settlement of the arrears, no collection activity takes place. Arrangements may continue over a number of months. The onus is on the customer to contact Union so that payment arrangements can be made in a timely manner.

Given the extensive use of natural gas by residential customers for home heating, Union encourages its customers to join the equal billing program to lessen the impact of higher winter bills. This program equalizes the amount due each month, which makes the bill more stable, predictable, and affordable.

Union also works with a number of other social service agencies and support groups that assist customers having difficulty paying their bill. While privacy legislation limits the information we can collect and restricts what we can share with these agencies, our common goal is to help the customer to avoid disconnection of the gas service.

As indicated above, Union is a contributing member of the Winter Warmth Fund that is administered by the United Way and its agencies. During the 2007-2008 heating season, approximately 500 households received assistance with their Union Gas bill averaging approximately \$366.

During the consultation, a number of parties raised concerns with utility policies related to payment period, disconnection rules, reconnection charges, late payment penalties and security deposits. Union does not support measures that would result in special programs, rules, waivers of fees and penalties and arrears forgiveness for low income consumers. Union has no mechanism or functionality in its billing system to identify and track low-income households that would allow it to implement such measures. Further, due to privacy legislation, Union does not have access to any information sources or databases that would provide income or social assistance information on an individual customer basis. To the extent that these measures are needed, it is Union's view that the identification, management and funding of this is best left to the government and social service agencies as they have the necessary expertise and are best positioned to address the needs of the low-income households.

During their presentation, the City of Hamilton stated that they:

“have heard loud and clear from many of our clients, and especially our seniors, that they want the ability to select when they pay a bill” (Transcript – September 24, 2008 – Page 37, Lines 13-15) and that they would prefer to pay bills during the first few days of the month.

Union’s billing system does not have the functionality to allow different payment dates for individual accounts. Union bills its 1.3 million customers evenly throughout the month, with the bill date being based on meter reading dates, which in turn are based on geographic location.

With respect to disconnection rules, the non-payment by any customer needs to be managed through a common collection process rather than establishing a separate collections and disconnection policy for low-income households. While Union does take each customer's individual situation into consideration, a common process is the most efficient and effective approach and provides the best encouragement for the customer to make full and timely payments.

During one of its presentations, the Low Income Energy Network (LIEN) stated that

“There should be a mandatory exemption or waiver of late-payment charges for low-income consumers.” (Transcript – September 24, 2008 – Page 74, Lines 10-11).

The late payment penalty charge is a well established and practical device in widespread use in Ontario and elsewhere to encourage prompt payment of utility bills. The primary objective of this charge is to encourage customers to pay promptly and thus minimize the growing cost of carrying accounts receivable. The Board has determined that these costs as well as extraordinary collection costs should be borne by customers who cause them to be incurred.

During the stakeholder consultation, the Green Light on a Better Environment (GLOBE) group suggested that:

“The Board should ensure that the customer care policies of the gas and electric utilities provide adequate support for social housing residents that pay their bills directly to stay connected. Educational programs may not be sufficient. Other customer care assistance may be necessary to help residents pay their energy bills. The Board should provide bill discounts on an as-needed basis for social housing residents who pay their energy bills, in recognition of the reduced ability of these residents to pay their energy costs. It is hoped that residents will require such assistance on an interim basis until energy bill reductions have occurred as a result of participation in energy education opportunities and participation in CDM/DSM”. (Transcript – September 22, 2008 – Page 19, Lines 4-18).

As is the case with any customer, Union is prepared to work with local social housing groups if their tenants are having trouble paying their bills (e.g., will contact social housing before disconnecting the gas). Like all customers, Union encourages them to seek further assistance from their social services provider or from other agencies if they are short funds to pay their utilities.

The issue of security deposits was discussed at various times during the consultation. As was explained by Union, the request for a security deposit may be waived by Union in any of the following situations:

- New customers joining the equal billing plan and the automatic payment plan.
- New customers provide an excellent credit bureau or a positive letter of reference from another utility.
- Customers that have payments assured by a social service agency.

While security deposits are added to the customer's first bill and are due at that time, customers can request additional time to pay the security deposit. As long as the customer keeps paying the new charges on the bill each month and a portion of the security deposit, Union will allow the deposit to be paid over a number of months.

The rationale for applying a security deposit by a utility is to protect a utility from those customers who fail to pay their bills and protect other ratepayers who would be required to make up the loss of revenue from non-paying customers.

During one of its presentations, the Low-Income Energy Network (LIEN) said:

“Security deposits: This is an issue that is near and dear to my heart, and we got involved in this, our advocacy centre, for Tenants Ontario Legal Clinic, because we got a call from our Kapuskasing legal clinic, because the local utility was going to charge tenants, but not homeowners, a security deposit fee, and we thought that that was a discriminatory practice. And actually, as a result of that, the OEB held a proceeding on consumer security deposit issues and did amendments to the Distribution System Code to set minimum security deposit requirements so utilities don't have to collect one. It is discretionary – LDCs -- and the conditions are set in there. And at that time, we asked for a mandatory exemption for low-income households from security deposit requirements. We're still asking for that mandatory exception.” (Transcript – September 24, 2008 – Page 77, Lines 13-28)

The referenced proceeding on consumer security deposits (RP-2002-0146) was initiated by the Board in June 2003 to consider issues around the customer security deposit policies of electricity local distribution companies. Specifically, the Board had proposed changes to the Distribution System Code to reflect a new framework for electricity security deposit policies.

In its July 2003 submission, the Advocacy Centre for Tenants Ontario:

- supported a complete exemption for low-income residential consumers from the security deposit requirements of local distribution companies for electricity service;
- argued that, in the absence of an explicit exemption for low-income residential consumers, a number of the OEB's proposed amendments could result in disproportionate, adverse impacts on these vulnerable households with respect to access to electricity service; and
- defined “low-income residential consumer” as a person with a household income level at or below the Low-Income Cut-offs (LICOs) published by Statistics Canada, using pre-tax, post-transfer household income. (VECC made same recommendation)

In this RP-2002-0146 proceeding, a working group comprised of electricity LDCs as well as members representing small, medium and large consumers considered input from the Advocacy Centre for Tenants Ontario and concluded that exempting low-income customers from posting security deposits would be a social policy decision. The group concluded that administering social policy should be undertaken by the government.

One of the more practical issues identified by the working group was how the LDCs would administer a policy that would exempt "low-income" consumers from posting security deposits. In addition, they questioned the lack of assessment of the potential impact on non-defaulting customers if these customers defaulted in the absence of a security deposit and the need for this analysis.

In February 2004, the Board approved amendments to the Distribution System Code pertaining to consumer security deposit policies of electricity local distribution companies. After considering all of the submissions, the Board did not exempt low income consumers from the security deposit requirement but did make a minor change to the Code from "installments over no more than 4 months" to "installments over at least 4 months". This change was made to provide LDCs with the flexibility to allow more than four installments, especially where it involves low-income consumers.

In its December 21, 2004 Summary Report regarding Proposed Amendments to the Distribution System Code Regarding Unpaid Electricity Charges (RP-2004-0166), the Board stated (emphasis added):

"The Board wants to emphasize that the representatives for tenants and low-income customers generally found that the distributors were well motivated in their actions respecting the clients of social agencies, and sought to deal respectfully and effectively with the relevant agencies. The problems seem to arise as the result of a lack of clear, consistent and predictable procedures governing the interface between distributors and low-income customers and the agencies that serve them.

One of the key difficulties in this area concerns the extent to which distributors can or should be required to identify an existing or potential customer as a low-income customer or otherwise as a person requiring some measure of special management. It is the Board's view that distributors ought to have no such definitional role. The identification of a customer as a low-income customer should rest with the responsible social agencies.

The proposed amendments assume the applicability of the security deposit regime outlined in the Code to all customers, without regard to their status as clients of social agencies. The security deposit provisions are designed to strike an appropriate balance between the responsibility of an individual for his or her own electricity charges and the extent to which system users, as a collective, ought to backstop the distributor for unpaid bills. This is necessary so that system integrity and viability can be maintained. The collective responsibility can be invoked only after the security deposit governing a given defaulting account has been applied to the arrears, and any additional outstanding amounts are reasonably considered to be uncollectible.

Security deposits play an important role in the financial underpinning of public utilities, such as the distributors. This is especially important during a period when the ability of distributors to account properly for unpaid accounts is somewhat unnaturally limited because of the effect of legislation on rates applications.

...

Given the importance of security deposits to distributors, and their role in underpinning the financial structure of the distribution system as a whole, the Board does not consider that it has been presented with justification to conclude that security deposits ought not to be applicable to clients of social agencies or low-income consumers in general. What we have heard is that there are serious difficulties and dysfunctions in the management of the relationship between clients of social agencies who are customers or potential customers, the social agencies themselves, and the distributors, due in large part to a lack of consistency and predictability in practices. These difficulties concern areas such as disconnection and security deposit policies.”

On March 29, 2005, as part of a separate subsequent proceeding on Unpaid Electricity Charges, the Board issued further amendments to the Distribution System Code which provided clarification to electricity distributors on their rights and obligations in the areas of security deposits (as well as tenant arrears and reconnection charges).

Conservation Demand Management and Demand-Side Management Programs for Low Income Consumers

From Union’s perspective, while it is admirable to want to decrease the energy cost burden of low-income energy consumers (both those that directly and indirectly pay their utility bill) and increase the affordability of energy, from a utility perspective, it is more practical / equitable to help all customers including low income consumers to:

- Increase their knowledge of the efficient energy use and available DSM programs - thereby reducing their energy use in a measurable and sustainable way;
- Support referrals to social assistance programs that can make it easier for customers to manage all of their household finances, including energy costs; and
- Provide easy access to information on the utility’s billing, payment, and collections policies and processes and actively supporting the customer in the management of their account, including the resolution of payment trouble.

Union understands the value of developing DSM programs tailored to meet the specific needs of low income energy consumers. The objective of Union’s low-income DSM program is to empower low-income energy consumers to control their natural gas usage through ongoing education on energy conservation. The intent is to promote behavioural changes and the adoption of conservation programming.

As indicated at the settlement consultation, it is Union’s view that appropriate incentive measures and dedicated budgets allow for effective low-income DSM program design and delivery.

Union believes that one of the largest barriers to low-income program design is the ability to identify and communicate with the target audience. Union continues to make it a priority to solidify

partnerships with community agencies to help identify customers and bring further awareness of the programs in our communities.

Union's Helping Homes Conserve is a demand side management program designed for our low-income customer base. This program offers customers who are at 125% or below Statistics Canada Pre-Tax Low Income Cut-Off (LICO) the free installation of basic energy saving measures including: energy-efficient showerheads, water-saving bathroom and kitchen aerators, foam pipe insulation and programmable thermostats. This program is delivered at no-cost to the customer and can save them up to \$200 a year on their energy bills. Helping Homes Conserve is currently being offered in Windsor, Hamilton and Sudbury.

For 2008, Union Gas forecasts the following for DSM programs directed at low income groups:

- Spending on Low Income programs - \$1.43 million;
- Number of participants in programs – 3 communities (Windsor, Hamilton and Sudbury) targeting 10,000 – 12,000 participants;
- Budgeted spending as a percentage of total DSM budget – 7.6% (2008 DSM budget is \$18.7 million);
- Budgeted spending as a percentage of General Service Delivery Revenues - 0.26% (2008 budget for delivery revenue is \$557 million*);
- Budgeted spending as a % of General Service Gas Supply Revenues - .15% (2008 budget for gas supply revenue is \$975 million*).

** April 1, 2008 rates*

Although Union supports the continuation and enhancement of low income DSM programs, Union notes that under the current DSM framework, utilities are incented to undertake DSM activities that produce the highest Total Resource Cost ("TRC"). In some cases, DSM programs targeted to low income consumers may generate low or negative TRC. This will disadvantage low income DSM programs relative to DSM programs targeted at other groups and has financial implications for utilities. It is Union's view that to ensure a continued focus on low income DSM, appropriate incentives must be put into place.

Summary

Union recognizes the significant challenges facing low income consumers. Prices for all goods and services, including energy, are rising. It is Union's view, however, that many of the issues facing low income consumers extend beyond energy and the mandate of the Board. The development and delivery of social welfare programs are the responsibility of the government. Union believes that its view appropriately aligns the expertise of the utility, the Board and the Government.

The Board and utilities do have a role to play in the development and delivery of DSM programs for low income consumers. It is Union's view that DSM programs targeted at low income consumers should be continued and enhanced. The delivery of DSM programs is complementary to and consistent with our expertise of delivering safe and reliable distribution, transportation and storage services. Reducing the overall energy use for low income consumers results in long term, sustainable savings for low income consumers. The Board should continue to encourage utilities to

develop and deliver DSM programming to low income consumers by ensuring the appropriate incentives exist (or that disincentives do not exist) for utilities to make DSM investments.