

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, S.O. 1998.

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders approving the unbundling of certain rates charged by Union Gas Limited for the sale, transmission, distribution, and storage of gas.

**WRITTEN ARGUMENT OF THE
CONSUMERS= ASSOCIATION OF CANADA**

I SUMMARY

1. These are the submissions of the Consumers' Association of Canada (CAC[®]) regarding the application of Union Gas Limited (UGL[®]) for approval of its proposals to provide unbundled services to its small volume customers and for approval of the disposition of the associated one-time and ongoing costs of implementing those proposals.
2. For the reasons set out below, CAC submits that the Ontario Energy Board (OEB[®] or Board[®]) should grant the following relief:
 1. It should, on the basis of fairness, accept Union's unbundling proposals, and the prudence of the costs incurred in implementing them, but in doing so should acknowledge significant deficiencies, principally the absence of a cost-benefit

analysis, in support of those proposals;

2. It should allocate the costs of the unbundling proposals to the retail energy marketers (AREM[®]) or, in the alternative if the Board agrees with Union's proposition that all customers will ultimately benefit from the existence of the unbundled service offerings whether they contract for them or not, to in-franchise customers based on the volume of gas consumed. However, the communications costs, related to both unbundling and billing, should be allocated to general service customers in proportion to the weighted average number of customers, save and except for the \$2.25 per customer charged to REMs whose customers move to direct billing. In addition, Union should be required to re-file its communication plan once a final determination of the billing proposals has been made;
3. It should approve Union's proposals for enhanced agent billing and collection service (AABC[®]) and direct billing services;
4. It should defer a decision on market-consolidated billing (AMCB[®]) in this case, and the issuance of its decision on the Gas Distribution Access Rule (AGDAR[®]) until, first, there is an agreed-upon model for MCB and, second, there is a cost-benefit analysis for the implementation of that model.

II INTRODUCTION AND BACKGROUND

3. By Application dated July 31, 2000, Union applied to the OEB for approval of its proposals to provide unbundled services to its small volume customers through REMs and for deferral account treatment of the associated one-time and ongoing costs of these implementation of those proposals. In addition, Union sought approval for its proposals regarding changes to its current billing arrangements with REMs.

4. The issues in this proceeding were the subject of a settlement conference in which CAC was an active participant. That settlement conference resulted in a settlement agreement in which a number of the issues in the proceeding were resolved. As a signatory to that agreement CAC will only make submissions on the issues that were not resolved through the settlement process.
5. The prudence of the expenditures related to further unbundling and the allocation of those expenditures was initially part of Union's customer review process. As a result of the settlement agreement in this case, those issues were deferred to this proceeding.
6. Union had filed in this proceeding evidence related to billing issues. Some of those issues were already subject to consideration by the Board in a process underway regarding the development of the GDAR. Even with the GDAR process underway, the Board determined that it would, as set out in its Procedural Order No. 5, test Union's evidence on the billing issues within the context of this Application. The Board indicated that it intended to test the evidence in a manner which preserves flexibility with respect to the development of the GDAR. The Board also indicated that it may withhold its decision on the billing issues encompassed by Union's Application until after it has finalized the GDAR. CAC will make submissions below, in Section V, regarding its perspective as to the relationship between the issues that are being considered in this proceeding and the Board's consideration of the GDAR.
7. These submissions are divided into the following sections:
 1. A consideration of what the OEB must approve with respect to Union's unbundling proposals;
 2. A consideration of the allocation of the costs of unbundling, including a separate

consideration of the communications costs;

3. A consideration of Union's billing proposals. A consideration of this issue will include consideration of the jurisdictional arguments with respect to the implementation of marketer-consolidated billing (AMCB®).

III THE UNBUNDLING PROPOSALS

8. The threshold question is what, if any, approval is required from the Board regarding Union's unbundling proposals. It is Union's position that no approval is required, because the Board, in its Decision with Reasons in RP-1999-0017 case, approved unbundling for the small volume market. **(Tr. 8, pp 22)** Union further submits that the Board's approval in that case was based on the terms of an ADR agreement, in which all of the parties agreed to further unbundling, for the small volume market. **(Tr. 8, pp 32 ff.)** Finally, it is Union's position that, in any event, unbundling for the small volume market reflects a broad, consensus agreement among all stakeholders as reflected in, among other things, the report of the Market Design Task Force (AMDTF®). **(Tr. 8, pp 25 and 27)** In order to understand Union's position, some background is required.
9. In the RP-1999-0017 proceeding the Board considered Union's proposals to implement unbundled storage and transportation services for large volume customers. Union's proposals for unbundling in that case were the subject of a comprehensive Settlement Agreement with the exception of the issue of the mandatory allocation of upstream transportation capacity. The Board accepted the Settlement Agreement and subsequently approved the allocation of upstream transportation capacity following the oral hearing.
10. In its evidence in that proceeding Union indicated that further changes would be necessary to facilitate access to unbundled services by the small volume market, through services provided to REMs and that these additional changes would be the subject of a subsequent proceeding. **(Ex. B, Tab 1, p. 3)** Union has brought forward those proposals

for approval in this proceeding.

11. The changes proposed by Union include changes to facilitate contract administration, daily gas management, and billing REMs for storage. In addition, Union is proposing to implement technology changes to support the new Internet-based customer interface. The total costs of these initiatives are \$15.7 million. Of that total \$8.2 million relates to this proceeding and \$7.5 million relates to the changes initiated as a result of the RP-1999-0017 proceeding. **(Ex.C1.15)**

12. Union maintains that in endorsing the settlement agreement in the RP-1999-0017 case and its subsequent approval of the mandatory vertical slice methodology in the Decision that the Board has already approved the further unbundling for small volume customers. Union's position is that the current process is simply to consider the costs associated with that further unbundling. Union also relied on two reports issued by industry working groups, the Ten Year Market Review **(Ex. G1.2)** and the MDTF **(Ex. G1.3)**, to support its position that its proposals have been based on a broadly based industry consensus. Specifically, Union cites the MDTF Report and its conclusions that unbundling will ultimately increase competition for the commodity. Union also claims that there has been a recognition that unbundling was a desired vehicle for flexibility and supply options leading to more competitive pricing and that every stage of the unbundling process has justified that view of the benefits. **(Tr. 8, pp 24)**

13. It must be noted, however, there was no evidence provided, in RP-1999-0017, with respect to the costs of the further unbundling, beyond a rough estimate of approximately \$7.5 million. There were no specific details about what the further unbundling would consist of. There was no evidence as to the anticipated benefits of further unbundling. There was no cost/benefit analysis undertaken by Union. There was no evidence in RP-1999-0017, or in the present case, that small volume customers want further unbundling. **(Tr., 1, pp 267-268)** CAC disagrees with the statement, in Union's Argument-in-Chief

that Aeverybody said we want this, we want this, as quickly as possible, get on with it, we understand it will cost@ (Tr. 8, pp. 38). That statement, CAC, submits, is a rhetorical overstatement that grossly simplifies, and therefore distorts, the position of the CAC.

14. The absence of the important categories of information, itemized in the preceding paragraph, puts the Board in a very difficult position in trying to decide whether to approve Union's unbundling proposals. Union's corporate evidence was that a cost/benefit analysis Ashould have been done prior to the Decision by the Board to offer the service to the marketplace@. (Tr. 1, pp 314). Indeed, Union, albeit indirectly, underscores the importance of a cost/benefit analysis by engaging in a detailed cost/benefit analysis in support of its argument that the Board should reject any proposal for MCB.
15. Union's expert witness, Dr. Schwindt, argues that the absence of a cost/benefit analysis is a fundamental flaw in the proposal for MCB (Ex. B, Tab 7, p.1). Dr. Schwindt argues, however, that the absence of a cost/benefit analysis is not a defect in the proposal for direct billing because, in his view, no one objects to it. (Tr. 6, pp 444). How Dr. Schwindt is able to know that no one is complaining about direct billing, when the issue had not been considered prior to this case, is anybody's guess. The distinction, in his argument, between the circumstances where a cost/benefit analysis should be required and those when it is not, seem, with respect, to be facile. The more credible position, CAC submits, is that a cost/benefit analysis is required before any decision is made to implement a new service, whether unbundling or billing.
16. Union suggests that no cost/benefit analysis is necessary for the unbundling proposals, both because of the Board's approval in the RP-1999-0017 Decision and because of what it describes as the broad consensus in support of further unbundling, as reflected in, for example, the MDTF. CAC submits that the Board's approval in RP-1999-0017 is subject to the frailties that, as noted above, neither the costs nor the benefits of further

unbundling were examined. CAC further submits that there is little or no value in the supposed evidence of the historic consensus, as reflected in reports like the MDTF. The report of the MDTF contains no detailed conclusions on unbundling, and reflects, at the highest, generalized agreement on broad principles. In addition, that agreement was premised on a number of assumptions which no longer are valid. Chief among those assumptions was that LDCs, including Union, would be withdrawing from the merchant function, and would be operating as wholesale distributors of gas to a limited number of REM customers. Union's witnesses, under cross-examination, pointed out that that assumption was no longer valid. **(Tr. 4, pp 98-99)** It is submitted, with respect, that Union cannot select which of the underlying assumptions are no longer valid and yet hold the other parties to the positions they allegedly took as reflected in the report of the MDTF.

17. Although Union has made unbundled services for large volume customers available, to date no customers have taken up the service. **(Tr. 1, pp 262)** In addition, Union has not provided the Board with evidence to demonstrate that there will be take up by the REMs when the unbundled services for small volume customers are made available. **(Tr. 1, pp. 286)**
18. Union's position is that the Board and industry stakeholders have endorsed the changes proposed which are necessary in order to provide access to the unbundled services to small volume customers. Union advocates that the combination of rate schedule changes and systems and process changes will facilitate effective use by REMs of the unbundled services which will, in turn, be used to provide competitive retail energy supply services to small volume customers. **(Ex. B, Tab 1, p. 6)**
19. CAC submits that the Board should not gloss over the absence of essential evidence in support of the unbundling proposals. CAC submits that it would not be appropriate for the Board to simply accept Union's implementation proposals for unbundling and

recovery of the associated costs of those proposals on the basis of previous industry reports and an intuitive feeling that the further unbundling of rates and services for small volume customers will bring benefits that outweigh the costs. CAC submits that the issues in this case go beyond simple Board endorsement and implementation of what Union submits has already been approved.

20. CAC submits that the better approach would be for the Board to acknowledge the deficiencies in the evidence in support of unbundling, but to rely on the criterion of fairness in making its decision whether to approve unbundling. CAC submits that, in light of the ADR agreement, and subsequent Board decision, in RP-1999-0017, it would be unfair for the Board to now reject the unbundling proposals and the recovery of the costs incurred in implementing those proposals.
21. In terms of moving forward CAC does not support any further changes related to unbundling. All changes beyond those proposed to date should be subject to specific prior approval from the Board. Union should be required to submit a plan as to what further changes are required and an analysis as to why these changes are justified. CAC urges the Board to ensure that in the future approval of expenditures of this magnitude and policy initiatives of this significance be dependent upon a full cost/benefit analysis.
22. A significant amount of time has lapsed between the time when unbundling was initially envisioned by industry stakeholders and this proceeding. As a result, although these changes are going forward there is no evidence that the services Union is currently providing to large volume consumers and the services Union is making available to REMs will actually be contracted for. Potentially significant changes in the upstream transportation markets will be considered by the National Energy Board within the next year that may further affect the attractiveness of Union's unbundling proposals. CAC submits that this context underscores the importance of Union seeking prior approval of any further unbundling initiatives.

23. CAC's endorsement of the unbundling proposals is on the basis that Union was simply proceeding with something that had already been endorsed by the Board. This does not imply an acceptance of the allocation of the associated costs as proposed by Union. CAC's submissions on the proposed allocation are set out in the next section, below.

IV THE ALLOCATION OF THE COSTS OF UNBUNDLING

(a) Costs Other Than Communications Costs

24. As identified above Union is seeking recovery of \$15.7 million related to its unbundling proposals. These expenditures are what Union has determined to be appropriate to facilitate the proposed changes in regarding contract management, daily gas management process, development of the electronic customer interface (IT infrastructure), billing REMs for storage and the disaggregation of storage charges. To date Union has spent approximately \$12.3 million of the \$15.7 million estimate **(Ex. G 5.3)**
25. Union indicated that if it had developed unbundling only for large volume customers that the costs associated with implementation would have been approximately \$500,000 **(Tr. 1, pp. 159)**
26. Union has proposed that the entire amount of unbundling costs be recovered from all customers on the basis that all customers benefit from the availability of the services whether they contract for them or not. In effect, those customers that will always remain system supply customers are required to bear a portion of the costs. The costs are to be allocated to in-franchise rate classes based on the weighted average number of customers, to be recovered by all customers in the rate class. As a result the overwhelming amount of these costs are assigned to small volume customers. **(Ex. C 22.25)** Union has proposed this allocation on the basis that the costs are driven overwhelmingly by the number of transactions that this new unbundling service requires and hence by the

number of customers. From Union's perspective, these costs are all necessary to enable access to the services for small volume customers.

27. Union rejected the option of recovering the costs associated with providing unbundled services from existing direct purchase customers because the time frame in which these customers will likely take up the unbundled service through their REM is uncertain. Union also argued that they are not the only customers that will benefit from the unbundled service. Once the systems are in place all customers will have access to those services. **(Ex. C1.12)** Union rejected recovery from future unbundled service end-users largely on the same basis.
28. Union rejected recovery of the costs from REMs on the basis that it is the end-user that stands to eventually benefit most from having the unbundled offering available. Union also cited practical impediments to collecting these costs from REMs. Issues such as which REMs to recover the costs from and how much from each would have to be resolved. To the extent these costs were amortized and collected over time Union had concerns about the uncertainty of ultimate recovery. **(Ex. C1.12)**
29. CAC submits that the Board should decide on the allocation of costs based on consideration of benefit. Using this consideration would be consistent with the Board's own observation, in its Decision with Reasons in RP-1999-0017, that the Board believes that there is merit in the principal that those who stand to benefit most from an initiative should bear the bulk of the cost. **(Decision With Reasons, RP-1999-0017, pp 6.106)** Mr. Todd, in his evidence, agreed with this proposition, noting the Board has long experience in addressing cost causality issues. He makes a valid point in that system customers may realize no benefits from unbundling and should not bear the costs.
30. Following that principal, CAC submits that the bulk of the costs of implementing the unbundling proposals should be recovered from REMs, or in the alternative if the Board

is of the view that unbundling in and of itself will benefit all customers, from in-franchise customers, based on volume consumed.

31. CAC submits that the evidence is clear that the principal beneficiaries of unbundling will be the REMs. Union=s cites throughout its evidence the direct benefits accruing to the REMs:

AUnion plans to address this requirement by developing an electronic customer interface (or customer information exchange) using Internet-based technology. This design approach will provide REMs online self-serve access to Union=s key processes and will provide real-time or near-real-time delivery and exchange of information so that REMs can make more timely business decisions.@ (Ex. B, Tab 2, p. 6)

ASelf-serve access means that REMs can have direct access, through an electronic interface, to Union=s key systems that support its contract administration and daily gas management processes.@ (Ex. B, Tab 2, pp. 6-7)

AIn addition, Union will use the customer information exchange to facilitate the transportation clearing house described in RP-1999-0017 to help REMs manage their upstream transportation portfolios.@ (Ex. B, Tab 2, p. 8)

AREMs will be able to use this same electronic capability to view details of the MRN, to confirm their nominations, to view their storage balances and to view their operational status. Online access to this information will allow REMs to effectively manage their businesses on a daily basis.@ (Ex. B, Tab 2, p. 11)

AChanges to the administration of Direct Purchase (ADP@) contracts will provide REMs with the ability to assign various price points for the services they provide within individual DP contracts.@ (Ex. B, Tab 1, p. 4)

32. Union's position is that in providing enhanced services to REMs and simply making them available will create further competition with respect to the commodity. CAC submits that Union failed, however, to provide any evidence that benefits that may accrue to REMs will necessarily be passed on to their customers. REMs may be able to reduce their costs, but it does not necessarily follow that those cost reductions will be passed on. CAC submits this is particularly significant given the Ontario retail market is not truly competitive- the evidence from Union is that three REMs control over 90% of the market- (**Ex. B., Tab 4, p. 2**) and many customers are locked into long-term contracts. One marketer has a significant market share. In addition, Union failed to justify its arguments that simply because unbundled services are available all customers will benefit. Furthermore, given that none of the large volume customers have taken up the services, and the lack of evidence that REMs will in fact take up the services, Union has not justified its proposal to allocate the majority of the unbundling costs to small volume consumers. The idea that over \$13 million of the unbundling costs are to be borne by small volume customers seems unfair especially in light of the uncertainty around any potential benefits for those customers.
33. CAC submits that the most appropriate allocation of these costs is to the REMs, those that ultimately stand to benefit and those that were initially pushing for these changes to accommodate their business activities. CAC proposes that the costs be deferred and collected through a per customer charge to be paid by REMs who choose the unbundled services. In effect, those that choose to contract for those services should pay for the implementation of those services. If end-use customers are to benefit they should do so through efficiencies that their REMs gain and choose to pass on to them. There is no guarantee that end use customers will actually see those benefits. With respect to large volume users, those who contract with Union directly, CAC submits that they should be allocated \$500,000, the amount estimated to be directly related to providing them with unbundled services.

34. Union has proposed that with respect to direct billing those REM that choose the service should bear the costs associated with Union's notification to the REMs customers of that change. Union's rationale is that since it is the choice of that REM to move to that arrangement the costs of doing so should not be levied on the entire customer base. CAC submits that Union's position regarding the unbundling costs should be consistent with its approach regarding direct billing.
35. Union expressed concerns about the ultimate recovery of these costs and the timing issues for that recovery if only those that contracted for the services were required to bear the costs. **(Ex.C1.12)** This is, in effect, an argument by Union that it should not bear the risks of the cost of the unbundling proposals. There is no reason, however, why residential consumers should bear the risk of those costs. In order to provide Union with some measure of protection, the Board can allow Union to reapply for the allocation of stranded costs if, during the next several years, there is either no take-up of the unbundled services, or very little take-up, and if most of the costs have not been recovered.
36. If the Board is of the view that benefits will accrue to all customers by simply having the unbundled service offerings available CAC submits recovery on the basis of customer number is not appropriate. The alternative approach to the recovery of costs would be to allocate those costs to in-franchise customers according to volumes consumed. Union repeatedly identified the benefit of the unbundling proposals in the form of a more competitive market resulting in lower commodity costs. **(Tr. 4, pp. 136 and Tr.1, pp 42)**. The benefit of lower commodity costs increase with the volume of gas consumed. That is common sense. Curiously, Union sought to deny that evident link, persisting in its argument that the benefit of lower commodity costs would accrue to small volume customers. **(Tr. 4, pp. 140)** That position defies, with respect, common sense.

37. Exhibit G8.1 illustrates the allocation of the costs of unbundling by volume. That exhibit, CAC submits, reflects a fairer allocation of the costs of unbundling according to the likely benefits received. If the Board rejects CAC's views that the costs should be allocated to the REMs, a volumetric approach would represent the next best alternative.

b) Communications Costs

38. Union has proposed a communication plan to educate consumers about changes in their billing arrangements. Union's objective is to educate gas consumers in the small volume market to ensure that they are aware of and comfortable with any changes in retail billing arrangements. (Ex. B, Tab 5, p. 1) There are three proposed phases of the communication plan.

39. The initial phase will be to notify ratepayers about the addition of a storage line on the bill and to explain reasons for the change. The cost of this effort which will be accomplished largely through bill inserts is estimated to be \$ 165,000.

40. The second phase will be related to the introduction of direct billing. This effort will be directed to all customers and will cost approximately \$385,000.

41. Union is proposing in its third phase another effort related to direct billing. Union intends to inform all customers that will be receiving direct bills from their REMs of the changes they should expect and why. Unlike the other communication efforts Union is allocating the costs of this effort to the REMs that choose direct billing for their customers. Union's rationale is that since it is the choice of the REM to move to the billing arrangement, the costs of doing so should not be levied on the entire customer base. (Ex. B, Tab 5, p. 4)

42. Union proposed to record these costs in a deferral account. Those costs other than those

to be recovered directly from the REMs through the proposed per customer charge will be recovered from general service customers in proportion to the weighted average number of customers per class. **(Ex. B, Tab 6, p. 5)**

43. CAC has always supported efforts by the LDCs to inform its customers of impending changes to its rate and services. CAC accepts that Union's communication proposals in this proceeding are reasonable and has no reason to take issue with the delivery mechanisms proposed nor the quantum of the proposed costs. In addition, to the extent that the changes that are specific to general service customers CAC supports the proposal to recover such costs, to the extent they have been prudently incurred from those customers.
44. Having said that, CAC submits that it may be appropriate to revisit the proposals of Union depending upon the outcome of these proceedings and the Board's decision on GDAR. For example, to the extent the Board mandates MCB either through this proceeding or its Decision on GDAR CAC is of the view that a more comprehensive communication effort will be required. Without such an effort CAC submits that significant customer confusion and potential backlash will result.
45. CAC submits that until the billing issues are resolved it would be premature for the Board to approve Union's communication proposals and the associated costs. There must be some certainty about what billing options will be available, the specific models to be employed, and the implications for customers. Once the Board has defined what will be required Union should be required to come forward with a new plan and a forecast of the associated costs. Until then, it would be inappropriate for the Board to accept what Union has proposed.
46. To the extent the unbundling for small volume customers goes forward and there is approval to break out the storage component on customers' bills CAC supports the

proposal by Union to notify customers of the change and to recover the costs of doing so from general service customers.

V BILLING

47. Union is proposing that the further unbundling, for the small volume market, be accompanied by two forms of billing. One is an enhanced ABC billing service. A second is direct billing, under which REMs would bill their customers directly for the services they provide and Union would bill its customers for the services it provides. Union also will continue to provide ABC service as it does today. Union argues, at considerable length, against the adoption of MCB, even though that form of billing was proposed by the Board in the draft GDAR. Included in that argument is the proposition that the Board does not have the jurisdiction to require Union to implement MCB.
48. CAC submits that there are some threshold considerations, with respect to the billing proposals, that must be considered. One is the relationship of billing to unbundling. The second is the question of what the Board must decide about billing in this case. The third is the relationship of the billing proposals in this case to the GDAR process.
49. The Board could, in theory, approve Union's unbundling proposal without any consideration of billing. Having said that, however, it is apparent, from the importance which all of the parties have placed on the billing proposals, that billing is an essential component of the implementation of the unbundling proposals.
50. According to Union, there are no costs which are specifically attributable to either of Union's two billing proposals. There is, accordingly, arguably nothing which the Board has to approve, with respect to billing, in this case. However, because billing is so inextricably intertwined with the implementation of the unbundling proposals, the Board must, in some form, either approve or disapprove of Union's billing proposals and must,

as well, decide what to do about MCB. To put the matter another way, CAC submits that the Board should, as a condition of allowing Union to recover, in rates, some or all of the costs of further unbundling, approve some or all of Union's billing proposals.

51. In February 2001 the Board issued a draft GDAR seeking comments from interested parties on the proposals encompassed in the draft rule. Included in that draft rule were requirements that the LDCs offer distributor consolidated billing, split or direct billing, and MCB. Following receipt of comments the Board established a consultation process in which it intended to clarify the submissions filed to date on the GDAR and to seek input from consumer groups. There had no been an opportunity up until that point for the small volume customer groups to provide the Board with comments on the draft rule.
52. The GDAR process did not allow for parties other than the Board question the submissions made by others. Parties were permitted to make oral presentations and take questions from the Board. Although CAC welcomed the opportunity to comment on the draft GDAR, it was not in CAC's view a process that would allow the Board to make a fully informed decision on the final rule. A decision on the final GDAR is pending.
53. Despite the overlap of issues under consideration in the GDAR process and in this proceeding the Board allowed for an examination of the billing issues in this case. It is unclear to what extent the evidence in this case will inform the Board's decision regarding the GDAR.
54. Union has indicated it that it will continue to provide ABC service. In addition, Union has indicated that it continues to work with the REM community and other stakeholders to improve and expand the service (**Ex. B, Tab 4, p. 10**) Union is currently considering offering additional service features such as messaging capability, REM logos, and line items on the bills for REMs to access and enhance their bill presence. Union is also proposing that the costs for these service enhancements be recovered directly from REMs through the ABC service fee, and would only be incurred after consultation with REMs

to assess the demand and benefits of such enhancements.@ (Ex. B, Tab 4, p. 10)

55. CAC submits that it is ironic that with respect to ABC enhancements Union is proposing that any enhancements be recovered through the REM only after an assessment of the demand and benefits of such enhancements. Although CAC agrees that this analysis is required, CAC questions why Union's position on the unbundling initiatives should be any different.
56. CAC supports Union's proposals regarding the ABC service. To the extent changes to the ABC service are requested by REMs and the cost of those changes are recovered from them directly CAC supports any future enhancements. Until those changes are made CAC supports continuance of the existing ABC service.
57. CAC accepts Union's proposal for direct billing. In so saying, CAC acknowledges that there is no evidence of a demand for direct billing, and no evidence that residential customers, in particular, will ever use it or benefit from it. Notwithstanding these deficiencies in the evidence in support of direct billing, CAC submits that this billing alternative is one way to implement the unbundling proposals and that this billing alternative should be available to residential consumers. CAC is influenced, in taking this position, by the fact that there are no costs attributable to direct billing. Were there such costs, and were they to be allocated, in whole or in part, to residential consumers, CAC would have more difficulty in supporting a billing proposal that is not supported by any evidence of consumer demand or benefit.
58. The real issue that the Board must resolve is whether to approve some form of MCB. In trying to reach that decision, the Board faces the difficulty that it does not have before it any model of what MCB would consist of. Just as important, the Board does not have any sense of what the full costs of implementing MCB would be.

59. In its pre-filed evidence (**Ex. B, Tab 4, p 13, ff**), Union set out a number of reasons why it is opposed to MCB. Chief among those reasons were the following:

1. MCB created what Union called Asset utilization risk[@]. Union's argument is that billing its customers directly allows it to promote the use of natural gas and that, without being able to do so, there is a risk that fewer customers will use natural gas. Union conceded that it would still be able to market the use of natural gas among its distribution customers, but that it would be more difficult and costly to do so; (**Tr. 4, pp 128**)
2. MCB would result in an increase in the cost of capital. Union conceded that this proposition was based on anecdotal evidence, in the form of discussions in the financial marketplace, and had no direct evidence in support of the proposition; (**Tr. 4, pp 171-173**)
3. MCB would result in a risk of a loss of franchise agreements. This argument was predicated on the assumption that Union would not be able to persuade its customers of the benefit of continuing franchise agreements with Union. There are, however, any one of a number of ways in which Union can alert its customers to the benefit of its services. It is Union's position, again, that communicating with its customers would be more expensive and less effective; (**Tr. 3, pp 189**)
4. MCB would result in a loss of value in the company, in the form of a loss of good will. The willingness of Duke Energy to pay what Union acknowledges is a premium price for Westcoast Energy, in the face of the Board's draft GDAR, which included a requirement for MCB, seems to negate that argument. There is, in addition, no evidence to support the argument, beyond Union's contention that it is true.

60. CAC submits that there is no credible evidence in support of Union's arguments about the alleged detrimental impact on it of implementing MCB. Even if it would be more costly, and more difficult, for Union to remind its customers of the quality of its service and the benefits of the use of natural gas, those increased costs may be outweighed by the benefits of MCB.
61. In its oral evidence-in-chief, Union identified a number of items which, it argued, would add to the cost of implementing MCB. **(Tr., 3, pp. 1148 to 1178)** These items might more accurately be described as items which might add to the cost of implementing MCB and which must be resolved, as a practical matter, before MCB is implemented. The items are:
1. The problem of recovering payment from defaulting customers. The corollary of this problem is the increased credit risk if it must recover all of its costs from a limited number of REMs;
 2. The increased difficult of communicating with customers on, for example, safety issues;
 3. The problem of customer disconnections for non-payment;
 4. The problem of customer relocations, of which there are approximately 125,000 annually;
 5. The difficulty of billing for additional transactions, for example, moving meters aids to construct of which there are some 400,000 per year;
 6. The problem of the use of Union's account numbers;

7. The problem of group billing.

62. Union conceded, in cross-examination, that the risk posed by some of those items could be mitigated (**Tr. 4, pp 278**) and that all could be addressed as part of a service level agreement (ASLA®). (**Tr. 4, pp 677 and 678**) The problem for the OEB, however, is that there is no evidence in this case of the cost of addressing those items and whether those costs would outweigh any benefit from MCB.

63. CAC is not necessarily opposed to the concept of MCB. In fact, the concept of receiving one bill for many services may be appealing to some residential customers. CAC had advocated MCB in the GDAR process on the condition that it be at the customers explicit direction, not the REM=s and that any such initiative be preceded by a comprehensive customer communication campaign. In addition, the direct or split billing concept may be unattractive for many customers in that it increases transaction costs by requiring customers to receive and pay two bills for a service in which they previously paid one bill. CAC does not accept Union=s evidence that customers seem to be indifferent as to obtaining one bill or two.

64. CAC did not find the customer research presented by Union or CEED particularly helpful in assessing whether MCB should be pursued or whether a direct billing model would be more appropriate. The Northstar Survey simply pointed to the fact that customers prefer choice. CAC submits that the way in which each of those surveys were designed was self-serving.

65. Union, even though it knew that the Board was likely to mandate MCB through the GDAR, did not provide its view on how MCB could be implemented in the best interests of its ratepayers and shareholders. Instead, Union=s analysis pointed to all of the potential adverse implications without providing any detailed assessment of the cost consequences to assist the Board.

66. Union claims the likely costs of MCB will be significant. They cannot be quantified without a specific model or proposal. Union's position is that when there is no demonstrable benefit, substantial controversy and significant costs then the Board should not launch into a major regulatory initiative, particularly when other more worthwhile initiatives are underway occupying the Board's time. **(Tr. 8, pp. 159)**
67. Union advocates that MCB will not add any benefits to the market that direct billing cannot. Union's position is that the direct billing option will provide REMs with direct contact with customers to develop a stronger retail relationship. **(Ex. B, Tab 4, p. 12)** Union also argued that there has been no systematic analysis or demonstration that MCB is necessary or significant to facilitate further commodity competition beyond what would be facilitated by allowing REMs to bill for their services through direct billing. **(Tr. 8, pp. 161)**
68. From CAC's perspective the consideration of the billing issues in this proceeding underscores their importance to all stakeholders and highlights the fact that a comprehensive consideration of them is required. The evidence in this proceeding illustrates that the costs and benefits of implementing the GDAR, including the billing options have not been adequately assessed. With the GDAR the Board has simply imported requirements from a yet untested electricity model. It would be inappropriate to mandate those requirements now without a full cost/benefit analysis of the options. Without such an analysis ratepayers may be required to unnecessarily bear significant costs, both directly and indirectly, as a result of the proposed changes.
69. CAC recommends that prior to the finalization of the GDAR there be a determination as to whether or not MCB is required to enhance the competitiveness of the commodity market, and whether there is a clear demand for this type of service offering at this time. If pursuing MCB has been justified there must be some determination as to what model is

most appropriate. Union has raised a long list of legitimate issues that would need to be addressed in the development of a MCB model. Enbridge Consumers Gas may well have its own set of complex issues that need to be addressed. CAC submits that the model could be developed either through an industry working group or a Board sponsored consultant. Once a model has been developed both Union and ECG should be required to bring forward their proposals on how to implement the desired model. Their evidence would provide a complete analysis of the potential costs and benefits and would be subject to scrutiny by the Board and intervenors.

70. In the absence of a process like that outlined above CAC has significant concerns about the implementation of the MCB. What model would Union employ? How can the Board be assured their chosen model best serves the end-use customers? What are the ongoing costs and the costs of implementation? Who will bear the costs? How will the long list of issues raised by Union regarding MCB be resolved? (disconnections, connections, customer relocations, aids to construct, group billing, prudential requirements, safety concerns etc.) Who will bear the indirect costs? (increased cost of capital, increased credit risk, etc.) Without resolution of these issues ratepayers may be subjected to many unnecessary cost impacts.
71. CAC urges the Board to delay implementation of the GDAR until the implications of proceeding with the requirements are fully understood. CAC submits that in this proceeding Union raised a number of very legitimate points about costs and implementation details that merit full consideration in another process. The draft GDAR was mirrored on the electricity industry's Retail Settlement Code which to date has been untested. The evidence in this proceeding has demonstrated that to move forward with these proposed changes as they relate to the gas industry, without further consideration, would not be in the interests of the utility ratepayers.
72. CAC submits that the Board should not approve MCB, but should defer consideration of

it until, first, there is an agreed-upon model for MCB and, second, there is a cost/benefit analysis of that model.

Board's Jurisdiction

73. Union advances two, different arguments about jurisdiction. The first is that MCB is not permitted by the Ontario Energy Board Act (the AAct[@]) because REMs would, under MCB, be distributing gas. The second is the OEB cannot force Union to conduct its business in a particular way that, in other words, the OEB cannot order Union to offer MCB. CAC will deal with those arguments separately.

A. The Act Does Not Permit MCB

74. Union argues that MCB is a wholesale distribution service, and that a wholesale distribution service is contrary to the Act. **(Tr. 8, pp. 71)** That argument is premised on the notion that the effect of MCB is that the contractual relationship, for the distribution of gas, is between REMs and consumers and that Union becomes a wholesale distributor, whose contractual relationships are with REMs. It is Union's argument that the Act requires that a distributor have a contractual relationship with its end use customers. **(Tr., 8, pp 83)**

75. In support of this argument, Union relies on the differences in the definition of Adistributor[@] as it appears in the *Electricity Act*, and the definition of Agas distributor[@] in section 3 of the Act. In the former, a distributor is defined as a person who owns or operates a distribution system. In the latter, a distributor is defined as a person who distributes gas to a consumer. This latter definition, according to Union, requires that there be a contractual relationship between the distributor and the person who receives the gas, and precludes anyone other than a consumer paying for distribution. **(Tr. 8, pp 84-85)**

76. A corollary of this argument, according to Union, is that, if REMs are to become distributors, then the rates which they charge for distribution must be approved, in discrete proceedings, by the OEB. Before MCB could be implemented, according to that argument, the Board would have to consider, and approve, discrete rate applications by the REMs offering MCB. **(Tr. 8, pp 106)**
77. In responding to these arguments, one difficulty is that there is neither a Board-directed nor an agreed-upon model for MCB. There is, accordingly, no model for the underlying contractual relationships, among the REMs, Union and end-use customers, that should inform any analysis of jurisdiction.
78. Having acknowledged that, however, CAC understands that the basic concept of MCB is one in which Union would distribute gas, and provide all of the services ancillary to doing so, and the REM would bill the end-use customer on Union's behalf. The REM would, in other words, include Union's bill in its bill.
79. CAC cannot conceive how, under that basic model, the REM would be regarded as anything more than a billing service, let alone as a gas distributor. Union would continue to distribute the gas. It would do more than merely own the means of distribution, it would actually distribute the gas to end-use customers. It would, in other words, continue to meet the definition of a gas distributor in the Act. The REM, by contrast, would neither own the means of distribution nor actually distribute gas to end-use customers.
80. CAC does not accept the basic premise of Union's first argument on jurisdiction, namely that MCB somehow fundamentally changes the basic contractual relationship between Union, the distributor, and its end-use customers.

81. CAC acknowledges that distortions in the relationships among Union, the REMs and end-use customers can arise as a result of the SLAs that are to form the basis of MCB. CAC acknowledges, in particular, the danger that REMs may try to charge a fee for distribution.
82. What is required is OEB scrutiny of, and approval for, all SLAs in order to ensure the REMs' role under MCB is simply that of a billing service and that only the OEB-approved rates are charged for distribution.
83. Given, accordingly, that Union would remain the distributor, and that the REMs would be doing nothing more than providing a billing service, the provisions of the Act would not, in CAC's submission, be violated.
84. Accordingly, the CAC submits that Union's first argument on jurisdiction is wrong, and that the Act does not preclude MCB.

B The OEB Cannot Force Union to Offer MCB

85. Union argues that there is no residual jurisdiction in the Board to tell it, having set rates, and thus exercise the jurisdiction accorded to it under the statute, to do anything else, including contracting out billing for its services. **(Tr. 8, pp 140)**
86. Union is seeking to recover, in rates, the cost of the measures necessary to implement unbundling. The OEB has the jurisdiction, under section 36 of the Act, to impose such terms and conditions as it considers appropriate on its approval of rates. The only limit on the jurisdiction of the OEB to impose conditions is that the conditions must be reasonably related to the OEB's jurisdiction to approve just and reasonable rates.
87. CAC submits that it is open to the Board, in deciding whether to allow Union to recover

the costs of unbundling, to impose terms and conditions which the OEB feels are required to give effect to unbundling. Those terms and conditions might include requiring that Union make available different forms of billing, including MCB.

88. Union is at liberty to refuse to comply with the conditions which the OEB imposes on its approval of the recovery of certain costs in rates. If it does do, however, it cannot recover those costs.
89. Accordingly, CAC submits that Union's second argument on jurisdiction is also wrong.
90. CAC submits that the OEB does have the jurisdiction to require, as a condition of its approval for Union recovering the costs of implementing unbundling in rates, MCB. CAC has argued, above, that the OEB should not implement MCB, but for reasons unrelated to jurisdiction.

V COSTS

91. CAC asks that it be awarded 100% of its reasonably-incurred costs for its participation in this hearing.
92. The principal focus of the hearing was on the implementation of the unbundling of services to benefit the small volume market, consisting principally of the residential consumers whom the CAC represents. Approval of Union's application to recover the costs of implementing its unbundling proposals would have significant cost consequences for residential consumers. It was, accordingly, essential that the CAC participate fully in the hearing.
93. CAC submits that its participation in the hearing was helpful to the Board in enhancing its understanding of the concerns of residential consumers.

94. CAC submits that it behaved responsibly in that, among other things, its counsel avoided duplication in cross-examination and made every reasonable attempt to be present at the hearing only for Union's evidence-in-chief and for cross-examination.

All of which is respectfully submitted.

Robert B. Warren
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