



EB-2011-0327

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Union Gas
Limited seeking approval of its 2012-2014 Demand Side
Management plan.

BEFORE: Cathy Spoel
Presiding Member

Cynthia Chaplin
Vice Chair

Paula Conboy
Member

DECISION AND ORDER ON SETTLEMENT AGREEMENT
February 21, 2012

Union Gas Limited (“Union Gas”) filed an application with the Ontario Energy Board (the “Board”) on September 23, 2011, seeking approval for its 2012-2014 Demand Side Management (“DSM”) plan including a 2012 DSM budget of \$30.954 million. The application was filed pursuant to the Board’s DSM Guidelines that were issued on June 30, 2011 (EB- 2008-0346). The Board assigned file number EB-2011-0327 to the application. On October 13, 2011 the Board issued a Notice of Application.

On December 19 and 20, 2011 parties sat for a Settlement Conference. As part of Procedural Order No. 2, the Board ordered that any settlement agreement that resulted from the Settlement Conference be filed on or before Friday, January 20, 2012. This deadline was subsequently extended. The Settlement Agreement was filed on January 31, 2011.

The parties to the Settlement Agreement are:

- Association of Power Producers of Ontario (“APPrO”)
- BOMA Greater Toronto (“BOMA”)
- Consumers Council of Canada (“CCC”)
- Canadian Manufacturers & Exporters (“CME”)
- Energy Probe Research Foundation (“Energy Probe”)
- Federation of Rental-housing Providers of Ontario (“FRPO”)
- Green Energy Coalition (“GEC”)
- Industrial Gas Users Association (“IGUA”)
- Low-Income Energy Network (“LIEN”)
- London Property Management Association (“LPMA”)
- Pollution Probe
- School Energy Coalition (“SEC”)
- Vulnerable Energy Consumers Coalition (“VECC”)

On February 3, 2012 the Board sat to hear the Settlement Agreement. The Agreement set out a complete settlement on all issues with respect to Union’s 2012-2014 DSM plan with the exception of three partially settled issues and two unsettled issues. The Settlement Agreement also contains joint terms of reference for stakeholder engagement between Union, Enbridge, and intervenors as contemplated in the DSM Guidelines.

The Board heard oral submissions on the “non-severability” clause, that is, the clause in the Settlement Agreement which specified that the Settlement Agreement had to be accepted in its entirety or not at all (which Pollution Probe opposed), and on the two unsettled issues: the appropriate application of inflation to the budget and the appropriate method for setting the maximum incentive payment for 2012.

On February 8, 2012 the Board issued its partial decision on the Settlement Agreement.

The Board found that the inclusion of the non-severability clause was appropriate.

In regards to the first of two unsettled issues, the Board found that the appropriate interpretation of section 8 of the Board’s DSM Guidelines concerning the application of inflation to the DSM budgets is that the 2011 approved budget may be escalated by inflation to set the 2012 budget.

In regards to the second unsettled issue, the Board interpreted the Guidelines to mean that if Union has an approved DSM budget which is in excess of \$27.4 million, then the maximum incentive will be increased proportionally.

On Monday, February 13, 2012 the Board sat to hear the partially settled issues of the Settlement Agreement. The three partially settled issues relate to Union's resource acquisition program, the large industrial T1 and Rate 100 program, and the demand side management variance account (DSMVA). These three issues all relate to the flexibility Union has in managing its program budgets, including the additional amounts made available to allow for continued delivery of successful programs. Pollution Probe was the only party which opposed these sections of the Settlement Agreement, and it cross examined Union's witness on these issues.

The issues in the Settlement Agreement that Pollution Probe objects to centre around the amount of additional funding available through the DSMVA that Union can allocate to its large industrial program. The Board's DSM Guidelines state at section 13.2 that:

A natural gas utility may record in the DSMVA in any one year, a variance amount of no more than 15% above its DSM budget for that year.

The Guidelines further state:

The option to spend 15% above the approved annual DSM budget is meant to allow the natural gas utilities to aggressively pursue programs which prove to be very successful.

The Settlement Agreement provides that

The Participating parties, except Pollution Probe, have agreed that Union's ability to make budget changes within the overall Resource Acquisition budget, and to access DSMVA, will be restricted on a rate class basis. A shift in Resource Allocation budget between rate classes shall be limited to an increase of 100% of the amount allocated to the rate class.¹

¹ Union Gas Limited Settlement Agreement, EB-2011-0327, January 31, 2012, Section 6, Paragraph 4, Page 22

In the event that Union qualifies to access the 15% allowable overspend, Union will only access the overspend for the Large Industrial Rate T1/Rate 100 program up to a maximum of 15% of the budget allocated to the Large Industrial Rate T1/Rate 100 program, i.e. \$5.095 million.²

Union is eligible to recover up to an additional 15% above its annual Board-approved DSM budget through the DSMVA, subject to the following restrictions:

3. The maximum allowable 2012 overspend for the Large Industrial rate T1/Rate 100 program is \$0.764 million, not including inflation.³

Pollution Probe argued that these proposed limits on spending on the T1/Rate 100 programs (referred to as a cap) would restrict the allocation of available DSMVA funding that could be directed to industrial programs, and that is contrary to both the DSM Guidelines and the public interest. Pollution Probe argued that large industrial programs are far more cost-effective than other rate class programs. Pollution Probe submitted that the proposed cap goes against the first objective of the DSM Guidelines which states that the design of natural gas DSM programs and the overall portfolio should be the maximization of cost-effective natural gas savings and that the cap should be rejected.

Pollution Probe further argued that the proposed cap interferes with the goal of the DSMVA, which Pollution Probe submitted is to allow the natural gas distributors to aggressively pursue programs which prove to be very successful. Pollution Probe noted that the Guidelines do not restrict DSMVA allocation by rate class, which Pollution Probe submitted was appropriate, as the DSMVA funding should be allocated to the most successful programs, something that the proposed cap limits.

Pollution Probe submitted that the proposed cap is not in the best interests of industrial customers, as increased spending on large industrial DSM programs results in benefits for large industrial customers as a whole, with minimal impacts on rates.

Pollution Probe submitted that the Board should base its decision on the proposed cap on whether or not the cap is in accordance with the Guidelines, whether it furthers the

² Union Gas Limited Settlement Agreement, EB-2011-0327, January 31, 2012, Section 7, Paragraph 9, Page 25

³ Union Gas Limited Settlement Agreement, EB-2011-0327, January 31, 2012, Section 10.2, Page 35

public interest, and whether it furthers the objectives set out in the *Ontario Energy Board Act*. Pollution Probe argued that the comparison should be between a cap or no cap, and not a cap and the merits of the rest of the Settlement Agreement.

Union submitted that the Settlement Agreement is in the public interest and that it reflects a compromise that was reached amongst constituents from all rate payer and public interest groups. Union noted that offering programs for large industrial customers is not mandatory under the DSM Guidelines, and that the Board had stated in the DSM Guidelines that large industrial customers possess the expertise to undertake energy efficiency programs on their own. Union submitted that the Settlement Agreement reaches a compromise between the Board's direction regarding large industrial programs and Union's proposal to provide a program offering to these customers. Union submitted that the continuation of the program with a cap on the amount that will be spent provides large industrial customers with greater certainty regarding DSM rate impacts.

Union argued that the restriction on DSMVA funding for the large industrial program in the Settlement Agreement is consistent with a proportional split of the overall budget and that although the accessible amount of DSMVA funding will be limited for the large industrial programs, the remainder will be available for the other rate class programs.

Union submitted that the Settlement Agreement is consistent with the recently accepted Agreement from Enbridge Gas Distribution Inc. and that the Board should accept Union's Settlement Agreement in its entirety.

GEC supported Union's submissions in the context of the overall Settlement Agreement. GEC noted that the total budget, rate predictability, and rate impacts are all issues that are interrelated. GEC argued that the test the Board should be using in determining the issue put forth by Pollution Probe is whether the proposal is acceptable in light of the Agreement as a whole, and to not look at individual issues in isolation.

GEC submitted that the large industrial cap addresses the Board's concerns about rate impacts and the extent of DSM spending in the industrial sector as well as the rate payer concerns about rate impact and predictability. GEC submitted that it finds the Agreement, based on the one-year nature of the large industrial program, to be a reasonable compromise for the 2012 year.

SEC, BOMA, IGUA, and CME, also supported the submissions by Union and GEC.

SEC further submitted that the DSM Guidelines are not mandatory. SEC argued that the Guidelines are an informative document to which the Board should refer in its decision making process, but that compliance with the Guidelines should not be a determining factor.

FRPO further provided support for the submissions made by Union, GEC, and SEC, and the Settlement Agreement as a whole. FRPO submitted that if other considerations ought to be subordinated to the primary goal of the amount of natural gas saved within a given budget, then one would have to question why the Board emphasized a low-income program that delivers a much lower efficacy of natural gas savings per program dollars spent than other facets of the DSM program. FRPO submitted that the Agreement represents a well-balanced DSM plan.

APPrO submitted that the goals of conservation cannot be pursued in a vacuum and that maximization of cost-effective natural gas savings is only one of the three objectives in Section 3 of the DSM Guidelines. APPrO noted that the Board's letter accompanying the Guidelines spoke to its concerns relating to large industrial customers and that one of APPrO's goals in this process was to obtain some form of cost predictability for its members.

APPrO argued that Pollution Probe's focus on maximizing cost-effective natural gas savings, and indeed its focus on the DSMVA, is overly narrow, ignoring other important aspects of the overarching framework. APPrO submitted that the proposed Settlement Agreement is one which satisfies the requirements of the DSM Guidelines, respects the goals of the overarching framework, and adequately balances the interests of energy conservation with consumers' economic circumstances.

BOMA supported GEC's comments and the overall Settlement Agreement. BOMA noted that the original reason for a DSMVA was to provide the utility with the flexibility to continue delivery of successful programs rather than end program delivery once the budget constraints had been reached.

Board Findings

The issues in the Settlement Agreement that Pollution Probe objects to all centre around the amount of additional funding available through the DSMVA that Union can allocate to its large industrial program. The Board's DSM Guidelines state at section 13.2 that:

A natural gas utility may record in the DSMVA in any one year, a variance amount of no more than 15% above its DSM budget for that year.

The Guidelines further state:

The option to spend 15% above the approved annual DSM budget is meant to allow the natural gas utilities to aggressively pursue programs which prove to be very successful.

The Board notes that these principles and objectives have been a part of the DSM framework since the Generic DSM Proceeding (EB-2006-0021) and that the ability to remain flexible and adapt and address market conditions is the primary reason for the inclusion of the DSMVA.

Under the Settlement Agreement Union is prohibited from allocating the full DSMVA amount (15% of the total budget) to the large industrial programs. Instead, additional funding for these programs is limited to 15% of the industrial program budget (i.e. 15% of \$5.095 million or \$0.764 million). The Board accepts that large industrial DSM programs often yield the most favourable results (i.e. highest savings per dollar spend) amongst all rate classes. The achievement of cost-effective savings is one of the drivers of the allocation of funds within a DSM plan; however, it is not the sole consideration and the Board considers other factors as well.

The Board's DSM Guidelines list the maximization of cost effective natural gas savings as one of the main objectives, however, the Guidelines provide for the delivery of low-income and market transformation DSM programs, neither of which is necessarily consistent with this objective. The Board has long been of the view that a DSM plan should offer programs to all rate classes so that all customers are afforded the opportunity to participate in energy efficiency programs. A DSM plan that focussed exclusively on maximum cost effectiveness would presumably have no programs at all

for residential and low income consumers. The Board notes that the total budget for the large industrial DSM program is \$5.095 million with an available \$764,000 of additional DSMVA funds if Union achieves the necessary results to access the DSMVA. The Board is of the view that this is a reasonable budget to pursue cost effective natural gas savings in the large industrial market. The Board notes that additional funding through the DSMVA would remain available to pursue successful residential and low-income programs.

The Board notes that the Settlement Agreement is supported by all large industrial parties, the same parties who will be paying for the programs. Large industrial customers have witnessed increased rates related to DSM programming over recent years. As noted above, large industrial groups sought cost certainty rather than an open-ended DSMVA which places them in a situation where they may incur further rate increases.

The Board finds that the limitation on DSMVA spending contained in the Settlement Agreement reaches a reasonable and appropriate result that balances rate predictability, the pursuit of successful cost effective programs, and program accessibility for all rate classes.

The Board accepts the Settlement Agreement.

THE BOARD ORDERS THAT:

1. Union Gas Limited is granted approval of its 2012-2014 DSM plan based on the terms outlined in the Settlement Agreement filed on January 31, 2012.
2. Intervenors eligible for an award of costs shall file their cost submissions in accordance with the Practice Direction on Cost Awards with the Board Secretary and with Union within **15 days** of the date of this Decision and Order.
3. Union may make submissions regarding the cost claims within **30 days** of this Decision and Order.
4. Intervenors may reply within **45 days** of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

All filings to the Board must quote file number EB-2011-0327, be made through the Board's web portal at www.errr.ontarioenergyboard.ca and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may e-mail their document to BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file two copies.

DATED at Toronto, February 21, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary