

March 17, 2016

VIA RESS AND COURIER

Ms. Kirsten Walli
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Dear Ms. Walli:

Re: EB-2016-0040: Union Gas Limited (Union) April 1, 2016 QRAM Application.

Industrial Gas Users Association (IGUA) Comments.

We write as legal counsel to IGUA.

Further to our letter of March 15th in this matter, and having reviewed the answers filed by Union earlier today to questions posed by Board Staff, we can confirm that IGUA has no objection to approval of Union's application as filed.

In respect of the two issues raised in Board Staff's questions and noted in our earlier letter as being of interest to IGUA:

1. IGUA agrees that Union's proposal to exclude from its requested QRAM adjustments projected cost variances for the period beginning January 1, 2017 that are not expected to in fact materialize¹ is appropriate, administratively efficient, and provides for rate stability². Further, instituting a further proceeding to review this proposal seems unnecessary.
2. We appreciate Union's further explanation of the errors resulting in earlier over-recovery of gas costs and for which one-time adjustments (ratepayer credits) are proposed in the current application.³ It would be further appreciated if Union would, in its final submissions, expand on its reference at paragraph (ii) of its response to Staff question 5 that the misstatement of the previous quarter true-up variance in Inventory Revaluation Deferral Account was a "*mechanical error*". In particular, what was the error?

¹ Question.2, page 1, second paragraph.

² Question.1, paragraph 1.ii).

³ Question.5

Further on this issue, IGUA agrees with Union's response to Board Staff that correction of errors previously embedded in rates does not engage concerns regarding "*retroactive ratemaking*". The regulatory prohibition against retroactive ratemaking is intended to recognize that neither the utility shareholders nor its ratepayers are to be kept whole when actual earnings turn out to be different from the earnings forecast when rates were set. In between rate orders, management of the utility business is in the hands of, and at the risk of, the utility.⁴ The rule generally prevents utility companies from recovering losses that stem from "*past company mismanagement or improper forecasting*".⁵

There is, however, ample authority in regulatory jurisprudence that credits going forward do not constitute retroactive rate-making, particularly where such credits reflect a one-time fixed amount adjustment to an overpayment that the tribunal finds unjust.⁶ This concept of correction for previous errors in ratemaking (as opposed to divergences in actual from anticipated expenses or earnings) is particularly applicable for flow through costs such as those addressed through QRAM proceedings.

Costs

Pursuant to the Board's *Practice Direction on Cost Awards*, IGUA is eligible to apply for a cost award as a party primarily representing the direct interests of ratepayers in relation to regulated gas services. IGUA requests that the Board award it costs reasonably incurred in review of Union's QRAM.

IGUA has, in the past, been consistently awarded modest costs for review of QRAM applications. IGUA respectfully submits that the Board, in making such awards, has recognized some value (commensurate with modest costs) in the independent and informed review of such applications.

IGUA continues to be mindful of the need for efficiency in its regulatory interventions, in particular in respect of relatively non-contentious matters such as is normally the case with QRAM applications. For QRAM reviews, IGUA has retained Aegent, whose professionals are expert in Ontario gas commercial and regulatory matters, including rate matters in particular. Aegent conducts a review of the QRAM application as filed, and provides a report to IGUA. Provided that Aegent's report does not indicate any concerns with either the application of the QRAM protocols or the rate outcome, IGUA is in a position to advise the Board that it has no cause for objection, as is the case in this instance.

⁴ RP-2005-0013/EB-2005-0031, Minority Reasons at page 17.

⁵ Scott Hempling, Attorney at Law LLC; *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction, Chapter Ten: Retroactive Ratemaking: The Prohibition and the Exceptions*, page 327.

⁶ *Ibid* not 3, page 21.

IGUA submits that it has acted responsibly with a view to informing the Board's review and decision on this Application, while maintaining due attention to cost efficiency. On this basis, IGUA is requesting recovery of its costs for participation in this process.

Yours truly,


Ian A. Mondrow

cc. Dr. Shahrzad Rahbar (IGUA)
Valerie Young (Agent)
Chris Ripley (Union)
Crawford Smith (Torys)
Intervenors of Record (EB-2015-0116)

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