



By E-mail & By Electronic Filing

May 19, 2009

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

Dear Ms Walli,

Demand Side Management ("DSM") 2009 Input Assumptions

Board File No.: EB-2009-0102

Our File No.: 339583-000003

On March 31, 2009, Union Gas Limited ("Union") filed an application with the Ontario Energy Board ("Board") seeking approval of demand side management ("DSM") input assumptions for its 2009 year. By Procedural Order dated May 4, 2009, the Board provided parties with an opportunity to comment on Union's application by written submissions on or before May 19, 2009. Please consider this correspondence as the written comments of Canadian Manufacturers & Exporters ("CME") on Union's application.

As set out in more detail below, CME is concerned with the process by which Union has filed this application. Unlike in previous years, the Evaluation and Audit Committee ("EAC") was not consulted on Union's 2009 input assumptions. Furthermore, there has been no opportunity for parties to test the application through either interrogatories or a technical conference. The result is that the Board is being asked to approve input assumptions on a very slim and untested evidentiary record.

As the Board notes in its May 4, 2009 Procedural Order, the Board's Decision with Reasons for the Natural Gas DSM Generic proceeding (EB-2006-0021) outlined a process allowing for updates to DSM input assumptions. Specifically, the Board's Decision with Reasons dated August 25, 2006 in EB-2006-0021 reads as follows:

The Board anticipates that the recommendations that come from the evaluation and audit committee would, in effect, be the substance of the comments process to be employed for the updating of the list and values of the input assumptions. Any

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suggested updates to the input assumptions guide arising from the evaluation and audit process should be filed with the Board within one month of the end of the annual audit and evaluation.

More recently, in the Decision and Order for Enbridge Gas Distribution's ("EGD") application for approval of its 2008 DSM input assumptions (EB-2008-0384), the Board reiterated its expectation that the natural gas utilities consult on proposed changes to the DSM input assumptions:

When the updating process for DSM input assumptions was devised, it was done so in order to provide the Board with confidence it could move forward without having to conduct complex and adversarial proceedings.

The Board went on to acknowledge the value of the consultative as follows:

The Board would note that the EAC does not have a "veto" power, but the Board does expect there to be meaningful consultation. Although the use of the consultative and the EAC is at the utilities' discretion, it assists the Board and the regulatory process a discussion can take place in the informal atmosphere of the consultative and the EAC, rather than requiring that all matters be adjudicated

Unlike previous years, Union's EAC did not consider or discuss Union's 2009 input assumptions. Union's correspondence to the Board at the time of filing this application set out as follows:

Union's Evaluation and Audit Consultation ("EAC") has not reviewed the proposed 2009 input assumptions. While Union had intended to send a draft of the 2009 assumptions to the EAC prior to this submission, given the time spent reviewing and commenting on the Navigant Report on February 6, 2009, Union only recently completed the 2009 input assumptions.

Further, in 2008 Union and the EAC agreed to provide the 2009 input assumptions to the Board by the end of March 2009. There was insufficient time to discuss the assumptions with the EAC prior to filing the assumptions with the Board.

In previous years, CME has been able to rely upon the EAC consultation process to obtain a sufficient degree of confidence that the proposed input assumptions are reasonable without the need for an adversarial and complex proceeding. Indeed, this was one of the purposes of establishing an EAC.

Unfortunately, for 2009 the EAC was deprived of the opportunity to assess Union's 2009 input assumptions. Furthermore, parties have not had an opportunity to test Union's 2009 input assumptions through either interrogatories or a technical conference, or to obtain

the views of an independent expert. The result is that CME does not have confidence that the 2009 input assumptions proposed by Union are reasonable.

The Board's Decision with Reasons for the Natural Gas DSM Generic proceeding (EB-2006-0021) established that input assumptions would be "locked-in" for the purpose of calculating the Shared Savings Mechanism ("SSM"):

SSM. Assumptions used from the beginning of any year will be those assumptions in existence in the immediately prior year, adjusted for any changes in the audit of that prior year. By way of example, if in June of 2008 the audit of the 2007 programs demonstrates a change in assumptions, that change shall apply for SSM purposes from the beginning of 2008 onwards until changed again.

This places significant importance on the establishment of accurate input assumptions. If the Board approves input assumptions for 2009 that do not reasonably reflect of the actual savings achieved, then Union could receive a SSM that is artificially high in comparison to the actual savings achieved. This is an inherent risk in having input assumptions locked-in as opposed to relying upon best available information at the time of the audit.

CME relies upon the Board's expertise to ensure that Union's input assumptions will not result in an SSM that fails to reasonably reflect the actual savings achieved. If, based upon the minimal evidentiary record filed in support of this application, the Board is not confident that Union's 2009 input assumptions will reflect actual savings to be achieved, then CME urges the Board to direct Union to use best available information, at the time of the 2009 DSM audit, to calculate the 2009 SSM. This is the approach advocated by Board Staff in its "Draft Demand Side Management Guidelines for Natural Gas Distributors (EB-2008-0346), dated January 26, 2009. Specifically, Board Staff wrote as follows:

The Guidelines further require that for the purposes of determining whether the distributor has met its TRC target, the input assumptions for the calculation of SSM not be locked-in from the year before, but to be based on the best available information from the evaluation of the programs. As a result, the need for free rider assumptions for the calculation of TRC net savings and SSM financial incentive based on prior year's assumptions has been eliminated.

Appendix "A" to Board Staff's Discussion Paper, titled "Draft Demand Side Management Guidelines for Natural Gas Distributors", went on to explain as follows:

For the purposes of determining whether each distributor has met its TRC target, the input assumptions for the calculation of SSM should be based on the best available information at the time of evaluation, similar to LRAM adjustments. The utilities have had

several years of experience to conduct evaluation studies and make major changes to the input assumptions and as a result there is no need to lock-in the input assumptions from the year before. By way of example, if in June of 2009 the evaluation or audit of the 2008 programs demonstrates a change in assumptions, that change shall apply for SSM purposes from the beginning of 2008 onwards until changed again.

In light of Union's decision to not consult with the EAC on its 2009 input assumptions, it would be appropriate for the Board to require that Union's 2009 SSM be based upon best available information at the time of the 2009 audit. In CME's view, the use of best available information would address the short-comings of Union's application while also ensuring that the calculation of Union's 2009 SSM properly reflects the actual savings achieved.

CME requests an award of 100% of its reasonably incurred costs in this proceeding.

Yours very truly,



Vincent J. DeRose
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- c. Intervenor EB-2006-0021
DSM Consultative Members
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