



Jay Shepherd

Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

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Our File No. 20110210

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Re: EB-2011-0210 – Union Gas 2013 Rates

We are counsel for the School Energy Coalition. Further to Procedural Order #2, this letter sets out SEC's preliminary comments on the Draft Issues List.

General

The Draft Issues List consistently uses the phrasing "Does the evidence support..." SEC believes this wording is not the best, as it implies that the Board should approve everything in respect of which the Applicant presents a prima facie case. The wording that should be used, in our view, is the standard used in most other cases, i.e. "Is [X] appropriate?"

By way of example, the first issue is proposed as "Does the evidence support Union's forecast level of capital spending in 2013?" The Board can be sure that the Applicant will file evidence supporting its Test Year capital spending, but that is not the real issue. The real issue is "Is Union's forecast level of capital spending in 2013 appropriate?" This incorporates the balancing of costs and benefits that is central to the Board's regulatory role.

There have been numerous examples in the past where this difference in connotation and approach has mattered. Utilities have often filed capital plans that had thorough justifications on a project by project basis, but the Board looked at the overall spending envelope, and determined that keeping spending within a more reasonable level was more appropriate from a ratemaking point of view.

SEC therefore suggests that using the normal "appropriateness" style of wording throughout the document would be a clearer expression of what the Board is considering.

Tel: (416) 483-3300 Cell: (416) 804-2767 Fax: (416) 483-3305

jay.shepherd@canadianenergylawyers.com
www.canadianenergylawyers.com



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We also propose the following additional issues, most of which are standard in Board issues lists, but do not appear to have a natural category within the Draft Issues List proposed for this proceeding:

- ***Has Union responded appropriately to all relevant Board directions from previous proceedings?***
- ***Are Union's economic and business planning assumptions for the Test Year appropriate?***
- ***Is service quality, based on the OEB specified performance indicators and any other appropriate metrics, acceptable, and are Union's proposals to maintain or enhance service quality appropriate?***
- ***What impact, if any, has the IRM rate-setting process had on Union's costs and business processes?***

Rate Base

SEC proposes that the following additional issues be added:

- ***Is the proposed Test Year Rate Base appropriate?***
- ***Is the proposed working capital allowance appropriate?***
- ***Are the methods proposed by Union to allocate the cost and use of capital assets between regulated and non-regulated activities appropriate, and are the proposed allocations to the regulated business appropriate for the Test Year?***
- ***Do Union's Asset Condition Assessment information and Investment Planning Process appropriately address the condition of the distribution system assets and support the OM&A and capital expenditures proposed for the Test Year?***
- ***Has Union made productivity investments during the IRM period? If so, what are the current costs and benefits from those investments, and are they being reflected appropriately in the Test Year revenue requirement?***
- ***Is the proposal for the amounts, disposition and continuance of Union's existing Deferral and Variance Accounts appropriate?***
- ***Are the proposed new Deferral and Variance Accounts appropriate?***
- ***Have all impacts of the conversion of regulatory and financial accounting from CGAAP to USGAAP been identified, and reflected in the appropriate manner in the Application, the revenue requirement for the Test Year, and the proposed rates?***



Revenues

SEC notes that the second of the proposed issues refers to “weather normal”, and to the specific proposal of the Applicant. It is our understanding that weather normalization and weather forecasting assumptions are different, and that a number of possible approaches to weather assumptions need to be considered by the Board. Therefore, we would propose that the issue be reworded as follows:

“What is the appropriate methodology to be used to forecast degree days for the Test Year?”

With respect to the fifth of the proposed issues, we propose that the issue be reworded as follows:

“Is the proposed amount for Test Year Other Revenues, including the methodologies used to cost and price those services, appropriate?”

SEC also proposes the following additional issue:

- ***Has Union levied proper charges and allocations to non-regulated businesses and affiliates, and provided proper credit for those charges and allocations in calculating revenue requirement to be recovered from regulated ratepayers?”***

Costs

SEC would reword the second proposed issue under this category to read as follows:

- ***Are the amounts included by Union in its costs with respect to charges from affiliates, or allocations from unregulated businesses or affiliates, including the methodologies used to cost, price, and allocate those amounts, appropriate?***

SEC also proposes the following additional issues:

- ***Are the Test Year Human Resources related costs (wages, salaries, benefits, incentive payments, labour productivity and pension costs) including employee levels, appropriate? Has Union demonstrated improvements in efficiency and value for dollar associated with its compensation costs over the IRM period?***
- ***Are the amounts proposed for capital and property taxes appropriate?***
- ***Is the amount proposed for income taxes, including the methodology, appropriate?***

Cost of Capital

SEC proposes the following issues for this category (removing the one issue currently proposed in the Draft Issues List):



- ***Is the forecast of the cost of debt for the Test Year, including the mix of short and long term debt, and the rates and calculation methodologies for each, appropriate?***
- ***Is the proposed provision for return on equity for the Test Year appropriate?***
- ***Is the proposed increase in the equity thickness from 36% to 40% appropriate?***

The current Draft Issues List does not include the cost of debt as an issue at all, and appears to assume that use of the Board's ROE formula means that this Board panel cannot consider the appropriateness of the ROE.

Revenue Deficiency

SEC proposes that the title of this section of the issues list be changed to "Revenue Requirement", so that a "deficiency" does not appear to be presumed by the Board.

We then propose that the single proposed issue be replaced with the following:

- ***Are the revenue requirement and revenue deficiency or sufficiency for the Test Year calculated correctly?***
- ***Does the proposed revenue requirement appropriately reflect the ongoing impact of Union's costs and benefits accrued under IRM?***
- ***Is the overall change in revenue requirement reasonable given the impact on consumers?***

The wording of the last issue above comes directly from the Board-approved Issues List in EB-2009-0096.

Cost Allocation

While the use of a number of specific issues relating to the Cost Allocation Study may have value, in our submission a general issue on cost allocation is also required, and thus we propose the addition of the following issue:

- ***Is Union's Cost Allocation Study, including the methodologies and judgments used and the proposed application of that study with respect to Test Year rates, appropriate?***

Rate Design

It is not clear to us why the issues relating to deferral and variance accounts would be included under Rate Design, and we are concerned that this could be a cause for confusion.



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For each of the proposed rate design changes, SEC believes that the change itself, and the effective date proposed, are both issues. For example, the change in the general service breakpoint to 5,000 m3 (or some other breakpoint) is an issue. Whether the eventual approved change, if any, should be implemented in 2014, or at some other time, is also an issue. From the current wording of the issues, it is not clear that both the nature and timing of the changes are considered at issue.

Conclusion

In general, SEC is concerned that the Draft Issues List may inadvertently exclude from the scope of this proceeding matters that should properly be determined by the Board as part of setting Union's 2013 rates. Since this is the first cost of service proceeding since 2007, and may be the last for another several years, in our submission the issues list should not result in matters being out of scope unless the Board expressly so finds with respect to a particular issue. That is, the default should be that matters are in scope for this proceeding, unless the Board determines otherwise at the outset, not by accident through the narrow wording of an issue, but because the Board has put its mind to those matters and decided that this is not the proper forum for them to be considered.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Khalil Viraney, OEB (email)
Interested Parties (email)