



EB-2012-0087

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 for an Order or Orders amending or varying the
rate or rates charged to customers as of October 1,
2012.

PROCEDURAL ORDER NO. 3

August 15, 2012

Union Gas Limited ("Union") filed an application dated April 13, 2012 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2012 in connection with the sharing of 2011 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2011 year-end deferral account and other balances (the "Application"). The Application also requests approval for the disposition of the variance between the Demand Side Management ("DSM") budget included in 2012 rates and the revised budget approved by the Board in EB-2011-0327. The Board has assigned file number EB-2012-0087 to the Application.

The Board issued a Notice of Application and Procedural Order No.1 on April 19, 2012 in which it adopted the intervenors in the EB-2011-0025 and EB-2011-0038 proceedings as intervenors in this proceeding. The Board also set out a timetable for the filing of interrogatories, responding to interrogatories, and for informing the Board regarding plans to file intervenor evidence.

In Procedural Order No. 2, dated June 27, 2012, the Board established a Technical Conference so that parties would have the opportunity to explore emerging issues such as the use of transportation contract attributes to yield shareholder margins. The Board directed intervenors to file letters scoping the issues that will be pursued at the Technical Conference. The Board also established a Settlement Conference to be held on August 28 and 29, 2012.

On July 10, 2012, the Board issued a letter rescheduling the Settlement Conference to August 21 and 22, 2012.

On August 3, 2012, the Canadian Manufacturers and Exporters ("CME") and the Federation of Rental-housing Providers of Ontario ("FRPO") filed a letter which proposed that the following issues related to Union's treatment of Upstream Transportation Services be dealt with at the Technical Conference:

1. Have all of the amounts Union received to December 31, 2011 to mitigate Upstream Transportation Demand Charges been properly recorded in Union Gas Supply Deferral Accounts, including Unabsorbed Demand Charges ("UDC") Deferral Account 179-108?
2. If not, then what additional amounts that Union received to mitigate Upstream Transportation Demand Charges should be recorded in these deferral accounts as of December 31, 2011 and cleared to ratepayers?
3. What is the impact on the amount of 2011 earnings to be credited to ratepayers of clearing to ratepayers the foregoing total amounts?

CME and FRPO noted that the issues in this case relate to the manner in which Union should account for the profits that it has derived from unauthorized demand charge conversion activities. CME and FRPO stated that the conceptual question of whether Union is obliged to account to ratepayers for these profits will be determined in Union's 2013 rate case (EB-2011-0210). CME and FRPO submitted that a final determination on the noted issue in this proceeding will need to await the Board's determination of issues of fact in Union's 2013 rebasing proceeding pertaining to the validity of Union's treatment of the noted revenues.

CME and FRPO proposed that the current balances in the UDC and other Gas Supply Deferral Accounts be cleared to ratepayers with an express recognition of the fact that there may be an additional amount for 2011 to be cleared to ratepayers through Union's Gas Supply Deferral Accounts following the release of the Board's Decision in Union's 2013 rebasing case. CME and FRPO noted that, at this stage, the amount of 2011 earnings sharing to be cleared for ratepayers should be calculated on the basis of an assumption that utility earnings could be reduced by \$14.0 million as a consequence of the Board's determination of issues of fact in Union's 2013 rebasing case. In addition, CME and FRPO noted that the undisputed balances in all other 2011 Deferral Accounts can be cleared at this time.

Union filed a letter on August 10, 2012 responding to the letter of CME and FRPO. Union submitted that the Technical Conference should be adjourned to a later date as the same issues raised by CME and FRPO in this proceeding have been raised in Union's 2013 rebasing case. Union submitted that the issue of the treatment of upstream transportation optimization revenue should not be considered until after the Board has rendered its decision on the 2013 rebasing application. Union stated that having the matter determined at this time risks inconsistent decisions by the Board in relation to the same issue in two different proceedings.

Union submitted that the Board should continue with the proceeding in relation to all other issues while adjourning the upstream transportation optimization revenue and related earnings sharing issues to a date to be determined following the release of the Board's decision in the 2013 rebasing proceeding. Union noted that it is not aware of any concerns in relation to the other issues, nor did any party request a Technical Conference in relation thereto. Union submitted that the other issues can be dealt with expeditiously either by way of settlement or brief hearing.

The Board does not agree with the submissions of CME, FRPO, or Union to the effect that the treatment of upstream transportation optimization revenue should not be considered until after the Board has rendered its decision on the 2013 rebasing application. The Board is of the view that there are two distinct issues before the Board. In Union's 2013 rebasing case (EB-2011-0210), the Board will be determining how upstream transportation optimization revenue should be treated in 2013 and going forward. In this proceeding (EB-2012-0087), the Board will be determining whether Union treated the upstream transportation optimization revenues appropriately in 2011 under the auspices of Union's existing IRM framework.¹ The Board is of the view that these are two different issues and that a decision on one of the issues does not necessarily require the same decision on the other.

For the above reasons, the Board has determined that it will address the issue of Union's treatment of upstream transportation revenues in 2011 as a distinct issue in this proceeding. The Board has decided that it will hear this single issue as a Preliminary Issue in this proceeding and will issue a decision on it prior to holding a Settlement Conference.

The Preliminary Issue is:

"Has Union treated the upstream transportation optimization revenues appropriately in 2011 in the context of Union's existing IRM framework?"

¹ The Board would like to make it clear that it is only considering the treatment of the upstream transportation optimization revenues as it impacts the 2011 rates being determined in this proceeding.

The Board will still hold the Technical Conference scheduled on August 21, 2012 so that parties have an opportunity for further discovery in this proceeding. The focus of the Technical Conference will be on the issues laid out by CME and FRPO in their letter cited above. However, the Board notes that this will be the only Technical Conference held in this proceeding. As such, if parties have other issues that they would like to discover at the Technical Conference they may do so. In order for Union to be properly prepared for the Technical Conference, any parties that wish to ask questions on issues other than the upstream transportation optimization revenue treatment issue shall file letters noting the issues they plan to canvass in advance of the Technical Conference. The Board would also like to advise Union that it is expected to make witness panels available at the Technical Conference that are knowledgeable in the areas that parties indicate will be canvassed.

The Board will establish dates for oral argument on the Preliminary Issue after the Technical Conference has concluded.

The Board will make provision for procedural matters. Please be aware that further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Parties that are seeking information on issues other than the upstream transportation optimization revenue treatment issue at the Technical Conference shall file letters with the Board and copy all parties describing the issues they wish to address on or before **August 17, 2012**.
2. The Technical Conference scheduled for **August 21, 2012** will still be convened at 9:30 am on that date and will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto.
3. The Settlement Conference scheduled for **August 21 and 22, 2012** is postponed until after the Board's Decision on the Preliminary Issue and a date will be set by the Board in a subsequent Procedural Order.

All filings to the Board must quote file number **EB-2012-0087**, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice>, 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. Please 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 you may email your document to the 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 seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

All parties must also provide the Case Manager, Lawrie Gluck, Lawrie.Gluck@ontarioenergyboard.ca, with an electronic copy of all comments and correspondence related to this case.

ISSUED at Toronto, August 15, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary