

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 clearing certain non-commodity related deferral accounts and sharing utility earnings pursuant to a Board-approved earnings sharing mechanism.

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

I. INTRODUCTION:

By Application dated May 8, 2013, Union Gas Limited (“Union”) applied to the Ontario Energy Board for the following relief:

1. Approval of the final balances in the 2012 deferral accounts and for an order for final disposition of those balances;
2. Approval of \$15.730 million as the customer portion of earnings sharing in 2012 and the proposed disposition of that amount to Union’s customers ; and
3. Approval to close the Shared Savings Mechanism Account No. 179-115 effective January 1, 2013.

In addition, Union applied for approval of a variance account to capture variances between earnings sharing, deferral account and other balances for disposition and amounts actually refunded to or recovered from ratepayers.

On August 1, 2013, there was a Settlement Conference held. On August 7, 2013, Union filed a letter with the Board indicating that although a formal settlement was not reached, Union and the intervenors agreed there were no matters in dispute regarding the balances in a number of deferral accounts. That letter also set out the remaining matters that would needed to be determined by the Board through an oral hearing process.

The Board held a hearing on October 22, 23 and 24 to deal with the following matters:

1. Union’s treatment of FT-RAM related exchange revenue;

2. Union's gas supply plan;
3. Union's demand side management ("DSM") results for 2011 and 2012;
4. Union's request to establish Account No. 179-132;

On October 25, 2013, the Board, on its own motion determined that it would initiate a motion to review a previous directive requiring Union to annually prepare and file separate audited financial statements for that portion of its business that is subject to rate regulation. That motion was initiated in light of the fact that Union's estimate of the cost of preparing the audited financial statements had increased significantly.

This is the final argument of the Consumers Council of Canada ("Council"). The Council will make submissions on the issues in the order used by Union in its Argument in Chief.

II. ISSUES:

Treatment of FT-RAM Related Exchange Revenue:

Union is proposing to treat the net FT-RAM revenue that was generated in 2012 as revenue, subject to earnings sharing under its incentive regulation plan. This is contrary to the Decision of the Board in EB-2012-0087 in which FT-RAM revenue was treated as a gas cost reduction.

Union has indicated that it is not seeking to vary the EB-2012-0087 Decision of the Board, but is proposing different treatment for FT-RAM related exchange revenues, "based on a different and more complete evidentiary record, which responds to the Board's decision-making criteria." Union has referred to the Enbridge Gas Distribution 2012 ESM/Deferral and Variance Account proceeding where the Board indicated that it would, in assessing transactional service activity, use the evidence in front of it this year, and not base its decision on what was decided last year (Argument-in-Chief, p. 4).

Union is seeking to treat the FT-RAM revenue as utility revenue, subject to earnings sharing in large measure based on the following points:

1. The Board's previous decision was based on a premise that Union's gas supply plan was driven by optimization opportunities. Union argues that this is not the case given the evidence by Sussex that Union's plan is "right sized" and consistent with those used in other jurisdictions;
2. Treating FT-RAM revenues as a gas cost offset is inconsistent with the historical treatment of transportation exchange revenue and is a departure from the 2008, 2009 and 2010 Settlement Agreements;

3. FT-RAM exchanges and base exchanges are fundamentally the same, only differing as a result of the value provided by TCPL's FT-RAM service; and
4. Treating 2012 transportation exchange revenues as a gas cost offset results in "impermissible retroactive rate-making." (Argument-in-Chief, pp. 3-4).

From the Council's perspective nothing has changed with respect to the nature of the transactions and how they should be treated since the Board's Decision in EB-2012-0087. Union has admitted that the type of transaction that is the subject of this proceeding are the same as those that they were doing in 2011 (Tr. Vol. 2, p. 10).

The Council has the following comments to make regarding the major points Union has made (set out above) regarding why there should be a change in this case relative to the Board's Decision in EB-2012-0087.

With respect to the point regarding the relevance of the Sussex evidence to the "reinstatement of the treatment of FT-RAM revenue as part of utility earnings", the Council notes that the Sussex witness was retained to consider the process used by Union to develop its annual gas supply plans in the North and South Regions, the principles which underlay them, and whether they were reasonable (Tr. Vol. 2, p. 94). He was not asked to prepare evidence as to the characterization of the amounts generated by Union's optimization transactions (Tr. Vol. 2, p. 94).

Union has claimed as it did in the previous case that the Board and parties were aware of Union's treatment of its upstream transportation activities and accepted that treatment as part of the Settlement Agreements in 2008, 2009 and 2010. In effect, treating the revenue as gas cost offsets is inconsistent with the historical treatment of the revenue. In the EB-2012-0087 proceeding the Board did not agree with that assertion.

Union claims that FT-RAM related optimizations are essentially the same as base exchanges. The Council disagrees. Base exchanges are services that Union provides to a third party using upstream transportation capacity it holds which is surplus or underutilized.

FT-RAM credits are not some form of service that Union sells to a third party, nor are these transactions being undertaken because of temporarily surplus assets. From the Council's perspective FT-RAM optimization activities are undertaken to change the way transportation is facilitated for Union's customers relative to what has been embedded in the gas supply plan. Union is effectively reducing the delivered price of gas to its customers through these transactions.

With respect to the argument that treating transportation exchange revenues as gas costs is retroactive rate-making, the Council takes issue with Union's position. The Board must decide how to treat these revenues that were accrued in 2012. Either the Board agrees that they are revenues that should flow to earnings as proposed by Union, or the Board decides they are more properly characterized as gas cost savings that should flow back to customers through the PGVA. Retroactive rate-making is clearly not at play here.

The Council notes that in the recently filed Settlement Agreement regarding the 2014-2018 rate-setting period, and accepted by the Board, Union agreed to the following:

The parties agree that changes in the upstream transportation costs that underpin Union's gas supply plan will be passed through to ratepayers through the gas supply deferral accounts or as otherwise determined by the Board, and through rates during the annual rate-setting or the earnings sharing and deferral account clearing processes. The upstream transportation costs include the 2013 Board-approved treatment of upstream transportation optimization revenues. Thus, the pass-through of upstream transportation costs will be unchanged in both substance and procedure from the 2013 Board-approved pass-through mechanisms.

So, in effect, in the new IRM framework, Union has agreed to treat transportation optimization revenues as gas costs on a go-forward basis.

The Council submits that in consideration of this issue it is important for the Board to go back to the fundamentals of IRM. From the Council's perspective Union, during the IRM term, was expected to look for efficiencies in the way in which it ran its business. To the extent that it could find efficiencies like reductions in capital expenditures and operating and maintenance costs, those would be shared through the ESM. If efficiencies are created through the implementation of better gas supply planning those efficiencies should be translated as gas cost savings, and allocated to the benefit of those customers that paid for the assets imbedded in the plan. Gas costs are clearly a pass-through item, as dictated by the original Settlement Agreement. From the Council's perspective it is really not any more complicated than that. Accordingly, the Council urges the Board to reject Union's request to reconsider the findings in the EB-2012-0087 Decision, and treat all FT-RAM generated revenue in 2012 as gas cost savings.

With respect to the allocation of the deferral account balances the Council agrees with the submissions of the London Property Management Association. In effect, gas cost savings should be allocated entirely to system gas customers. If the Board decides that the FT-RAM optimization amounts are to be shared through the ESM, the benefits associated with the optimization of the assets used to generate them should be allocated in the same manner as the costs themselves. As noted by LPMA, this is entirely consistent with the principles of cost-causality.

Union's Gas Supply Plan:

In Union's 2103 rate proceeding the Board approved its gas supply plan. The Board also ordered Union to file with the Board, an expert, independent review of its gas supply plan, its gas supply planning process, and gas supply planning methodology.

Union retained Sussex Economic Advisors ("Sussex") to prepare a report in response to the Board directive. Prior to this proceeding, Union undertook stakeholder consultation with respect to the Sussex Report.

Sussex made a number of recommendations, primarily related to transparency and reporting, after its review of Union's gas supply plan. As noted in its evidence, Union has reviewed the recommendations and is in the process of implementing them (Ex. B/T5/pp. 6-7). The Council notes that Union, as part of its next IRM plan Union has committed to an annual stakeholder meeting to review, among other things, Union's gas supply plan for the coming year.

The Council is satisfied that Union has complied with the Board's gas supply plan directive. The Council is also encouraged by Union's commitment to present, on an ongoing basis, its gas supply plan for review by interested stakeholders throughout the IRM term. This will go a long way, in our view, in terms of ensuring that Union's stakeholders, Board Staff and the Board have a better understanding Union's gas supply strategy and its overall gas supply objectives on a more current basis. Hopefully this will mitigate the extent to which gas supply issues are litigated before the Board.

Union's DSM Results for 2011 and 2012:

Union is seeking to recover amounts related to its DSM activities for both 2011 and 2012. With respect to 2011, the amounts were cleared subject to a final true-up arising from audited results. Union recently filed its 2012 audited results.

The Council was represented on both the 2011 and 2012 audit committees. As an audit committee representative the Council accepted the findings filed in each of those years in the Audit Summary Report. In 2011, the Council's representative did not have access to the Custom Project Savings Verification Reports which were the subject of cross-examination in this proceeding.

The Council has no issue with the clearance of the amounts related to those elements of the audit in which it participated. With respect to the issues arising from SEC's challenge to the CPSV reports, the Council is not setting out any detailed

positions, as it did not have access to those reports at the time of the audit. The information in those reports was presented to the Board, in this case, on a confidential basis.

As a matter of principle, the Council is of the view that utilities, with shareholder incentive mechanisms in place, should only get credit for actual savings that were generated as a result of their programs and their actions. Utility shareholders should not be rewarded for savings their programs did not generate. In determining the final DSM amounts in this case the Council submits that this is a critical consideration for the Board.

Union's Request for Account No. 179-32:

Union is proposing to establish a new deferral account, the Deferral Clearing Variance Account (No. 179-32), to capture any volume variances related to the disposition of deferral and variance accounts. Union applied for the account on April 22, 2013, requesting that approval be effective on April 1, 2013.

The issue of implementing a true-up mechanism for volume variances was raised by the Board in the EB-2009-0052 proceeding (2008) and again, in EB-2012-0087 (2011). Union determined in both those cases that a true-up account was not required because the variances were not material.

In 2013 Union determined that upon completion of the disposition of 2010 deferral account balances approximately \$1.3 million had been refunded to customers in excess of the final deferral account balances approved for disposition in EB-2011-0038 (Ex. A/T1/p. 40). This was because of a large variance between the actual and forecast volumes used to refund the 2010 balances.

Union has determined that for 2011 it has additional volume risk. The risk of over-refunding is primarily driven by the clearance of the gas supply deferral account balances – the Upstream Transportation FT-RAM optimization deferral account (179-30) and the Unabsorbed Demand Charge deferral account (179-108) (Argument-in-Chief, p. 24). Union has estimated that the over-refund for 2011 could be \$1.7 million.

In the Settlement Agreement dated January 3, 2008, establishing the 2008-2012 IRM framework, Union made the choice to take on volume risk throughout the IRM plan. Effectively, in the middle of the plan, they are now seeking relief with respect to this risk as it pertains to deferral account clearances.

The Council is supportive of the basic premise around deferral accounts that neither ratepayers or shareholders should gain or lose with respect to pass-through items. Having said that Union did not propose, as part of its IRM plan, an account to mitigate the volume risk associated with the clearance of deferral and variance

accounts. To do so now changes the parameters of the original plan, and therefore, should not be accepted by the Board.

Preparation of Audited Utility Financial Statements:

In the EB-2011 proceeding Board Staff proposed that the Board direct Union to be required to file separate audited financial statements for its regulated operations. The Board directed to prepare and file separate audited statements. The Board indicated that it was of the view that this information would assist it in both assessing the revenue requirement in future cost of service proceedings and in monitoring during the course of the IRM term. The Board also directed Union to collect the costs of preparing these financial statements in a new deferral account which would be reviewed and disposed of with Union's other deferral and variance accounts. At that time Union estimated that the costs of preparing the audited statements would be \$400,000.

In an addendum to its evidence in this proceeding dated July 26, 2013, Union indicated that compliance with the directive would cost approximately \$1.3 million. In addition, Union has indicated that that annual incremental cost of preparing these statements would be \$80,000 (Tr. Vol. 1, pp. 103-105). At the time of the hearing Union had spent approximately \$400,000 to date complying with the directive (Tr. Vol. 1, p. 55).

The Board on its own motion determined that it would review its previous decision requiring that the financial statements be prepared each year. This was done in light of the significant increase in the cost estimate provided in the July addendum.

Union's evidence at the hearing was that each year, in preparing its earnings sharing calculations, it prepares schedules setting out "regulated utility earnings" (Tr. Vol. 1, p. 109). The Council questions whether or not formal, audited statements would enhance the Board's ability to properly regulate the utility operations, in light of the fact that Union does, on an annual basis prepare schedules setting out utility earnings. In its Argument-in-Chief, Union indicated that it was unclear what incremental information would be available to the Board and to intervenors as a result of the directive (Argument-in-Chief, p. 25).

The Board issued its directive, and from the Council's perspective it is really for the Board and Board Staff to determine whether the benefits associated with preparing the audited statements clearly outweigh the costs. If the statements will provide the Board with greater assurance that the allocation between the regulated and unregulated aspects of the business is appropriate, they should be required. In addition, if they are required the Council urges the Board to consider whether the costs of compliance should be shared between the regulated and unregulated businesses.

III. COSTS:

The Council requests that it be awarded 100% of its reasonably incurred costs incurred in connection with this proceeding.

All of which is respectfully submitted, on November 26, 2013