November 26, 2013

Filed on RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930
nortonrosefulbright.com

John Beauchamp
+1 416.216.1927
John.Beauchamp@nortonrosefulbright.com

Assistant
+1 416.216.2322
Devka.Sakhrani@nortonrosefulbright.com

Your reference: EB-2013-0109
Our reference:

Dear Ms. Walli:

Union Gas Limited (EB-2013-0109)
2012 Earnings Sharing and Disposition of Deferral Accounts and Other Balances
Association of Power Producers of Ontario ("APPrO") Final Submissions

Please find attached the submissions of APPrO with respect to the above-noted proceeding.

Please do not hesitate to contact me should you have any questions or concerns.

Yours very truly,

Original signed by

John Beauchamp
Associate

JB/mnm

Enclosure

Cop(y/ies) to: All interested parties

DOCSTOR: 2874456\1

ONTARIO ENERGY BOARD

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.

AND IN THE MATTER OF an Application by Union Gas Limited for an order approving a deferral account to capture variances between earnings sharing, deferral account and other balances approved for disposition and amounts actually refunded/recovered

EB-2013-0109

Argument of the Association of Power Producers of Ontario (APPrO)

November 26, 2013

Introduction

1. This argument is being submitted on behalf of the Association of Power Producers of Ontario ("APPrO") in Union Gas' EB-2013-0109 earnings sharing proceeding.

2. Union submitted its application dated May 8, 2013 to the Ontario Energy Board for approval of the following requests :

    a. approval of final balances in its 2012 deferral accounts and an order to dispose of those balances;
    b. approval of $15.73 million as the customers' portion of the earnings sharing in 2012 and the related disposition of this amount;
    c. approval to close the Shared Savings Mechanism Account number 179-115 effective January 1, 2013; and
    d. approval of a variance account to capture variances between earnings sharing, deferral account and other balances for disposition and amounts actually refunded or recovered.

Treatment of FT-RAM Related Revenue

3. Union proposes to treat Firm Transportation Risk Alleviation Mechanism ("FT-RAM") related revenue as utility earnings. Under the Incentive Rate Mechanism ("IRM") Settlement Agreement entered into with stakeholders, and approved by the Board in EB-2007-0606, earnings in excess of the allowed utility earnings would be subject to the sharing mechanism specified in the Settlement Agreement.

4. In EB-2012-0087, the proceeding dealing with the disposition of 2011 deferral amounts (the 4th year of the IRM), the Board did not approve the treatment of FT-RAM exchange revenues as earnings and required that FT-RAM revenue be treated as a gas cost reduction. This amount was recorded in a new deferral account (FT-RAM Optimization

Deferral Account – 179-130). For 2012 this amount was then credited solely to sales and Union North bundled direct purchase customers.

5. At issue in this proceeding is the treatment of FT-RAM related revenue for 2012 in EB-2012-0087; the 5th year of the IRM. Should the FT-RAM related revenue be treated in the same fashion as it was in the period 2008-2010 as utility earnings,[1] or as a gas cost reduction as it was treated for 2011?

6. APPrO believes that the FT-RAM revenue for 2012 should be treated as utility earnings.

7. APPrO comes to this position for the following reasons:
   a. <u>The transportation portfolio conditions that were purported to be present in EB-2012-0087 do not exist.</u>
      The Board, in coming to its decision in EB-2012-0087 related to the disposition of 2011 earnings, indicated that:

      > *The Board agrees with the submissions of parties, and in particular the argument provided by CME, that set out its understanding of how Union utilized the FT-RAM program to generate revenue. The evidence in this case supports CME's contention that <u>Union generated revenue by creating unabsorbed demand charges or UDC on a planned basis</u> and then either concurrently assigned or exchanged its FT contracts on the TCPL Mainline to monetize the FT-RAM credit value of the unused FT contracts.*[2]
      > [Emphasis added]

      The Board also stated in its decision:

      > *…the portion of utility gas supply assets that is available to support transactional service activities is only the portion of those assets that is*

[1] EB-2013-0109 Exhibit B Tab 1 page 1
[2] EB-2012-0087 Decision page 26

> *temporarily surplus to the gas supply plan as a result of factors beyond Union's control.*[3]

In this proceeding Union filed evidence from Sussex Economic Advisors that indicates:

> *The resultant gas supply portfolios for Union North and Union South are reasonable and appropriately sized.*[4]

This conclusion by Sussex indicates that Union’s supply portfolio is reasonable. Utilities must design their supply portfolio to accommodate their design day requirements. A utility portfolio serving heat sensitive customers will therefore often have a temporary surplus of transportation capacity at off-peak times of the year as design day conditions only occur in winter. Utilities must however, be prepared to serve their design day demands in every year. This dispels the notion that Union contracts for excess transportation capacity on a planned basis to incur unabsorbed demand charges (“UDC”) and related FT-RAM credits.

b. <u>Assets other than FT transportation may also be required to generate net exchange revenues</u>

Union does not strictly use only upstream transportation contracts to generate FT-RAM exchange revenues. In order to generate some of the FT-RAM exchanges, Union also relies on other transportation assets to execute the exchanges. These other assets included the use of the Dawn-Parkway system. This Dawn-Parkway system is paid for by customers in addition to system sales and bundled direct purchase customers in the North. Exhibit A, Tab 1, Appendix B, Schedule 3 provides a schedule developed to calculate the compressor fuel and unaccounted for gas (“UFG”) attributable to FT-RAM exchanges. This clearly illustrates that the Dawn-Parkway system was used extensively to effectuate FT-RAM

[3] EB-2012-0087 Decision page 28
[4] EB-2013-0109 Exhibit C Tab 2 page 2

exchanges. Row 13 shows that 12.8 PJ of net volume was used on the Dawn-Parkway system to complete FT-RAM exchanges in 2012.

c. Respect the Terms of the IRM

The value of the TransCanada Mainline transportation has changed recently which has increased the value of FT-RAM credits. The availability of significant quantities of shale gas in and around Dawn over the last several years and the corresponding reduction in throughput on the Mainline[5] has fundamentally changed the tolls and value of traditional Mainline FT transportation[6]. This change in value of Mainline FT service has directly resulted in an increase in the value of FT-RAM credits compared to what they had been[7] since FT-RAM was introduced in 2004.[8] Shippers exercising their right to receive credits for unused firm transport ("FT") capacity have been able to apply these credits to interruptible ("IT") services.[9] Union has also included FT-RAM and other exchange revenue in utility income for some time including the first 3 years of the IRM.[10] Between 1993 and 2007, Union captured the variance in transportation exchange revenue in a deferral account and shared this amount with ratepayers.[11] This demonstrates the long standing practice of treating transportation exchanges, including FT-RAM exchanges, as utility revenue. APPrO submits, therefore, that it is inappropriate to alter the terms of the IRM during the currency of the IRM because the relative value of the value of FT-RAM exchanges has increased.

d. Union is at risk for a base level of exchange revenue

During the IRM, Union reduced its revenue requirement in each year by $6.9 million[12] to include a base level of transportation exchange revenues in rates.

[5] EB-2013-0109 Exhibit B page 47 Figure 8
[6] EB-2013-0109 Exhibit B page 46
[7] EB-2013-0109 Exhibit B page 47 Figure 8
[8] EB-2013-0109 Exhibit B Tab 2 page 46
[9] EB-2013-0108 Exhibit B Tab 2 page 51
[10] EB-2013-0109 Exhibit B Tab 2 page 4
[11] Ibid.
[12] EB-2013-0109 Exhibit B Tab 1 page 30

Union took on the risk during the IRM of generating sufficient transportation exchange revenue to generate this amount of exchange margin. In the event that Union was not able to generate this $6.9 million in margin in any year, ratepayers would not expect Union to try to subsequently recover the resulting shortfall amount in rates.

Lost Revenue Adjustment Mechanism ("LRAM") Account No. 179-75 - Calculation of LRAM Deferral Balances

8. Account 179-75 is used to track volumes variances in Demand Side Management ("DSM") activities between 2011 audited and unaudited numbers.[13] It is also used to track the 2012 unaudited volumes[14] related to 2012 DSM activities.

9. APPrO does not dispute the determination of the LRAM volumes provided by Union. APPrO does, however, have concerns with the rate used to derive the revenue impact for rate classes M4 and Rate 20.[15]

10. The LRAM mechanism is intended to keep Union revenue neutral for the volumes of gas no longer sold to customers due to implementation of DSM initiatives. The revenue losses to Union relate to the commodity charges not collected in any year as a result of the various energy efficiency initiatives implemented by its customers. In order to calculate the revenue impact, Union first determines the volumes and then applies the associated commodity charges for the respective rate in question to calculate the total revenue loss.

11. Rates classes M4, Rate 20, and T1 each have 2 commodity charges. Once a customer consumes an amount above a specified initial amount (block 1) the balance of the volumes attracts a lower commodity fee (block 2).

[13] EB-2013-0109 Exhibit A Tab 1 Appendix A Schedule 4 page 2 column a & b
[14] EB-2013-0109 Exhibit A Tab 1 Appendix A Schedule 4 page 3 column a
[15] EB-2013-0109 Exhibit A Tab 1 Appendix A Schedules 3 page 2 col c &d row 6 & 15 and Schedule 4 col row 6 & 15

12. Union indicates that for Rate classes M4 and Rate 20, it only uses the first block or the higher commodity charge in determining the lost revenues,[16] rather than some weighted average of blocks 1 and 2. Union's rationale for only using the first block is that the majority of the volumes lost are in the first block.[17] While this may be true, it overstates the lost revenues from the DSM program. For a M4 or Rate 20 customer with any consumption in the second volume block prior to the implementation of the energy efficiency measure, such block 2 volumes will be the first volumes saved under the DSM program.

13. For T1 customers, Union does use the second commodity block to determine lost revenues.[18]

14. There are not many customers in M4 and Rate 20 rate classes and DSM programs are administered on an individual customer basis. Consequently, APPrO submits that rather than assume all losses are in the first consumption block, it would be more appropriate to use the actual customer consumption reduction information determined from the DSM program and then apply the appropriate commodity rates from each block when determining LRAM revenues.

15. Alternatively, if the Board finds this approach to be too onerous, rather than calculating the lost volumes by block by customer in these rate classes each year, APPrO submits that Union should prepare a detailed study to determine the actual losses by rate class by block within a rate class and use these percentages as an estimate for subsequent years. These percentages could then be re-determined every 3 years.

[16] EB-2013-0109 Exhibit D6.2 c)
[17] Ibid.
[18] EB-2013-0109 Exhibit D6.2 c)

DSM Accounts

16. APPrO has had the opportunity to review the argument of the Schools Energy Coalition (SEC) in this proceeding regarding the disposition of the DSM deferral and variance accounts. SEC raises a number of issues with respect to determination of the DSM incentive payments to Union and the related LRAM volumes attributable to known free riders.

17. Union indicates that it accounts for free ridership by reducing the savings by 54%[19] for custom projects. It has been using this percentage since 2009.[20] SEC expresses concern for the baseline from which free ridership is measured, arguing that the baseline should reflect the customers' future plans to implement energy efficiency measures, rather than just the current consumption profile. Further, SEC submits that the useful life of a DSM measure should not be based on the technical life; it should recognize the timeframe that the customer would have implemented the program in any event without the DSM funding.

18. APPrO shares some of the concerns expressed by SEC. Firstly, it is unclear whether the 54% free ridership rate that Union has used since 2009 is current and whether or not it includes all of the free riders referred to by SEC. This percentage may need to be updated to reflect Union's current customers' investment in energy efficiency measures.

19. Secondly, APPrO agrees that the effective life or timeframe to calculate the savings from a custom DSM project should not automatically be the technical life of the measure. Large volume customers regularly have their own capital and maintenance programs that could implement the energy efficiency measure in the future on a planned basis. In the event that Union's DSM program helped to accelerate the measure, then the savings calculated should be based on the period of time between when the measure was implemented and when the customer would have implemented it without the DSM

[19] Union Argument in Chief page 23
[20] Ibid.

funding (or other relevant measurement of the effective useful life of the customer project).

20. APPrO submits that, as a minimum, the DSM program should be updated to ensure that the free ridership rate and the determination of the energy savings address these concerns.

21. Similarly, APPrO submits that the LRAM volumes should not include the savings from energy efficiency measures that the customer was going to implement in any event.

These are the respectful submissions of APPrO.