

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Sched. 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.

Final Submissions on Behalf of the
VULNERABLE ENERGY CONSUMERS COALITION
("VECC")

November 26, 2013

Introduction

Union Gas Limited ("Union") filed its application ("Application") for the disposition of 2012 deferral account and other balances on May 8, 2013. Included in Union's proposals was the disbursement to customers of \$15.730M as the customers' share of earnings sharing for 2012.

The proposed sharing amount of \$15.730M was determined, in part, by Union's inclusion of \$37.3M of net 2012 FT-RAM revenues in utility earnings.

Union has proposed this treatment for FT-RAM revenues rather than recording the FT-RAM net revenues as gas cost reductions as determined per recent and prior Ontario Energy Board ("The Board") Decisions EB-2012-0087 (Union 2011 dispositions) and EB-2012-0055 (Enbridge 2011 dispositions) on the very issue of the appropriate treatment of FT-RAM revenues.

In this proceeding, the Board made provisions for interrogatories, a settlement conference, and a three-day oral hearing held on October 22, 23, and 24.

The issues remaining in dispute include:

- The treatment of 2012 FT-RAM revenues;
- Union's response to the Board's directive regarding Union's gas supply plan;
- DSM results for 2011 and 2012;
- Union's request to establish Account no. 179-132 to track variances between balances approved for disposition and balances actually disposed of; and
- The Board's motion to review its directive to Union in respect of the requirement for Union to prepare audited financial statements for its regulated operations.

The Board issued Procedural Order No. 4 on November 11, 2013, which provided for Union's argument in chief, intervenors' submissions, and Union's reply argument.

VECC has reviewed the record, including Union's Argument-In-Chief filed on November 12, 2013, and has determined that it would be most efficient to restrict its submissions to the issue of appropriate treatment of FT-RAM net revenues.

The following are VECC's submissions on this issue.

Appropriate Treatment of FT-RAM Revenues

VECC first notes that it is in the utility's financial interest to treat 2012 FT-RAM revenues as utility earnings rather than as gas cost reductions: in the former case, the shareholder receives a portion of the savings while in the latter case, the savings would be 100% to the credit of system ratepayers.

VECC also notes that the Board has recently determined the appropriate treatment of FT-RAM revenues for 2011 in the case of both Union (EB-2012-0087) and Enbridge (EB-2012-0055).

Under Union's proposal in this case, i.e., treating the FT-RAM revenue as utility earnings, the \$37.3M would be allocated \$21.6M to the shareholder and \$15.7M to ratepayers;¹ under the determinations made by the Board in the EB-2012-0055 and EB-2012-0087 cases, i.e., treating the FT-RAM revenue as gas cost reductions, the \$37.3M would be allocated \$4.3M to the shareholder and \$33.0M to ratepayers.²

VECC further notes that Union states:

"Union does not seek to vary the Board's decision in EB-2012-0087; rather, Union proposes a different treatment for FT-RAM related exchange revenues, based on a different, more complete evidentiary record, which responds directly to the Board's decision-making criteria."³

VECC submits that Union's Argument-In-Chief, while providing an extensive historical regulatory record⁴ prior to the EB-2012-0087 proceeding, provides no historical information which the Board would have been unaware of, either at the time of the EB-2012-0087 proceeding or at the time of this proceeding.

Furthermore, in reading Union's argument, it appears that Union implies that for both the EB-2012-0087 proceeding and for the EB-2012-0055 proceeding, the Board simultaneously (i) laid out its criteria for determining whether the subject transactions should be considered as earnings and (ii) misapplied these same criteria in these same proceedings,⁵ as evidenced by the Board's determinations in both these cases.

VECC submits that Union has not provided any evidence in the current proceeding that would lead to the conclusion that Union seeks; further, VECC challenges Union to address concisely in its Reply Argument, the specific aspects of the "different, more complete evidentiary record" in this case – said specific aspects of which the Board was not fully cognizant in its EB-2012-0087 and EB-2012-0055 deliberations.

VECC submits that when an Applicant challenges the Board's recent determinations with respect to an issue, there is an onus on the Applicant to provide real and substantial new evidence to the regulator in support of its challenge. In VECC's view, Union has not met this onus.

¹ Exhibit D8.17 a) and b), FRPO IRR

² Ibid

³ Union's Argument in Chief, November 12, 2013, paragraph 11, page 5.

⁴ Ibid, paragraphs 13-32, pages 5-10.

⁵ Ibid, paragraphs 36 and 37, pages 11-12.

In summary, VECC submits that the relief Union seeks in this proceeding is inconsistent with the Board's recent findings on this exact, same issue; VECC further submits that Union has not persuasively demonstrated any new facts or other evidence – of which the Board was previously unaware – in this proceeding, which would result in overturning the Board's recent findings on this issue.

As such, VECC submits that the \$37.3M in net FT-RAM revenues for 2012 should be removed from utility earnings and be reclassified as gas cost reductions.

All of which is Respectfully Submitted this 26th day of November 2013