Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

Montréal

Calgary

Ottawa

New York

June 5, 2014

Richard King
Direct Dial: 416.862.6626
rking@osler.com
Our Matter Number: 1156225

FILED ELECTRONICALLY & BY COURIER

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

Dear Ms Walli:

Union Gas Limited ("Union Gas")
Reduction of Certain Penalty Charges Applied to its Direct Purchase Customers
Board File No. EB-2014-0154

We are enclosing the interrogatories of our client, Kitchener Utilities ("Kitchener"), to Union Gas pursuant to Procedural Order No. 1 dated May 27, 2014.

As noted in the attached interrogatories, Kitchener was billed by Union Gas for unauthorized overrun withdrawal charges, pursuant to Union's T3 Contract (and Rate Schedule) with Kitchener. The circumstances giving rise to the penalty charges to Kitchener are the same as those that gave rise to the penalty charges that Union is seeking to have reduced for other Union customers (i.e., T1/T2 customers subject to a February Supplementary Inventory charge, Rate 25 Unauthorized Overrun Gas Supply Commodity Charge, and Bundled-T customers). Union is not proposing to provide any relief in respect of the penalty charges levied against Kitchener (see Interrogatory #1(a) attached).

By way of this letter, Kitchener is requesting that the Board permit consideration of this issue within the scope of the current proceeding. The timing and nature of the penalties that Union has applied to reduce are the same as those levied against Kitchener, and as pointed out above, arise from precisely the same anomalous weather circumstances. In Kitchener's view, this is the most efficient way of dealing with this issue, and would not require any change to the Board's Procedural Order issued on May 27, 2014.

Yours very truly,

Richard King
RK:hi
Enclosure
c: All Parties to EB-2014-0154

EB-2014-0154

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 approving a one-time exemption from Union Gas Limited's approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations.

INTERROGATORIES OF THE CORPORATION OF THE CITY OF KITCHENER ("KITCHENER")

Preamble:

As noted in its request for intervention in this proceeding, Kitchener was invoiced by Union Gas Limited ("Union") for unauthorized overrun withdrawal charges of $206,379.30 related to T3 storage activity in late February 2014 / early March 2014. These penalty charges are disputed by Kitchener, as set out in the attached correspondence from Kitchener to Union dated May 2, 2014. Kitchener has paid these penalty charges in good faith, pending an adjustment by Union to waive or significantly reduce them, or a Board decision of similar effect. To date, Union has denied Kitchener any relief from the penalty charges, as set out in the attached correspondence from Union to Kitchener dated May 15, 2014.

Interrogatory # 1

a) Please confirm whether Union's position as set out in its May 15, 2014 correspondence to Kitchener remains its current position (i.e., Union is not prepared to waive or adjust the $206,379.30 in penalty charges to Kitchener)?

b) What is the rationale for Union providing relief for some customers that incurred penalties (i.e., those who have been subject to a February Supplementary Inventory charge or a Rate 25 Unauthorized Overrun Gas Supply Commodity charge) but not for other customers (including Kitchener) given that the circumstances underlying the penalty charges were the same (i.e., exceptional winter weather conditions)?

c) Are there other Union customers similarly situated to Kitchener? Specifically, are there any other Union customers that incurred penalty charges, overrun charges, etc. that Union is not willing to reduce or mitigate on the basis of exceptional winter weather conditions?

Interrogatory #2

What is the penalty charge for unauthorized overrun withdrawal for Rate T1 and T2 customers? If identical and/or lower than for Rate T3, please provide the rationale.

Interrogatory # 3

a) Did Union curtail any in-franchise interruptible distribution customers during February/March 2014 as per Union's Priority of Service (POS) Guidelines (attached)? If not, why not?

b) On the POS Guidelines, please confirm that Kitchener Utilities falls within tier 1 (Firm In-franchise Storage and Distribution services and firm Ex-franchise services).

c) How do the rates for in-franchise interruptible distribution storage service (tier 2 in the POS Guidelines) compare with the rates paid by firm storage service (tier 1 in the POS Guidelines)?

KITCHENER

INFRASTRUCTURE SERVICES DEPARTMENT
KITCHENER UTILITIES
James A. (Jim) Gruenbauer, CMA
Manager, Regulatory Affairs & Supply
Kitchener Operations Facility – Utilities Division
131 Goodrich Drive
Kitchener, Ontario, Canada, N2C 2E8
Phone: 519-741-2600 ext 4255
Cell: 519-580-3568
Fax: 519-741-2633
TTY: 1-866-969-9994
e-mail: jim.gruenbauer@kitchener.ca
www.kitchener.ca

BY E-MAIL

02 May 2014

Union Gas Limited
Attn: Patrick Boyer, Manager, Greenhouse REM & Wholesale Markets
50 Keil Drive North
Chatham, Ontario, N7M 5M1

Dear Patrick:

Re: City of Kitchener T3 Contract SA 3863 – March 2014 Invoice # 391 712

As previously discussed, I am writing to request an adjustment by Union Gas to the unauthorized overrun withdrawal charges on our March 2014 invoice. These overrun charges appear in the re-billed section of the invoice for February 2014 storage activity in the amount of $ 120,714.79 for 12,765,946 MJ and in the section of the invoice for March 2014 storage activity in the amount of $ 85,664.51 for 9,059,276 MJ. The total overrun charges are $ 206,379.30 on a total storage withdrawal quantity of about 21,825 GJ.

Kitchener is seeking an adjustment and credit by Union Gas to waive or very significantly reduce the billed overrun withdrawal charges on the following grounds:

1. Kitchener's higher obligated DCQ deliveries during the winter period, including February and March 2014, significantly reduced Union's load balancing requirements for its other in-franchise bundled and semi-unbundled customers. As compared to obligated deliveries determined on a mean daily volume (annual forecast divided by 365 days), Kitchener delivered an additional 5,000 GJ per day of obligated supply to Union throughout the winter period, including February and March 2014. This reduced Union's daily load balancing required for its other customers by an equivalent amount, resulting in cost savings which far exceed the billed withdrawal overrun charges from which Kitchener seeks relief.

2. The cost savings to Union from Kitchener's higher obligated DCQ deliveries were particularly acute this past winter when pricing at Dawn was volatile and extreme. The extent of these extreme prices is set out in Union's April 2014 QRAM evidence. Simply put, Union avoided buying some very expensive gas this past winter to balance its overall load by virtue of Kitchener's "castle" DCQ with higher winter deliveries. The quantity of avoided purchases / load balancing is emphatically not insignificant – for the months of February and March 2014 alone, it is 295,000 GJ (5,000 GJ per day multiplied by 61 days). This avoided quantity far exceeds the quantity of billed withdrawal overrun from which Kitchener seeks relief.

...2

3. Kitchener proactively took steps to purchase and deliver significant amounts of non-obligated incremental gas this past winter to mitigate the steep and sustained rate of withdrawals from its storage to meet higher customer demand in its franchise area due to the abnormally harsh winter conditions. Kitchener arranged for incremental gas deliveries to Union for both its system supply and direct purchase customers. These incremental deliveries totalled 762,789 GJ over the January 1, 2014 to March 31, 2014 period.

4. Kitchener's firm storage space of 3,051,188 GJ was reduced by 318,994 GJ or 9.5% in our current contract with Union due to the application of the aggregate excess methodology. As an embedded gas distributor with an obligation to serve, Kitchener continues to view the application of this methodology as flawed because it assumes a zero ending balance for storage at the end of the winter period on a forecast basis. This may be an appropriate assumption for an industrial customer served under Rate T1 or T2, but it is not appropriate for an embedded gas distributor. If our space allocation had not been reduced, then Kitchener would have utilized the higher space and avoided the withdrawal overrun billed by Union for February and March 2014.

5. Kitchener has previously contracted for supplemental storage space at market prices with Union to mitigate the reduction in its space allocation at cost based rates. As previously discussed, Kitchener has a standing bid of 40 cents per GJ for supplemental storage space for the upcoming winter.

6. We understand from Exhibit C19.45 in the RP-1999-0017 proceeding which was provided in your email response to me in late February 2014 that the unauthorized overrun rate of $ 9.456 per GJ which applies to Rate T3 corresponds to the transportation rate at approximately a 1% load factor (service required at a specified level for only 4 days of the year). The T3 overrun rate is 700% higher than the comparable rate of $ 1.175 per GJ which applies to Rates T1 and T2. The level of the overrun rate for Rate T3 cannot be justified. Kitchener is currently the only customer served under Rate T3. To the best of its knowledge, it is the only customer that has ever been served under Rate T3 since its inception. Kitchener's load factor has never been remotely close to 1%. Its current and historic annual load factor has been around 30% – a far cry from 1% and which strongly supports a directly comparable overrun rate of 1.175 per GJ. The onerous level of the T3 overrun rate has only come to light now because Kitchener has never before incurred any withdrawal overrun until the March 2014 invoice.

7. It is my understanding from participation via teleconference in the Union Gas Annual Stakeholder Meeting on April 9, 2014 at the OEB that Union did not curtail its Southern Area in-franchise interruptible customers for storage deliverability constraints in late February and early March 2014 when Kitchener incurred withdrawal overrun as billed by Union. Speaking here as "utility to utility", I strongly submit that Union cannot in good conscience or with prudence invoice its firm in-franchise customers such as Kitchener for withdrawal overrun charges at the same time it is permitting its interruptible customers to continue to consume gas when deliverability from storage is constrained. If you were ever going to curtail interruptible customers during the winter period for peak day distribution constraints and late season storage deliverability constraints to ensure firm services are met, then this past winter was that time. Enbridge Gas curtailed its interruptible customers on multiple occasions this past winter for both reasons. Kitchener did so as well. Union Gas did not likewise curtail its interruptible customers, yet sends Kitchener a bill for over $ 200,000 in withdrawal overrun charges despite Kitchener's mitigation efforts as noted above. That is simply wrong.

In good faith and pending the timely and fair resolution of this dispute, Kitchener has paid the March 2014 invoice, in full, as billed by Union. For all of the reasons provided above, Kitchener is requesting Union to review the March 2014 invoice for adjustment and credit on a subsequent invoice by Union to waive or very significantly reduce the billed overrun withdrawal charges.

If you have any questions or need further clarification to respond to this request for adjustment, please contact me at your earliest convenience. I look forward to hearing back from you in a timely fashion.

Sincerely,

James A. Gruenbauer, CMA
Manager, Regulatory Affairs and Supply

Cc: W. Malcolm (Kitchener)
L. Baillargeon (Kitchener)
J. Chatterjee (Kitchener)

UNION GAS LIMITED
Answer to Interrogatory
from the Wholesale Gas Service Purchasers Group

Question

Reference: Exhibit B, Tab 4, Page 23

a) Why is the U9 and T3 unauthorized delivery overrun rate set at 36.0 cents per m3 when the corresponding U5, U7 and T1 rate is only 9.0051 cents per m3?
b) Doesn't this violate the concept that the same service should cost the same for all in-franchise customers, regardless of rate class?
c) Given Union's position that M9, and hence U9, customers are in-franchise customers, why has Union tied the U9 unauthorized delivery overrun rate to the ex-franchise M12 rate?
d) What is the relationship between the unauthorized delivery overrun rate of 36.0 cents per m3 for U9 and T3 customers, the 9.0051 cents per m3 unauthorized overrun rate for U5, U7 and T1 customers and the 9.0051 cents per m3 overrun charge identified in section (F) of the M9 rate schedule?

--

Answer

a) Union is proposing the unauthorized delivery overrun rate for U9 and T3 services be set at a level that discourages customers from relying on it and "optimising" their contract demand (CD) level. Union views unauthorized charges as penalties that should be set high enough to discourage inappropriate customer behaviour.

   If a customer were to intentionally under-contract for service by requesting that their CD be set artificially low a couple of outcomes are possible. Firstly, Union may make the capacity available to others to use. When the customer then wants to access the capacity that would have otherwise been used to serve them (via unauthorized overrun) it won't be available and Union would have to curtail the customer. It may not be possible or politically acceptable to curtail another LDC who has contracted for T3 or U9 service under these circumstances. Alternatively, even though the customer doesn't contract for the capacity required, Union reserves the capacity for the customer in anticipation of their need. In this circumstance, the customer gets access to the service but only pays for a fraction of the cost to provide it. In

Witness: M.W. Packer
Question: January 31, 2000
Answer: March 1, 2000
Docket: RP-1999-0017

Union's view both outcomes are not appropriate.

In Union's experience, the industrial customers eligible for U5, U7 and T1 service have not relied on unauthorized overrun to meet their firm demands. They are typically higher load factor than the customers eligible for U9 and T3 service and as a result they would be incurring unauthorized overrun more frequently.

b) Union views unauthorized charges, penalties, rather than rates for service. Union has not experienced difficulty negotiating the appropriate contract demand level with customers in other rate classes. As a result, in Union's view there is no current need to change the unauthorized overrun charges in other rate classes.

c) Union is proposing that the unauthorized overrun for M12 services also be used for T3 and U9 services for the following reasons:
   i) Union believes that it may be sufficiently high enough to curb inappropriate behaviour.
   ii) It corresponds to the T3 transportation rate at approximately a 1% load factor. In the event that a T3 customer felt they would only require service at a specified level for 4 days of the year (Union would have to have facilities in place for the entire year) there would not be an incentive for the customer to rely on unauthorized overrun and request that their contract demand (CD) be set artificially low.
   iii) It is an established rate.

d) Please see above.

uniongas
A Spectra Energy Company

May 15, 2014

Infrastructure Services Department
Kitchener Utilities
131 Goodrich Drive
Kitchener, ON
N2C 2E8

Attn: James A. Gruenbauer

Re: City of Kitchener T3 Contract SA3863 – March 2014 Invoice #391 712

Dear Jim;

Union Gas Limited ("Union") has received your letter dated May 2, 2014, requesting that Union waive or reduce the unauthorized storage withdrawal overrun charges billed to the City of Kitchener ("Kitchener") under the T3 Contract between Union and Kitchener.

Under its T3 Contract, Kitchener has contracted to provide its own storage deliverability inventory. Per the rate schedule, Kitchener pays a lower demand charge for Firm Injection Withdrawal Rights than when Union provides the deliverability inventory and accordingly Kitchener is required to maintain a quantity of gas in inventory equivalent to 20% of the annual storage space entitlement. Between January 1 and April 30, Kitchener's Firm Withdrawal Right is reduced in accordance with the formula outlined in the contract if the quantity of gas in inventory is less than 20% of Kitchener's annual storage space entitlement.

Any gas withdrawn by Kitchener in excess of the Firm Withdrawal Right as adjusted by the formula is deemed to be overrun. Any such withdrawal overrun will be authorized or unauthorized as indicated on Union's website and Unionline.

During the time period in question, Kitchener's inventory of gas in storage was less than 20% and Kitchener's Firm Withdrawal Right was adjusted as outlined in the contract. Kitchener's withdrawals from storage were in excess of the adjusted Firm Withdrawal Right and were therefore overrun. Union was interrupting storage services to customers per the Priority of Service policy posted on Union's website. As such, storage withdrawal overrun was interrupted and the overrun indicator on Union's website and Unionline identified withdrawal overrun as unauthorized.

Union applied the Ontario Energy Board approved charge of $9.402/GJ for unauthorized storage withdrawal per the T3 rate schedule to the unauthorized overrun quantities.

In response to the points raised in your letter, Union provides the following:

1. Kitchener does deliver gas under a higher obligated DCQ during the winter period. It has done this for many years. Kitchener is the only customer with such an arrangement in place; Union's other customers have the same obligated DCQ through the entire year. This arrangement was requested by Kitchener and agreed to by Union. This gas is used by Kitchener to meet the requirements of its T3 contract and its customers. It has no impact on load balancing requirements of Union's other customers.

2. As the gas delivered by Kitchener was used by Kitchener, it did not provide a load balancing benefit to Union's other customers. During the period in question, Kitchener consumed well in excess of what it was delivering which resulted in the reduced storage balance and unauthorized withdrawal overrun.

3. Like Union and its other direct purchase customers, Kitchener experienced additional consumption resulting from much colder than normal winter weather and had to purchase significant quantities of incremental gas this past winter. Kitchener delivered incremental supply of 36,560 GJ in January, 8,577 GJ in February, and 731,778 GJ in March. The vast majority of this gas was delivered by Kitchener after its gas in storage had decreased below 20% and resulted in unauthorized overrun of its storage parameters.

4. Kitchener's storage parameters were determined using the storage allocation methodology reviewed and approved by the OEB in EB-2007-0725.

5. Kitchener had not contracted for additional storage for the period in question. However, having contracted for additional storage space would not have alleviated this situation.

6. The unauthorized overrun charge was reviewed and approved by the OEB in RP-1999-0017. The rate has been in each approved rate order since the RP-1999-0017 proceeding. As noted in Exhibit C19.45, the intent of the rate was to incent appropriate behaviour by customers in establishing contract parameters and in operating within those parameters. This rate was set equivalent to the unauthorized rate for services to other LDC's under Union's M12 rate class. Although the charge was equivalent to the T3 rate at approximately a 1% load factor, it is a penalty charge, not a load factor driven cost-based rate. Kitchener's load factor is not relevant to the unauthorized overrun charge.

7. Union did interrupt services to customers as per the Priority of Service policy posted on Union's website during most of the winter including the late February and early March period. While Union did not have to curtail interruptible distribution services (tier 2), Union had curtailed services up to and including tier 3. Further to this, the overrun indicator on Union's website had identified that storage withdrawal overrun was unauthorized during the period that Kitchener exceeded its storage withdrawal parameters.

It was Kitchener's responsibility to operate within its contract parameters. Had Kitchener maintained a storage balance above 20%, it could have avoided the unauthorized storage withdrawal overrun charge. As such, the charges for unauthorized storage withdrawal overrun per the T3 rate schedule are appropriate and Union will not provide the relief requested by Kitchener.

Should you have any further questions, please contact your account manager, Patrick Boyer.

Sincerely,

Jim Laforet, Manager Contract Billing & Operational Support

Copy:
Patrick Boyer, Union Gas

Via Email

POLICIES & GUIDELINES

Policy #: 07-CM-POS-015

Subject: Priority of Service (POS) Guidelines	**Effective:** December 7, 2007

Applies to:

Applied on a daily basis to services for both in-franchise and ex-franchise customers in Union Gas' Southern, and Northern and Eastern Operations area.

Purpose:

To prioritize scheduling reductions and service restrictions for Union's services during periods when Union's ability to flow interruptible gas quantities is less than the requested/forecasted quantities.

Background: *(Not to limit the applicability of the policy)*

Union offers firm no-notice (allocated) services, firm nominated services and interruptible services. The priority of service listings provide information regarding the processing of interruptions or scheduling reductions when requested services exceed available capacity under normal operating conditions.

Firm no-notice services are not interruptible. Firm nominated services are only firm if requested on the North American Energy Standard Board (NAESB) Timely Nomination Cycle for the gas day in question. Nominations for increases to daily quantities for Firm Services after the NAESB Timely Nomination Cycle are treated the same as interruptible services. Because Union is a non-bumping pipeline, interruptible services scheduled on the NAESB Timely Nomination Cycle will not be interrupted to make room for additional firm services nominated on later nomination cycles.

In order to place services on the priority of service list, Union considered several business principles. The principles included: appropriate level of access to core services; customer commitment; encouraging appropriate contracting; materiality; price and term; and promoting and enabling in-franchise consumption.

Policy:

The priority ranking for all services utilizing Union Gas' storage, transmission and distribution system as applied to both in-franchise and ex-franchise services are as follows; with number 1 having the highest priority and the last interrupted.

Priority for STORAGE Services

1. Firm In-franchise Storage and Distribution services and firm Ex-Franchise services[1]
2. In-franchise Interruptible Distribution storage services
3. Peak Storage above firm up to 5% maximum storage balance (MSB) [2]
4. Balancing (Hub Activity) <= 100 GJ/d; Balancing (Direct Purchase) <= 500 GJ/d [3]
5. Off Peak Storage (First Cycle) up to 5%; Long Term Storage up to 5% MSB [2]
6. Peak Storage and Off Peak (First Cycle) above 5% MSB & Loans; In-franchise storage authorized overrun
7. Peak Storage and Off Peak (Second Cycle); Long Term Storage above 5% MSB
8. Balancing (Direct Purchase) > 500 GJ/d
9. Balancing (Hub Activity) > 100 GJ/d
10. Late Nominations

Priority for TRANSPORT Services

1. Firm In-franchise Transportation and Distribution services and firm Ex-franchise services[1]
2. In-franchise Interruptible Distribution services
3. C1/M12 IT Transport and IT Exchanges with Take or Pay rates
4. Balancing (Hub Activity) <= 100 GJ/d; Balancing (Direct Purchase) <= 500 GJ/d; In-franchise distribution authorized overrun [3]
5. C1/M12 IT Transport and IT Exchanges at premium rates
6. C1/M12 Overrun <= 20% of CD [4]
7. Balancing (Direct Purchase) > 500 GJ/d
8. Balancing (Hub Activity) > 100 GJ/d; C1/M12 IT Transport and IT Exchanges
9. C1/M12 Overrun > 20% of CD
10. C1/M12 IT Transport and IT Exchanges at a discount
11. Late Nominations

Notes:
(1) Nominated services must be nominated on the NAESB Timely Nomination Cycle otherwise they are considered to be a late nomination and are therefore interruptible.
(2) Higher value or more reliable IT is contemplated in the service and contract, when purchased at market competitive prices.
(3) Captures the majority of customers that use Direct Purchase balancing transactions.
(4) Captures the majority of customers that use overrun.

Procedures

1. Union Gas will use its daily gas scheduling process to forecast the impact of firm and interruptible and/or discretionary customer activities on its storage, transmission and distribution operations.

2. Customer requested and/or forecasted quantities are compared to Union Gas' operational limitations to determine if scheduling reductions and/or service restrictions are required. Any constraints are identified in advance of the effective flow time.

3. The Priority of Service list applicable to the operational constraint is used to make reductions to the customer's requested and/or forecasted quantities to a level sufficient to alleviate the constraint. Pro-rata reductions are performed within each priority ranking when necessary.

4. Customers are notified of an operational constraint and the corresponding impact on their requested and/or forecasted activities. All notifications occur in advance of the effective flow time.

5. Customer must re-nominate, as necessary, to balance any scheduling reductions and/or service restrictions.

6. As interruptions of specific services have ended the processing of authorized transactions will resume. The customer will be notified by phone and/or Unionline that their authorization will resume.