



**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.

**Before:** Ken Quesnelle  
Presiding Member and Vice Chair

Marika Hare  
Member

**DECISION ON MOTION AND PROCEDURAL ORDER NO. 3  
July 29, 2014**

**Background**

Union Gas Limited ("Union") filed an application dated April 3, 2014 with the Ontario Energy Board under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B (the "Act"), for an order of the Board approving a one-time exemption from its approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of February and March, 2014.

On May 27, 2014 the Board issued Procedural Order No. 1 which provided for the filing of interrogatories and intervenor evidence, among other things. Union filed responses to the interrogatories on June 17, 2014 (and updated responses on June 19, 2014).

On June 20, 2014 the Board received a motion from the intervenor TransAlta Corporation (“TransAlta”) under section 27 of the Board’s *Rules of Practice and Procedure*. The motion sought an order requiring Union to provide full and adequate responses to the following interrogatories (the “Subject Interrogatories”):

- a) TransAlta IRs #1-12;
- b) TransCanada Energy (“TCE”) IR #4;
- c) London Property Management Association (“LPMA”) IR #4;
- d) Canadian Energy Strategies (“CES”) IR #1; and
- e) City of Kitchener (“Kitchener”) IR #2 (later amended to IR #3c<sup>1</sup>).

In its motion, TransAlta also requested a delay in the date for the filing of intervenor evidence.

In Procedural Order No. 2, issued on June 23, 2014, the Board rendered its determinations that the motion should be heard in writing, and that it would delay the filing of intervenor evidence and subsequent procedural steps until a decision on the motion was rendered. The Board set out the timeline for filings of submissions on the motion.

On June 25, 2014, the Board received TransAlta’s submission on the motion. By June 27, 2014, the Board had received submissions supporting the motion from Kitchener, LPMA, TCE, Canadian Manufacturers & Exporters (“CME”), Association of Power Producers of Ontario (“APPrO”), and Natural Resource Gas Limited (“NRG”). On July 3, 2014, the Board received Union’s response to the motion. On July 7, 2014, the Board received TransAlta’s final reply submission.

### **Position of Parties**

The Subject Interrogatories are largely related to the impact on certain customers of actions taken by Union during the winter of 2013 – 2014. TransAlta argued that the significant customer impacts and proposed remedies that are the subject matter of the EB-2014-0154 proceeding result from Union’s exercise of discretion and its application of certain charges that were applied to direct purchase customers who did and did not meet their contractual obligations during the 2014 winter.

TransAlta submitted that, as one of Union’s most significantly and negatively impacted customers during the winter of 2014, the responses to the Subject Interrogatories are required to allow it to participate in the proceeding in a meaningful

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<sup>1</sup> Kitchener, in its submission on the motion, noted that Union filed an adequate response to its IR #2 and requested that Union be required to file an adequate response to its IR #3(c).

way and to exercise its right to be heard. TransAlta stated that its right to present its case fully and fairly in this proceeding depends on receiving adequate responses to the subject interrogatories.<sup>2</sup>

TransAlta also argued that the responses to the Subject Interrogatories are likely to be material to the Board in deciding the appropriateness of any proposed remedy to address the costs and charges that Union imposed on direct purchase customers, who did or did not meet their contractual obligations imposed by Union during the extreme weather conditions of the 2014 winter.<sup>3</sup> TransAlta stated that Section 9.1 of the Ontario *Statutory Powers Procedure Act* supports hearing all of the customer issues resulting from Union's conduct during the 2014 winter in the same proceeding. TransAlta submitted that hearing the issues that were raised in its interrogatories in a coordinated manner, as it has proposed, allows the Board to use its resources in the most efficient manner.<sup>4</sup>

Kitchener supported TransAlta's motion. Kitchener noted that Union refused to provide a response to any interrogatory that does not pertain to the specific penalty charges that it is willing to reduce. Kitchener argued that the Board should not accept the narrow scope that Union has applied to the proceeding for the reasons set out below.

The exceptional weather events that gave rise to the penalty charges which Union is prepared to reduce also gave rise to penalty charges that were applied to Kitchener. Kitchener argued that while Union is willing to reduce penalty charges for some customers, it is unwilling to do so for Kitchener. Kitchener submitted that the decision as to which customers should receive relief from the strict application of Union's tariffs should be made by the Board and not by Union.

Kitchener argued that, if the Board refuses to consider penalty charges other than those cited by Union in its application (like those incurred by Kitchener under its T3 rate schedule), customers that will not have their issues heard in this proceeding will have to seek other avenues to have their issues heard. Kitchener submitted that hearing the issues of these other customers, including Kitchener, separately from this proceeding is not efficient.

Kitchener stated that the Board's public interest mandate supports not restricting the scope of the proceeding to the particular charges that Union has asked the Board to consider. Kitchener argued that it would be best to allow parties with similar

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<sup>2</sup> TransAlta Submission on motion, June 25, 2014, at pg. 6.

<sup>3</sup> Ibid at pg. 7.

<sup>4</sup> Ibid.

grievances, which are attributable to the weather conditions of the 2014 winter, to bring those issues forward for Board determination in this proceeding.<sup>5</sup>

LPMA, TCE, CME, and NRG all filed submissions supporting TransAlta's motion. These parties submitted that the information sought in the Subject Interrogatories is relevant to the proceeding and therefore the Board should require Union to file adequate responses.

APPPrO indicated that it takes no direct position on the motion. However, APPPrO stated that it believes the underlying issue raised by TransAlta regarding the methodology used by Union to determine whether a customer's Daily Contract Quantity ("DCQ") should be obligated or unobligated (and the methodology used to calculate the magnitude of the DCQ) is of substantial importance to customers like dispatchable generators.<sup>6</sup>

Union, in its response to the motion, submitted that the application before the Board, in the EB-2014-0154 proceeding, is to determine whether Union may provide a one-time exemption to direct purchase customers that did not meet their contractual obligations in February or March 2014 from the obligation to pay certain specified penalty charges. Union argued that the proceeding is not an opportunity to resolve all issues that Union's customers may have with respect to the terms of their contracts. Union submitted that the only relevant interrogatories are those that are directly associated with the issue of whether the one-time exemption, requested by Union, should be granted.<sup>7</sup>

Union submitted that the information sought by TransAlta and Kitchener in their interrogatories falls outside the scope of the proceeding. Union stated that the information sought by TransAlta is associated with a complaint that it has with regard to the DCQ of gas that it is required to deliver to Union. Union stated that this issue is unrelated to the one-time penalty charge reduction proposed by Union in its application. Union stated that the issue raised by Kitchener is associated with a complaint that it has with regard to the unauthorized storage withdrawal overrun charges billed to Kitchener under its T3 contract. Similarly, Union stated that this issue is not related to the one-time penalty charge reduction proposed by Union in its application.<sup>8</sup> Overall, Union submitted that TransAlta's motion should be dismissed.

In reply, TransAlta submitted that Union's proposed restricted scope of the proceeding unduly limits the Board's jurisdiction under the Act, is not consistent with the Board's May 6, 2014, Letter of Direction and related Notice of Application, and is

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<sup>5</sup> Kitchener Submission on motion, June 27, 2014, at pp. 2-4.

<sup>6</sup> APPPrO Submission on motion, June 27, 2014, at p. 1.

<sup>7</sup> Union Submission on motion, July 3, 2014, at p. 1.

<sup>8</sup> Ibid at pp. 5-8.

in contrast to the Board's consumer protection mandate and recent enhanced customer focus.

TransAlta also submitted that Union has made a number of assertions<sup>9</sup> that are not supported by evidence and therefore should be struck from the record of the motion or afforded no weight by the Board.

TransAlta also argued that Union has attempted to misrepresent the concerns of several intervenors in this proceeding relating to the harm caused by Union's exercise of discretion under its Board approved tariffs during the extreme weather events of the 2014 winter. TransAlta stated that Union has characterized the concerns of some intervenors as private contractual disputes. TransAlta stated that this characterization is not supported by the regulatory compact and the Board's consumer protection obligations.

Finally, TransAlta submitted that the Board's regulatory efficiency is best served by dealing with the issues that it, and other intervenors, have brought forth in this proceeding as opposed to holding multiple uncoordinated proceedings to hear the same issues.<sup>10</sup>

In its conclusion, TransAlta requested that the Board order Union to provide full and adequate responses to the Subject Interrogatories. TransAlta submitted that, if the Board determines that the Subject Interrogatories do not fall within the scope of the current proceeding, the Board should either revise and reissue the Board's Notice of Application in this proceeding or establish a separate proceeding in order to ensure all customers that have been negatively impacted by Union's actions over the 2014 winter are provided with the right to be heard (and potentially provided with a remedy for the harm caused by Union).<sup>11</sup>

## **Board Findings**

The Board dismisses the motion for the reasons set out below.

The Board finds that the Subject Interrogatories are not within the scope of this proceeding. As set out by the Board in its May 8, 2014 Letter to NRG:

In the EB-2014-0154 proceeding, the Board will determine whether to grant Union a one-time exemption from the use of its approved tariffs with respect to certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of

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<sup>9</sup> TransAlta referred to paragraphs 20, 21, 24 and 27 of Union's Submission on the motion.

<sup>10</sup> TransAlta Reply Submission on motion, July 7, 2014, at pp. 1-9.

<sup>11</sup> Ibid at p. 9-10.

February and March 2014. The outcome of this proceeding will be the Board setting a final penalty charge that Union will be allowed to apply to those customers who did not meet their contractual obligations during the months cited above.

The Board intends to hear, as part of the EB-2014-0154 proceeding, arguments as to whether the exemption should be granted and if so, what penalty charge should be applied in its place having regard for the intended purpose of the penalty charge and its efficacy. The penalty charge set in the EB-2014-0154 proceeding will be utilized for Phase 2 of NRG's QRAM proceeding (EB-2014-0053). Therefore, the Board intends to make a final decision in this proceeding prior to making a final decision in NRG's QRAM proceeding.<sup>12</sup>

The Board, in this proceeding, is dealing with an application filed by Union which requested a one-time exemption from its approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of February and March, 2014. The result of this proceeding will be a determination on Union's request as set out above. This proceeding is not a general review of all discretionary actions taken by Union during the winter of 2013 – 2014.

The Board intentionally established and communicated a narrow scope for this proceeding. As set out above, in the excerpt from the Board's Letter to NRG, the penalty charge, which will be set in this proceeding, will be utilized in Phase 2 of NRG's QRAM proceeding. The Board's Letter, dated June 17, 2014, in the EB-2014-0053 proceeding, has placed Phase 2 of NRG's QRAM proceeding on hold until after the Board has made its findings in the immediate proceeding. The Board would like to resolve the penalty reduction issue in this proceeding as expeditiously as possible in order to: (a) provide a fair and more immediate determination to those customers that are directly affected by the application of the penalty charges at issue here; and (b) move forward with Phase 2 of NRG's QRAM proceeding.

Although the issues raised by TransAlta and Kitchener in their interrogatories and motion materials do not fall within the scope of this proceeding, that does not mean that the issues raised by these parties are not valid. The issues raised could represent legitimate concerns that may fall within the jurisdiction of the Board.

TransAlta or Kitchener may wish to file a complaint with the Board by way of letter alleging that Union is failing to comply with an enforceable provision under the Act (e.g. a provision of a rate order of the Board). The matter could then be considered by the Board to determine if a compliance review is warranted. Alternatively, if TransAlta or Kitchener accepts that Union is properly implementing a

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<sup>12</sup> Board Letter to NRG, May 8, 2014.

rate approved by the Board, the letter could request that the Board on its own motion review the rate in question. Such a letter would have to address the Board's jurisdiction, any issue of retroactivity and the exceptional circumstances that would persuade the Board to inquire into the matter. The Board has set just and reasonable rates for Union, and the resolution of contractual disputes is generally outside the mandate of the Board.

The Board has set out the procedural steps for the remainder of the proceeding below.

**THE BOARD ORDERS THAT:**

1. The motion filed by TransAlta is dismissed.
2. Intervenors who wish to present evidence shall file that evidence with the Board and deliver it to Union and all intervenors no later than **August 7, 2014**.
3. Anyone (intervenor, Board staff or Union) who requires additional information related to any intervenor evidence, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to Union and all intervenors on or before **August 14, 2014**.
4. Responses to the interrogatories on intervenor evidence shall be filed with the Board and delivered to Union and all intervenors on or before **August 21, 2014**.
5. Union shall file its Argument-in-Chief with the Board and serve it on all other parties on or before **September 2, 2014**.
6. Board staff and intervenors who wish to make written submissions shall file such submissions with the Board, and deliver them to Union and other intervenors, on or before **September 12, 2014**.
7. If Union wishes to reply to the submissions of other parties, the reply shall be filed with the Board and delivered to intervenors on or before **September 19, 2014**.

All filings to the Board must quote file number **EB-2014-0154**, 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](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to the [BoardSec@ontarioenergyboard.ca](mailto: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.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Lawrie Gluck at [Lawrie.Gluck@ontarioenergyboard.ca](mailto:Lawrie.Gluck@ontarioenergyboard.ca) and Counsel, Jennifer Lea at [Jennifer.Lea@ontarioenergyboard.ca](mailto:Jennifer.Lea@ontarioenergyboard.ca).

All communications should be directed to the attention of the Board Secretary and be received no later than **4:45 p.m.** on the required date.

**ADDRESS**

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**DATED** at Toronto, July 29, 2014

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary