

September 2nd, 2014

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

Dear Ms. Walli:

Re: EB-2014-0154 Checkpoint Balancing 2014 – Argument in Chief

Please find attached Union's Argument in Chief for the above noted proceeding.

If you have any questions with respect to this submission please contact me at (519) 436-5476.

Yours truly,

[Original signed by]

Chris Ripley
Manager, Regulatory Applications

Encl.

c.c.: C. Smith, Torys
EB-2014-0154 Intervenors

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 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.

**ARGUMENT IN CHIEF OF
UNION GAS LIMITED**

A. Overview

1. By letter dated April 3, 2014 Union Gas Limited ("Union") applied to the Ontario Energy Board ("the Board") for approval of a one-time exemption from Union's Board-approved rate schedules. Union applied to make a one-time exemption to certain charges levied to the Rate T1/T2 Supplementary Inventory, Rate 25 Unauthorized Overrun Gas Supply Commodity and Bundled T-Service customers who did not meet their contractual balancing obligations in the months of February and March 2014. Consistent with the terms of their contracts, these customers were charged the highest spot cost of gas at Dawn in the month of the occurrence and the month following the occurrence. In Union's letter dated April 3, 2014 Union applied for two changes to this charge in recognition of the exceptional weather conditions, as follows:

- (1) to limit the billing of the above changes to the highest spot cost in the month in which the gas was sold; and,
- (2) to reduce the charge from the highest spot cost at Dawn during each of these months to the second-highest spot cost at Dawn.

2. A Procedural Order was issued on May 27, 2014 outlining dates for interrogatories to Union, responses from Union, Intervenor Evidence, interrogatories to intervenors and argument.

3. On June 17, 2014, Union filed interrogatory responses.
4. On June 20, 2014, TransAlta Corporation (“TransAlta”) filed a motion seeking responses to those interrogatories in which Union did not provide a response. The Board proceeded to hear the Motion through a written proceeding and delayed the subsequent procedural steps. On June 29, 2014, the Board issued its Decision dismissing the Motion and giving orders for the remainder of the proceeding.
5. On August 7, 2014 Intervenor evidence was filed by TransCanada Energy and Natural Resources Gas Limited, two customers that failed to meet their contractual commitments.
6. Board Staff filed interrogatories on August 11, 2014. TCE filed its interrogatory responses on August 21, 2014.

B. Matters in Dispute

7. The balance of this argument is addressed to the matters which are in dispute and is organized under the following issues:
 - (1) Reduction of certain penalty charges; and,
 - (2) Intent of the penalty.

C. Reduction of Certain Penalty Charges

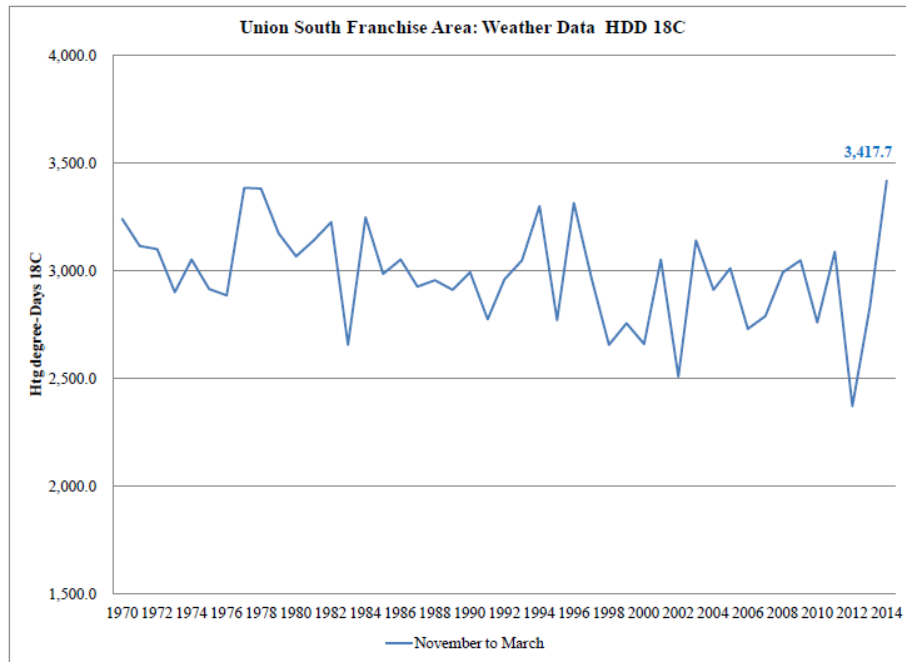
Proposed Reduction

8. Union is proposing to reduce the above noted penalty charges in recognition of the exceptional weather conditions in 2014, despite that fact that over 95% of Union’s customers met their contractual obligations¹.
9. The five month winter period of November 2013 to March 2014 was the coldest in Union’s records for Union South, which date back to the winter of 1969/1970. Please refer to Chart 1 that shows the actual weather (heating degree-days below 18 C) data for the five month period for Union South².

¹ Exhibit B.BOMA.1, Attachment 2.

² Exhibit B.NRG.1.

Chart 1



Data Source: DTN Meteorology.

10. Union’s proposal to reduce certain penalty charges is in recognition of this exceptional weather experienced. The referenced 95% was the approximate percentage of Union South Bundled Transportation direct purchase customers that took action and met their February 28, 2014 Winter Check Point Obligation or February 28, 2014 Contract Expiry Obligation. Specifically, to meet their balancing obligation, this group of customers delivered an incremental 5.6 PJ of gas into their Banked Gas Account (“BGA”) by the end of February 2014. The shortfall associated with 11 of 602 contracts (98% customer compliance rate) that did not balance was 0.06 PJ of the 5.6 PJ (99% volume compliance rate).

11. Union applied for the one-time exemption from the Board-approved rate schedule based on feedback from customers most impacted by the penalty charge. Specifically, the impact is significant for the four customers that were facing a charge in excess of \$800,000, as indicated in B.CME.2, Attachment 1. For these four customers, the impacts include the potential of financial impairment or even bankruptcy³.

³ Exhibit B.Staff.1.

Intent of the Penalty

12. The bundled transportation contract is in place to ensure that customers balance to their contractual commitments. The intent of the cost consequence of the “highest price”, is to discourage customers from making economic decisions on whether or not to comply with their contractual obligations. A customer should not be in a position of making an economic decision to pay a penalty rather than paying a higher market-based price, thus putting the integrity of the utility system at risk⁴.

13. Contrary to NRG’s suggestion, using historic penalties does not achieve this objective as the penalty must reflect the market at the time of the economic decision to be made by customers. As recognized by the Board in the RP-2001-0029 Decision:

“the failure to balance can place compliant system participants at risk, and may result in additional costs....In the Board's view, the penalty must be sufficiently costly to defaulters to strongly discourage strategic non-compliance with balance obligations, and the careless or incompetent acceptance of contractual obligations which are not reasonably achievable. The Board is concerned that parties wishing to engage in the market, either directly or through agents, must be appropriately encouraged to manage their obligations responsibly. The system as a whole requires that.” (p. 31).

14. Any price below the proposed February \$50.50/GJ and March \$52.04/GJ does not meet the intent of the penalty charge as contemplated in RP-2001-0029. The 3rd, 4th and 5th lowest prices noted in b) are near to, if not below, prices that compliant customers were paying in the market place to meet their balancing obligation. It would be inappropriate and inequitable for a non-compliant customer to pay a price less than a customer that met their contractual obligation⁵.

⁴ Exhibit B. NRG.29.

⁵ Exhibit B.Staff.1 part c).

15. Greater than 95% of customers paid the prevailing market prices to meet their obligation. There is no reason why customers who failed to meet their contractual obligations could not have done the same⁶.

16. For the above noted reasons, Union requests that the Board approve Union's Application as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Original Signed By

Crawford Smith
Lawyers for Union Gas Limited

⁶ Exhibit B.Staff.1 part d).