

## 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.

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### SUBMISSIONS OF THE LONDON PROPERTY MANAGEMENT ASSOCIATION

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#### **I. INTRODUCTION**

These are the submissions of the London Property Management Association ("LPMA") related to the Union Gas ("Union") proposal for a one-time exemption from the approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual requirements in February and March, 2014.

Direct purchase contracts contain provisions that require the direct purchase customers to balance at specific times to the forecast levels of gas in their banked gas account. This ensures that Union does not incur additional costs on behalf of direct purchase customers who have elected to take on the responsibility and costs associated with purchasing, delivering their own gas. When customers fail to meet their checkpoint balancing levels, Union must purchase additional gas to ensure that its system is not compromised by the failure of direct purchase customers to live up to the obligations in their contracts. The penalty charge for failing to deliver the required gas is found in Union's R1 rate schedule.

The Ontario Energy Board (“Board”) has approved the penalty charges through Union’s R1 rate schedule. In particular, this rate schedule states that *“The charge for banked gas purchases shall be the higher of the daily spot cost at Dawn in the month of or the month following the month in which gas is sold under this rate and shall not be less than Union’s approved weighted average cost of gas.”*

Union is proposing to reduce these penalty charges in recognition of the exceptional weather conditions in the 2013/2014 winter.

LPMA has members that are both direct purchase customers and system gas customers on the Union system. Since LPMA customers are not served by rates T1, T2 or Rate 25, LPMA’s submissions are limited to the penalty charge associated with bundled T-service customers.

## **II. SUBMISSIONS**

### **a) Intent of the Penalty**

In the RP-2001-0029 Decision at page 31, the Board stated that:

*“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.”*

LPMA agrees with Union’s Argument in Chief dated September 2, 2014, that:

*“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 risk.”*  
(Paragraph 12)

LPMA submits that the Board should be mindful in approving any one-time exemption to a rate schedule that may be granted in this particular situation. Direct purchase customers may expect or seek another one-time exemption if some other exceptional circumstance occurs in the future. This expectation could result in exactly the type of economic decision making that the Board has indicated that needs to be discouraged in order to ensure that the utility system is not put at risk. In other words, the intent of the penalty may be compromised through the granting of the requested exemption.

As noted in the RP-2001-0029 Decision quoted above, the Board was also concerned about the *"careless or incompetent acceptance of contractual obligations"*. The fact that the current winter was exceptionally cold is, in the view of LPMA, no reason for direct purchase customers to be relieved of their responsibility to ensure that they are in compliance with their checkpoint balancing requirements. In fact, the cold weather should have ensured that direct purchase customers were actively monitoring and reacting to the weather conditions. By accepting the responsibility of purchasing their own gas, direct purchase customers should be expected to adequately and properly respond to demand and supply situations in a timely manner.

In general, LPMA does not support the deviation from rates or charges (including penalties) that are set out in Board approved rate schedules. Any deviation from the approved rate schedules could be interpreted by parties to mean that other deviations are possible as well.

For example, if the cold winter of 2013/2014 is seen as a reason for reducing the penalty for the direct purchase customers that did not live up to their contractual obligations, LPMA submits that the same argument could be used by customers that received late payment penalties during the same winter. Why did Union not request, and the Board grant, a reduction in the late payment penalties for those customers who fell behind in their payments because of the exceptional winter circumstances that significantly increased their bills? Why should direct purchase customers that failed to balance receive a reduction in their penalty charge as provided for in the rate schedules, while customers that failed to pay their monthly bill and incurred late payment penalties are not afforded the same consideration?

In their Argument in Chief, Union states that it applied for the one-time exemption from the Board-approved rate schedule based on feedback from customers most impacted by the penalty charge. Does this mean that Union should also be asking for an exemption from the Board-approved late payment penalties in rate schedules based on feedback from customers most impacted by the late payment penalty charge?

### b) Union's Proposed Reduction

If the Board does approve a one-time exemption, LPMA submits that the Board should approve the reduction in the penalty charge as proposed by Union, and not any further reduction as may be argued for by others.

As indicated in the response to B.Staff.1, any price below that proposed by Union (\$50.50/GJ for February and \$52.04/GJ for March) may result in penalties that are close to or actually lower than the costs incurred in the market by direct purchase customers that ensured they were in compliance with their contractual obligations by taking action and purchasing gas, even at the high rates that existed in the market.

By reducing the penalty any further than that proposed by Union could result in the penalty failing to achieve the objective of ensuring that direct purchase customers from making economic decisions on whether or not to comply with their contractual obligations. Moreover, a lower penalty might incent other direct purchase customers to roll the dice in the future and take a chance on the penalty being lower than market prices they would have to pay.

### III. COSTS

LPMA requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

All of which is respectfully submitted this 12<sup>th</sup> day of September, 2014.

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