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By electronic filing

September 12, 2014

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

Dear Ms. Walli,

Union Gas Limited (“Union”)
Application to Reduce Certain Penalty Charges Applied to its Direct Purchase Customers
Board File No.: EB-2014-0154
Our File No.: 339583-000176

Please find attached the Submissions of Canadian Manufacturers & Exporters (“CME”).

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Peter C.P. Thompson', is written over a light blue horizontal line.

Peter C.P. Thompson

PCT\slc
enclosure

c. Chris Ripley (Union)
Intervenors EB-2014-0154
Paul Clipsham and Ian Shaw (CME)
Vince DeRose and Emma Blanchard (BLG)

OTT01: 6533426: v1

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.

**SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")**

September 12, 2014

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I. INTRODUCTION

1. In this case, the Ontario Energy Board (the "Board") is considering whether to grant Union Gas Limited ("Union") a one-time exemption from the use of approved tariffs with respect to penalty charges applied to direct purchasers who did not meet their contractual balancing obligations during February and March 2014. This one time penalty reduction application is prompted by the extraordinarily cold weather faced by direct purchasers earlier this year.
2. We submit that the questions which this application raises are as follows:
 - (a) Should the one time penalty reduction request be granted?
 - (b) By what amount should the penalties be reduced?
 - (c) How should the excess in penalty amounts recovered over the actual costs incurred by Union to remedy the defaults be allocated?
3. Our submissions with respect to each of these questions are set out below.

A. Should the One Time Penalty Reduction Request be Granted?

4. We agree with Union that the extraordinary circumstances of this past winter justify a reduction in the penalty amounts charged to those few direct purchasers who failed to meet their contractual balancing obligations in February and March 2014.

B. By What Amount Should the Penalties be Reduced?

5. Once again, we agree with Union that the principle to be applied in determining the amount of the reduction is that the level of the reduced penalty charges should not be less than the prices paid by compliant customers to meet their contractual balancing obligations. Put another way, it would be inequitable and unreasonable for the Board to fix reduced penalty amounts so as to put those who failed to comply with their balancing obligations in a better position than those who complied.

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6. We rely on the Board to apply this principle when determining the disputes that exist pertaining to the appropriate level for the reduced penalty amounts.
- C. How Should the Excess in Penalty Amounts Recovered Over the Actual Costs Incurred by Union to Remedy the Defaults be Allocated?**
7. While the facts in this proceeding give rise to this question, the Board's determination of the issue has implications for the deferral account balances and clearances being considered in the Union 2013 Deferral Account Balances proceeding, EB-2014-0145.
8. The amount in issue is significant. Based on the tables provided at Attachment 1 of Union's letter to the Board of April 10, 2014, the total penalties levied were \$9,085,422.00. The total reduced penalties Union proposes are \$3,172,692.00. After deducting actual costs of gas incurred to remedy defaults, the excess is about \$8.334M as shown in Union's Interrogatory Response to the Ontario Greenhouse Vegetable Growers ("OGVG") Interrogatory No. 1.
9. A determination of the question of how the excess should be allocated involves a consideration of the rationale for both the penalty charge and its amount.
10. We agree with Union that the purpose of the penalty charge for a failure to balance is to deter customers from making strategic decisions to pay penalties rather than to comply with their contractual balancing obligations. Any widespread failure by direct purchasers to comply with such obligations places the integrity of Union's system at risk. Such actions expose all users of the system to harm.
11. As a result of the defaults, Union must purchase gas which the defaulters failed to deliver. We submit that the amount of the penalty charge, being the highest spot gas price at Dawn in the month in which the default occurs, is based on a premise that Union will have to pay up to that amount to procure gas supply coverage for the defaults.
12. Contrary to Union's submissions, the penalty amount does have a cost-based rationale. Its rationale is a particular cost of spot supply at Dawn. This cost-based rationale for the

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- charge is material to a consideration of the question of how the excess in penalty charge recoveries over the actual costs of gas incurred to cover defaults should be allocated.
13. The amounts Union recovers from its direct purchasers for balancing penalty charges are revenues Union realizes from its activities as the system operator for direct purchasers. We submit that these amounts are to be used to cover the costs Union incurs in providing these system operation services. If the amounts recovered from providing such system operation services for direct purchasers exceeds the costs Union has incurred to provide such services, then the excess in amounts recovered over costs incurred should be held for and eventually remitted to all direct purchasers.
 14. Union, in its capacity as the system operator for direct purchasers, in effect, purchased system gas from itself as the purchaser of gas for its system gas customers. The price Union can charge for system gas is limited to its WACOG. Union is prohibited from selling gas at a price higher than WACOG.
 15. Union, in its capacity as system operator for direct purchasers, cannot and did not purchase system gas from itself at the penalty charge amount paid by defaulting direct purchasers. The amount paid by the system operator for direct purchasers was WACOG. The excess in penalty amounts collected by Union as the system operator for direct purchasers over the costs it incurred to cover the defaults remains with Union in its capacity as the system operator for direct purchasers.
 16. For these reasons, we submit that all direct purchasers, the vast majority of whom complied with their balancing obligations in February and March 2014 at considerable expense, are the beneficiaries of excess in penalty amounts recovered over the actual costs incurred to remedy defaults. Union's rationale for allocating these amounts to system gas users is inappropriate and should be rejected.
 17. While further submissions with respect to this issue will be made in the Deferral Accounts Clearing case, we urge the Board to find, in this case, that the penalty

amounts Union recovered from direct purchasers as a result of their failure to comply with their balancing obligations in February and March 2014 are held by Union in its capacity as the system operator for direct purchasers and are not held by Union in its capacity as the purchaser of system gas.

II. COSTS

18. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of September, 2014.



Peter C.P. Thompson, Q.C.
Vincent J. DeRose
Counsel for CME