

September 19, 2014

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

Dear Ms. Walli:

**Re: EB-2014-0154 Checkpoint Balancing 2014 – Reply Argument**

Please find attached Union's Reply Argument 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

**REPLY ARGUMENT OF  
UNION GAS LIMITED**

**A. Overview**

1. This is Union Gas Limited's Reply Argument in EB-2014-0154. This Argument should be read in conjunction with Union's Argument-in-Chief. For the reasons set out in that argument and below, Union remains of the view that the relief requested by it should be granted by the Board. Union continues to request that the Board grant a one-time exception to the Board approved charge applied (1) to Rate T1/T2 Supplementary Inventory and Rate 25 Unauthorized Overrun Gas Commodity for the months of February and March 2014 and, (2) to bundled T-Service customers that did not meet their contractual balancing obligations in February 2014.

2. Submissions were received from Board Staff, BOMA, AMCO, CME, OGVG, IGUA, LPMA, APPrO, TransCanada Energy (TCE) and Natural Resource Gas (NRG). In broad terms, these submissions can be grouped into the following categories: parties that support the requested relief (ex. Board Staff); parties that oppose the requested relief (ex. IGUA and LPMA); parties whose submissions (while supportive in part) were primarily directed at the question of the allocation of the revenue associated with the charges (ex. CME and OGVG); and parties who propose different relief (TCE and NRG).

3. Below, Union addresses the relief requested by TCE and NRG.

4. In response to IGUA and LPMA, Union relies on its evidence and its Argument-in-Chief. Union also specifically agrees with Board Staff's observation that the "benefit arising from reducing the penalty charge is greater than the inequity that could result" if a few compliant customers paid more to meet their balancing obligations.

5. Union does not intend to reply to submissions in relation to the appropriate allocation methodology. This is the subject of an ongoing proceeding before the Board (EB-2014-0145) and is not in issue here.

**B. Response to TCE and NRG**

6. **TCE.** TCE argues that the methodology used by Enbridge Gas Distribution for calculating the charges associated with Unauthorized Supply Overrun for its Rate 125 customers should be used by Union to calculate the penalty charge applicable to its T2 customers. TCE does not offer an alternative methodology that would apply to T1 customers, nor does it comment on the charge applicable to Bundled T-Service customers that failed to meet their winter checkpoint.

7. In Union's view, the Board should reject TCE's proposal. Union agrees with Board Staff: "TCE's proposal reflects a fundamental change in the manner in which the Supplementary Inventory charge" is calculated and this "type of fundamental change is not appropriate for a one-time reduction of the penalty charge" sought by Union as a result of the exceptional weather conditions experienced this past winter. In Union's submission, this sort of change would be best dealt with in a rates proceeding.

8. At page 4 of its argument Board Staff asks Union to comment on an assumption embedded in TCE's proposal that the timing of Union's actions to remedy a default by a T2 customer coincides with the occurrence of the default. In fact, Union would not know of an overrun occurrence until after the gas day has ended. If Union needed to replace gas, it would then need to do so the next day or, if on a weekend, the day on which gas markets were next open. As reflected in TCE's evidence, the market price of the gas on that day would almost certainly be different than the day on which the overrun occurred.

9. **NRG.** NRG argues that for it – and it alone amongst defaulting Bundled T-Service customers – the Board should apply a penalty charge of between \$4.87 per GJ and \$7.12 per GJ. The Board should reject NRG’s request.

10. NRG’s argument boils down to the following five propositions:

- that the penalty rate should be a function of “historic norms and/or sufficient to pay Union’s cost of gas;
- NRG “did everything reasonably possible to meet its contractual obligations”;
- NRG is unique in that it is a utility;
- Union has storage; and that,
- the penalty provides a windfall to Union.

11. None of these propositions withstands any degree of scrutiny. They are either wrong or have nothing to do with this case.

12. *Historic norms/Union’s cost of gas.* NRG points to the penalty charged by Union between 2006 and 2013. These amounts were a function of then prevailing gas prices. If accepted, NRG’s proposition would gut any incentive for customers to meet their contractual obligation. Anytime the cost of gas exceeded or was forecast to exceed these historic prices, customers could simply default, put Union’s system as a whole at risk and rely on the Board to relieve them of the financial consequences of their failure. This would be inconsistent with the Board’s decision in EB-2001-0029. There, the Board held:

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).

13. Union’s cost of gas is irrelevant. NRG chose to become a direct purchase customer, with the benefits and responsibilities that that entails. If it had wanted to pay the same costs as sales service customers, it could have been a sales service customer.

14. *NRG did not do everything possible.* Whether NRG did everything possible to meet its contractual obligations is similarly irrelevant. The prudence of NRG's actions will be assessed in a different case. As the Board advised NRG's counsel by letter dated May 8, 2014:

In the EB-2014-0053 proceeding, the Board will review the prudence of NRG's incremental gas purchases made over the past winter. As part of the EB-2014-0053 proceeding, the Board will also review whether the costs associated with the penalty should be recovered from ratepayers. The quantum of the penalty charge, however, will be set by the Board in the EB-2014-0154 proceeding.

15. In any event, the proposition that NRG did everything possible is wrong on its face. Over 95% of Bundled T-Service customers met their balancing obligation. They operate in the same market as NRG. No explanation has been offered by NRG for why these customers could meet their obligation but somehow it could not. The fact is that other customers paid the prevailing market prices to meet their obligation. There is no reason why NRG could not have done the same. The prices paid by customers will vary depending on their respective gas supply strategies. Customers that utilized a proactive strategy similar to Union's may have paid comparable prices. However, customers that chose to buy in the day market paid the higher spot prices experienced at Dawn. Further as Union advised in Exhibit B.NRG.15:

...there were over 170 trades at Dawn each day between February 25 and 28 with volumes recorded at approximately 1 PJ/d [well in excess of NRG's shortfall]. Other customers paid the prevailing market prices to meet their obligation. Further, there were 16 Balancing Transactions that occurred on Union's system with a start date of February 28, 2014.

16. Based on the record, it appears that NRG chose to ignore information and assistance provided to it by Union. As Union indicated in Exhibit B.NRG.17:

Union did not refuse to assist NRG. During January and February 2014 Union frequently communicated with NRG to notify it of its balancing obligations, responded to NRG's emails and telephone calls, provided a written response on February 24<sup>th</sup> to their NRG's letter dated February 21<sup>st</sup> (Please see Attachment 1 and Attachment 2) and participated in a conference call with NRG representatives on February 26<sup>th</sup>. This was done to assist NRG in understanding and meeting its contractual obligations and included the discussion of gas supply options. Union provided options to NRG to meet its checkpoint obligations, including:

- (i) purchase the gas in the market itself per its normal practice;

- (ii) purchase from an in-franchise contract that is “long” (In-Franchise Transfer - IFT); or,
- (iii) purchase gas through Union via its Discretionary Gas Supply Service.

As communicated to NRG, Union could supply the natural gas as part of the Discretionary Gas Supply Service (“DGSS”), which is a supplementary gas supply service of last resort for Union South Direct Purchase customers. Union South Direct Purchase contract customers, who are unable to access market supplies from other sources, can purchase supplementary gas directly from Union through the DGSS to meet their unplanned, excess consumption. Gas purchased through this service will reflect market pricing, as well as an administration fee. The administration fee that Union charges for this service is the same as that approved for sales service gas sales. NRG did not request this service from Union.

The advice provided by Union is the same offered to other customers and is the extent of the assistance from Union that is available with regard to acquiring gas to meet their balancing obligations. Further, it is the same assistance that is provided to direct purchase customers, regardless of whether they are a utility, retail energy marketer or commercial customer.

17. Moreover, as Union indicated in relation to Exhibit B.Board Staff.1 and as indicated by Staff it in its letter filed in NRG’s QRAM proceeding (EB-2014-0053):

...every month, NRG receives a Direct Purchase Status Report (“DPSR”) from Union, which sets out the expected balance in its banked gas account with Union at the time of next balancing point (in this case, the Winter Checkpoint). Each month throughout the winter period, the DPSR was indicating that NRG was going to be short gas come the time of the Winter Checkpoint. In fact, the DPSRs indicate, that each month throughout the winter period, NRG’s expected shortfall, at the time of the Winter Checkpoint, was growing larger. Board staff notes that at no point during the 2013 – 2014 winter period did NRG take any preemptive action to mitigate its balancing shortfall.

18. *NRG is a utility.* The fact that NRG is a utility is also irrelevant. As set out above, it could have chosen to be a sale service customer but elected not to be. Moreover, whether NRG is entitled to pass on its cost of gas to its customers is an open question: it may or may not be able to depending on the Board’s decision in EB-2014-0053.

19. *Union has storage.* Again, this proposition is irrelevant; NRG makes no real attempt to argue otherwise. As Union explained in Exhibit B.NRG.15, it did not plan for, nor proactively purchase any gas supply to make up the default for any direct purchase customers not meeting their contractual obligation, including NRG. Union's planning assumption when purchasing spot gas was that all direct purchase customers would meet contractual obligations at expiry and checkpoint.

20. *No windfall to Union.* The suggestion that the penalty results in a windfall to Union is misconceived. Union does not benefit from the penalty charges at all. Rather, the amount received is credited to Union's customers. How that allocation will take place is the subject of the EB-2014-0145 proceeding.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*[original signed by ]*

---

Crawford Smith  
Lawyers for Union Gas Limited