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By electronic filing

September 24, 2014

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

Dear Ms. Walli,

Union Gas Limited ("Union")
2013 Disposition of Deferral Accounts Balances
Board File No.: EB-2014-0145
Our File No.: 339583-000175

Please find enclosed the Submissions of Canadian Manufacturers & Exporters ("CME") in the above-noted proceeding.

Yours very truly,

S Castanza

for Vincent J. DeRose

\slc
enclosure
c. Karen Hockin (Union)
Intervenors EB-2014-0145
Paul Clipsham and Ian Shaw (CME)

OTT01: 6554772: v1

EB-2014-0145

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 clearing certain non-commodity related deferral accounts;

AND IN THE MATTER OF an Application by Union Gas Limited for an order approving a deferral account to capture variances between balances approved for disposition and amounts actually refunded/recovered.

SUBMISSIONS OF CANADIAN MANUFACTURERS & EXPORTERS ("CME")

September 24, 2014

Peter C.P. Thompson, Q.C.
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I. INTRODUCTION

1. These submissions are made on behalf of Canadian Manufacturers & Exporters ("**CME**"). They pertain to the amounts and allocations of the following:

   (a) Checkpoint balancing penalty revenues;

   (b) Incremental load balancing costs for March 2014;

   (c) Incremental Unaccounted for Gas ("**UFG**") costs; and

   (d) Average use per customer deferral account balance.

II. CHECKPOINT BALANCING PENALTY REVENUES

2. The amount of these revenues ultimately recovered by Union Gas Limited ("**Union**"), in its capacity as the system operator for direct purchasers, will be determined by the Board in the EB-2014-0154 proceeding.

3. The penalties levied by Union against direct purchasers who failed to meet their February checkpoint balancing obligations were $9,163,046.00. Union is proposing to reduce those penalties to $5,964,041.00.

4. The actual cost of spot gas used to cover the shortfalls of non-compliant direct purchasers was $828,690.00. If there is no reduction in the penalty amounts charged by Union, then the penalty revenues of $9,163,046.00 will exceed the actual costs of $828,690.00 of spot gas to cover the shortfalls of non-compliant direct purchasers by $8,334,356.00. If the Ontario Energy Board (the "**Board**") approves the reduced penalties proposed by Union, then the penalty revenues charged to non-compliant direct purchasers of $5,964,041.00 will exceed the actual costs of $828,690.00 to cover their shortfalls of spot gas by $5,135,351.00.[1]

5. Both Union and Board Staff argue that the amount by which the penalty revenues exceed the actual costs of spot gas to cover the shortfalls of non-compliant direct

[1] All of these amounts are either found in or derived from EB-2014-0154 Exhibit B OGVG1, Attachment 1 and Exhibit B CME2, Attachment 1.

purchasers should be entirely allocated to Union's sales service customers. These arguments are premised on the notion that the gas used to cover the shortfalls "belonged" to Union's system gas customers.[2]

6. We submit that this is an incorrect premise. The gas Union acquires, as the system operator for both direct purchasers and system gas customers but has not yet delivered and sold to any particular customers, belongs to Union. Gas purchased by Union for a regulated utility purpose belongs to Union until such time as it is delivered to a third party.

7. In the EB-2014-0154 proceeding, Union raised an issue pertaining to the nature of the February checkpoint balancing penalty amounts payable by direct purchasers who failed to meet their checkpoint balancing obligations. Union asserted that these penalty amounts did not have a cost-based rationale. We strongly disagreed with that submission because the penalty amount is specified to be a particular cost of spot supply at Dawn in the month of default.

8. We accepted that one purpose of the penalty charge payable by direct purchasers who failed to comply with their contractual checkpoint balancing obligations is to deter them from making strategic decisions to pay penalties rather than to comply with those obligations. However, we emphasized that the penalty amount is specified to be the highest spot gas price in Dawn in the month in which the default occurs because Union will have to pay up to that amount to procure gas supply coverage for the defaults. We also emphasized that the amounts Union recovers from its direct purchasers for checkpoint balancing charges are revenues which Union realizes from its activities as the system operator for direct purchasers.

9. In these circumstances, we urged the Board to respond to the issue which Union raised in the EB-2014-0154 proceeding about the nature of the checkpoint balancing penalty

[2] See Union Argument, Transcript Volume 2, p.91, lines 23 to 28 and Board Staff Submissions, p.8.

revenues by finding that these amounts are revenues Union realizes from its activities as a system operator for direct purchasers and are amounts to be used to cover the cost that Union incurs for providing these system operation services. We reiterate that if the amounts recovered from providing such system operation services for direct purchasers exceeds the cost 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.

10. Union and Board Staff are effectively arguing that the gas Union acquired in its capacity as the purchaser of gas for system sales customers can notionally be sold or transferred to Union in its capacity as the system operator for direct purchasers at a price higher than WACOG. Yet, Union is prohibited from selling gas, notionally or otherwise, at a price higher than WACOG. Neither Union nor its system customers can gain or lose from a gas commodity sale transaction.

11. The argument that sales service customers should receive the penalty amounts paid by non-compliant direct purchasers for gas used by Union to cover their shortages contravenes the principle that neither Union nor its system gas customers can gain or lose from a gas commodity "sale" transaction.

12. Based on the foregoing, we submit that the portion of the amounts Union recovers from its direct purchasers for checkpoint balancing penalty charges which is allocable to Union's sales services customers is limited to the actual costs of the gas used to cover their defaults, namely, $828,690.00. The excess in penalty amounts collected by Union as a system operator for direct purchasers over the costs of $828,690.00, being an amount of $5,135,351.00 if Union's penalty proposals are accepted, remains with Union in its capacity as the system operator for all bundled direct purchasers and should be allocated to all bundled direct purchasers in Union's southern operations area.

13. The credit amount of $5,135,351.00 to be allocated to these direct purchasers, if Union's reduced penalty proposal is approved, will operate to provide a modicum of relief to all of those direct purchasers who complied with their checkpoint balancing obligations. The credit will also mitigate the incremental load balancing costs Union incurred in March 2014 to cover the extent to which some bundled direct purchasers were then overdrawn in their banked gas balances.

14. We submit that the only principled basis upon which the penalty revenues realized by Union in its capacity as the system operator for bundled direct purchasers can be allocated is to distribute the funds to all bundled direct purchasers in Union's southern operations area. Allocating these direct purchase system operation revenues to direct purchasers does not "reward" compliant direct purchasers as Board Staff argues.[3] Rather, it mitigates the substantial costs compliant direct purchasers incurred to meet their checkpoint balancing obligations. Moreover, it matters not whether one characterizes the allocation as mitigative or something else. The reality is that these checkpoint balancing penalty revenues have been realized by Union from the performance of its function as the system operator for direct purchasers and, as such, should be allocated to the bundled direct purchaser constituency.

15. For all of these reasons, the submissions of Union, Board Staff and any others in support of allocating these amounts to system gas users should be rejected.

III. INCREMENTAL LOAD BALANCING COSTS FOR MARCH 2014

16. Union proposes to recover $1.801M of incremental spot gas costs which it incurred to cover overdrafts in the March 2014 banked gas accounts of certain direct purchasers. It proposes to limit the allocation of these costs to those particular direct purchasers whose banked gas balances were in an overdraft position at that time.

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[3] Board Staff Submissions, p.9.

17. The calculated amount Union seeks to charge these customers of $1.954M exceeds the actual cost of $1.801M incurred to cover the overdrafts by $0.153M. Union proposes to allocate the benefit of this $0.153M over-recovery amount to system gas users.

18. We urge the Board to reject these proposals for the reasons which follow.

19. First, the amount to be recovered should be no more than the $1.801M of costs incurred to manage the overdrafts. There is no justification for charging direct purchasers an amount greater than the costs incurred to cover the overdrafts. The proposal to recover a calculated amount of $1.954M which exceeds the actual costs incurred by $0.153M should be rejected.

20. Second, there is no contractual obligation on direct purchasers to cover their requirements in their banked gas accounts at points between the checkpoint balancing dates under the Board-approved load balancing regime which Union applies in its capacity as the system operator for bundled direct purchasers. Such direct purchasers are contractually obliged to be in balance on the checkpoint dates. However, variances from estimated banked gas balances in between those checkpoint dates are permitted.

21. As the system operator for bundled direct purchasers, Union accepts the obligation to manage the risk of some banked gas balances being overdrawn at any particular point in time, provided that it recovers any incremental gas costs which it incurs to manage that risk. There are many reasons why the banked gas balance of a particular direct purchaser might be too high or too low at a particular point in time. Such reasons include the possibility of Union providing customers with an inappropriate estimate of the balance required at a particular point in time.

22. Managing the risk of overdrawn banked gas balances between the balancing checkpoints is a function Union performs for the benefit of its entire bundled direct purchaser constituency. In these circumstances, we submit that the incremental costs

Union incurs in managing this risk should be recoverable from all bundled direct purchasers as Board Staff proposes.

23. We submit that there is no basis in contract or in equity for Union's proposal to limit the allocation of these costs to those particular direct purchasers whose banked gas balances were in an overdraft position as of March 2014.

24. The actual costs of $1.801M for spot gas which Union incurred to cover the overdrafts should be allocated to all south bundled direct purchase customers. The amount to be allocated should be the net amount of $1.801M, being the actual costs incurred to manage the risk. Segregating the amount between a calculated $1.954M load balancing cost and a $0.153M credit is inappropriate for the reasons described in paragraph 18 of these submissions.

IV. UNACCOUNTED FOR GAS ("UFG")

25. The $4.729M debit associated with price variances related to UFG should be allocated in accordance with the principle of cost causality to all customers on Union's system who are responsible for UFG costs. These costs should be allocated to both system supply customers and direct purchase customers (excluding those who provide their own fuel) as Board Staff proposes.

26. We agree with Board Staff that Union's misallocations of UFG benefits in prior years to Union's sales service customers only is an inappropriate rationale for failing to make a timely correction to the error made in prior years.[4]

V. AVERAGE USE PER CUSTOMER DEFERRAL ACCOUNT

27. We agree with Board Staff that the intended purpose of the average use deferral account is to ensure that neither ratepayers nor Union's shareholder are harmed by differences between forecasted and actual average use (in the general service rate

[4] Board Staff Submissions, pp.4-6.

classes).[5] The issue that has arisen in this case is whether the current wording of the Accounting Order pertaining to the average use deferral account is achieving its intended purpose.

28. We submit that the evidence indicates that the intended purpose of the account is not being achieved because it is failing to bring into account material changes in storage-related costs which occur when there are differences between forecasted and actual average use. Changes in storage costs attributable to average use variances should be brought into account when determining the average use per customer variance balance to be cleared to ratepayers.

29. Union's Undertaking response in Exhibit J2.1 indicates that, of the increases in storage-related costs of $2.5M for 2013, approximately $1M is attributable to the increase in average use in the general service rate classes. Having regard to this evidence, we respectfully submit that the Board can, if it wishes, reduce the increase in total storage-related costs of $2.5M for 2013, being recovered under the auspices of Union's storage-related deferral accounts by $1M and reduce the credit of $11.475M in the average use per customer deferral account to be allocated to the beneficiaries of that account by an off-setting $1M.

30. While the Board is fully empowered to make appropriate changes in this case to assure that the intended consequences of the deferral account are achieved, since storage cost deferrals are not a matter in issue in this particular proceeding, we submit that the most appropriate course to follow is that recommended by Board Staff which is to clear the 2013 credit amount of $11.475M to customers and to revise the Accounting Order to reflect the inclusion of storage revenues and cost calculation of the balance for the purposes of 2014 and beyond.

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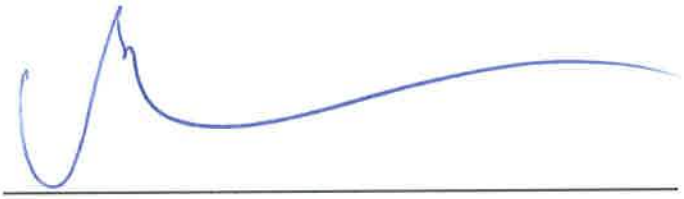
[5] Board Staff Submissions, p.7.

31. We agree with Board Staff that the Accounting Order should be modified to achieve its intended purpose. We view the modification as a "correction" rather than an update and submit that deferral account wording which is failing to achieve its intended effect should be corrected as soon as the unintended consequences are discovered. Correcting deferral account language for unintended consequences does not violate the principle of retroactive ratemaking. This is particularly so because the clearance of deferral accounts, by its very nature, is an exercise of retroactive ratemaking.

VI. COSTS

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of September, 2014.



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