

## UNION DEFERRAL OUTLINE

## INTRODUCTION

The Board staff submission of September 19, 2014 captures the chronology of this proceeding so we adopt their summary for efficiency.

In its argument-in-chief, Union asserted that "there is no serious question regarding the permissibility of recovery" and then went on to speak to the Board's discretion in relation to load balancing costs.<sup>1</sup> We wholeheartedly agree that the Board has discretion in this case in terms of all costs allocated and their subsequent disposition. However, we would respectfully submit that Union has a right to apply for recovery but needs to establish that its approach meets the Board's determination of just and reasonable. As can be seen in Board staff's submissions, there can be different views on the appropriateness of allocations and dispositions.

We believe one of the most important aspects of this proceeding is that all of the outstanding issues focus on the appropriateness of ex-post facto accounting allocations. In our view, equitable determinations of these allocations must be informed by the facts and, where applicable, previous Board approvals. From there, principles such as cost causality and consistency can be applied ensuring the outcomes are in the public interest. We would respectfully submit that the Board look beyond Union's proposals to the reasons behind the practices and determine how a just and reasonable outcome can be effected for all parties given this unprecedented season.

The following are the submissions of the Federation of Rental-housing Providers of Ontario ("FRPO") and the Ontario Greenhouse Vegetable Growers ("OGVG"). To aid the Board, we will present our submissions in the order formulated by Union in its argument-in-chief.

## ISSUES:

1) Appropriateness of Union's Recovery of 0.8 PJ Gas Loan from South Customers

The application proposes a recovery of the cost consequences of buying incremental gas that was not in the forecast prior to the end of March to meet Union's planned design criteria. Union has proposed the recovery from Direct Purchase ("DP") customers whose Banked Gas Accounts ("BGA") were below their forecasted amount at the end of March. While unprecedented, Union's main argument is based upon their evidence in EB-2008-0106, the QRAM and Load Balancing Generic proceeding, that stated that they would seek recovery of incremental load balancing costs.<sup>2</sup> Union did not propose its method of recovery in that proceeding nor in its

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<sup>1</sup> Transcript Volume 2, page 87, lines 1-9

<sup>2</sup> Exhibit B.FRPO\_OGVG.5

April QRAM application.<sup>3</sup> Their main support for the proposed recovery is cost causality.<sup>4</sup> We understand and generally support the principle of cost causality but believe the facts of the case bear greater scrutiny.

The matter has been brought to the Board as Union recovering prudently incurred costs for purchases made on behalf of DP customers who Union believed would be below their forecasted BGA at the end of March. Union purchased 1.8PJ on February 21st notwithstanding that the customers were not contractually bound to be in balance as of March 31<sup>st</sup> nor had they received notice of potential cost consequences of not being so (which we will address later). The chronology of the events in this process are important to consider:

a) February Checkpoint BGA Balance Risks

We believe that it is critically important to understand the facts around the Checkpoint obligations<sup>5</sup>.

- i) On or around the 10th business day of February, Union informs customers of their projection for the end February BGA position
- ii) For Union determined balanced, Union forecasts the amount of consumption and provides the customer with an additional quantity to bring in that amount by the end of the month. With this option, if the customer delivers the additional quantity to Union by the end of the month, the customer is not at risk for any shortfall.
- iii) For Customer determined balance, Union provides an information estimate but the customer is completely responsible for either reducing consumption or bringing in any additional gas so that their balance above the minimum threshold. If the customer by lack of regard or simply as a result of error does not meet the minimum threshold they pay the penalty rate (R1 rate schedule - the highest rate subject of 0154 proceeding) to Union. This rate is designed as a penalty to incent customers to meet the contractual balancing obligations.

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<sup>3</sup> Transcript Volume 1, page 58, line 7 to page 59, line 12

<sup>4</sup> Transcript Volume 2, page 86, lines 14-20

<sup>5</sup> EB-2014-0152 Exhibit B. NRG.15 Attachment 1, "Schedule 2, Southern Bundled T Terms and Conditions

b) Union Manages Storage in Aggregate but then Allocates the Cost

As testified to many times, Union manages its storage in aggregate and does not differentiate system gas and DP gas for operational purposes.<sup>6</sup>

- i) Union estimated a need for an additional 1.8 PJ by end of March to manage the forecasted DP shortfall and purchased the gas on February 21st<sup>7</sup> with the intent to allocate to system and DP later
- ii) Allocation to DP was determined to be 0.8PJ<sup>8</sup>
- iii) The amount allocated to DP could have been zero<sup>9</sup>

We agree that the allocation to DP could have been zero especially if notice of a potential penalty would have been given. Without notice, the shortfall in DP volumes was only 0.8PJ, less than half of what was forecasted.

c) System Integrity Space

In this proceeding, Union has steadfastly held that System Integrity space could not be used as a cushion against DP over consumption in March.<sup>10</sup> Union testified that it needed all of it even though they would only need an extra 0.2PJ/day to manage a 5 Heating Degree Day weather variance<sup>11</sup>. Yet, as was revealed during cross-examination, Union, in fact, used 0.6PJ of system integrity as again they under-forecasted the consumption of system gas customers.<sup>12</sup> In fact, a further inequity has arisen out of Union's current QRAM application and questions asked by the Industrial Gas User's Association ("IGUA") wherein Union will replace that gas for system gas customers at summer cost with no premium as it was for DP customers in this application<sup>13</sup>

d) Union's Proposed Allocation

Union has proposed that the allocation of 0.8PJ gas loan costs be to customers who did not balance to their forecasted BGA position at the end of March. Union has cited cost causality as the principle supporting the allocation to only these customers because they drove the cost<sup>14</sup>.

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<sup>6</sup> Transcript Volume 1, page 64, lines 27-28 amongst others

<sup>7</sup> Transcript Volume 1, page 79, lines 8-

<sup>8</sup> Transcript Volume 1, page 80, lines 1-3

<sup>9</sup> Transcript Volume 1, page 80, lines

<sup>10</sup> Transcript Volume 1, page 36

<sup>11</sup> Exhibit J2.5

<sup>12</sup> Transcript Volume 2, pages 50, lines 1-11

<sup>13</sup> EB-2014-0208 Union Letter dated September 22, 2014

<sup>14</sup> Exhibit A, Tab 1, pages 6-7

e) Union's Proposed Allocation - Different Perspectives

While there was allusions to the components that made up the 0.8PJ deficit in the evidence, it was only through cross-examination did the picture become clearer.<sup>15</sup> While Union is proposing to allocate the costs to those whose BGA position is lower than forecast at the end of March, some of that resulting 0.8PJ's stems from Union's under-forecasting of the Union determined balancing requirements for DP customers in February. While Union characterized this component as "quite low comparatively", in fact the volumetric amount attributed to the under-forecasting by Union for customers in February was almost half (0.34 out of the 0.8PJ).<sup>16</sup> With this insight, we would offer some implications of this fact:

- i) The practical effect of Union's proposal would be the requirement for compliant February checkpoint, customer determined DP customers who may have paid upwards of \$50/GJ to meet their contract then, unknowingly, did not balance their BGA at the end of March, would be penalized for Union's under-forecasting of balancing for Union determined customers.
- ii) In addition, a customer who had brought in the Union determined amount in February and subsequently consumed exactly the forecasted amount in March would still have to pay as a result of being short due to Union's forecast for them in February.
- iii) As previously mentioned, if a customer determined DP customer made an error in their forecast and their BGA balance came in below their threshold, they paid the R1 rate (\$78.72/GJ or less depending upon EB-2014-0154 determination). If Union was required to treat their aggregated 0.34 PJ under-forecast as they would a customer, the total penalty would be almost \$27 million at the \$78,72.
- iv) Instead of having to pay the penalty at the R1 penalty rate, Union is seeking to have unknowing DP customers pay for their error depending upon their end of March BGA position.

In our view, these outcomes are inequitable and should not be approved.

Prior to seeking relief, given our views expressed above, we believe it would be helpful to address briefly Union's sub-issue submissions in support of their proposal:

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<sup>15</sup> Transcript Volume 2, page 32, line 16 to page 36, line16

<sup>16</sup> Exhibit J2.2

- i) Union stated that there can be no serious question regarding the permissibility of recovery<sup>17</sup>. They support this claim with their recognition of the Board's power and jurisdiction in relation to load balancing costs.<sup>18</sup> We agree and respect that the Board has jurisdiction to determine the appropriate allocation of costs and disposition of balances but that does not translate to permission for Union's complete recovery.
- ii) Union argues that notice does not arise because it is not in the contract.<sup>19</sup> However, Union witnesses did acknowledge that the lack of notice was not ideal.<sup>20</sup> We would take it a step further in that Union's actions run counter to the business principles that underpinned the Checkpoint Balancing system that is the foundation for the DP balancing system<sup>21</sup>. Specifically, Union made purchase decisions on behalf of DP customers creating a retroactive charge thus inhibiting self-management. With notice, the DP customers would have had a choice to act or not before the end of March and transacted for a gas loan similar to Union<sup>22</sup>. From the analysis that Union undertook<sup>23</sup>, customer could have transacted for a gas loan for less than the Union proposed allocation eight days of the month. An inspection of the graph provided shows that most of those days were toward the end of March when a customer could know their position and potentially contract for the service.
- iii) Union dismissed the absence of contracting language as a red herring<sup>24</sup> in spite of the fact that all other balancing requirements are contained in the contract. However, in its own admission, this is the first time since Checkpoint Balancing has been in place that they are seeking costs for March. In practical terms, without language in the contract, customer have not had any understanding that after complying with the February checkpoint that should be actively managing their implicit March checkpoint.
- iv) Union emphasized that their proposal was about cost causality.  
***"It is those customers that drove the need for the purchases and, in Union's submission, it is appropriate that they bear the costs."***<sup>25</sup>

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<sup>17</sup> Transcript Volume 2, page 87, line 1-2

<sup>18</sup> Transcript Volume 2, page 87, line 5-9

<sup>19</sup> Transcript Volume 2, page 88, lines 1-2

<sup>20</sup> Transcript Volume 1, page 84, lines 7-15

<sup>21</sup> EB-2008-0106, Exhibit E2, Page 42 of 72 as found in the FRPO\_OGVG Compendium page 1

<sup>22</sup> Transcript Volume 2, page 45, line 25 to page 46, line 10

<sup>23</sup> Exhibit J2.4

<sup>24</sup> Transcript Volume 2, page 8, lines 10-13

<sup>25</sup> Transcript Volume 2, page 86, lines 17-20

If this additional cost ought to be allocated by pure cost causality, we would view Union as having more responsibility for creating this cost than unknowing DP customers.

In our respectful submission, as it pertains to the 0.8PJ, by Union's straying from its own business principles of the DP system and by not providing notice an opportunity to conceivably avoid the additional purchase was missed. Further, it is clear that Union's forecasting was responsible for almost half of the 0.8PJ. Those 0.34PJ have no causal link to the individual March balances for those customers who did meet their checkpoint in February. In our respectful submission, Union could be held responsible for the entire cost of the 0.8PJ. However, in the alternative, if the Board does not believe that is appropriate, we would respectfully encourage the Board to prorate the cost of 0.34PJ to Union and the remainder to DP customers. However, there is a third alternative for the Board's consideration in Section 4 Allocation of the Penalty Rate.

2) Appropriateness of Allocation of Incremental Price Impact of UFG to System Gas

Unaccounted for gas allocations are driven by activity. With the coldest winter in decades, activity was up and due to supply and demand, the prices were up. Historically, Union has allocated the price variances to system gas as per its application; Board Staff has recommended that these allocations ought to be made to both system gas and DP. We respect the principles behind Staff's submission and adopt their argument for this change with one important distinction.

With regards to the allocation to all customers, this becomes a delivery rate issue not a commodity rate issue. Therefore, the issue need not be part of the QRAM dispositions but more appropriately in a Deferral Account proceeding, the Deferral Account proceeding for 2014 balances.

Our reasoning is fairly simple.

- a) All of the costs were incurred in 2014<sup>26</sup>
- b) The drivers for the additional 2.1 PJ are all activity based
- c) These additional costs should be matched against the high activity of 2014

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<sup>26</sup> Exhibit B.CME.2

- d) With the expectation of high consumption, other deferral account balances and the prospect for Earnings Sharing will offset the cost reducing ratepayer impact in the proper period

We respectfully submit that this approach would be more appropriate than Union's proposal and would be consistent with Board Staff's position and allows an appropriate matching of costs to the potential benefits of a high activity season that drove those costs.

### 3) Inclusion of Storage in Average Use Calculations

We have been concerned about the appropriateness of excluding the impact storage on the higher average use adjustment. Storage is recovered in bundled rate classes through a variable rate, driven by consumption, meaning additional usage drives higher revenues. Depending upon the seasonality, it may or may not drive additional storage costs. While initially considering this issue and asking Union for the principles behind the exclusion, we reviewed EB-2007-0606 and found a surprising lack of evidentiary basis.

In trying to understand this issue better, we asked Union to define its concerns with inclusion. While we appreciate Union's undertaking response<sup>27</sup>, we believe that due to the ex-post facto determination of the average use versus the prospective allocation of storage for the use of bundled customers, the costs cannot be matched to the revenues. Said differently, Union sets aside storage for in-franchise customers putting those costs into the forward rates. To the extent that average use increases as a result of reviewing the previous year, Union did not allocate more storage for a year that is over. The best they can do, as they did last winter, is to bring in additional gas if the stored gas is not sufficient. This action does not bring with it an increase in the cost of storage nor carrying cost for additional inventory.

In our view, given the Board's limited information on this matter, we would respectfully submit that the current approach be maintained for the current IRM period and the issue be brought forward into the next rebasing proceeding.

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<sup>27</sup> Exhibit J2.1

#### 4) Allocations of Penalty Proceeds

It is clear from the utility applications for 2014, that this winter was unprecedented. From volumes to prices, those active in the gas market and those operating natural gas systems were "stress-tested" to show their ability handle extremes. Decisions had to be made and in many cases, historical practices had to be changed. In our view, this need to vary from past practices ought to be applied to the penalty rate.

Union's proposal calls the entire windfall estimated at over \$5 million dollars<sup>28</sup> to go to system gas because "they were the customers whose gas was used it was their gas that was used to manage the breaching customers' failure to meet their February checkpoint, and accordingly they should receive the benefit".<sup>29</sup> In our view, this assertion is not correct. While there may have been an accounting transaction that increased the breaching customers BGA while removing the cost of gas from the system supply pool, the system supply pool was not in a surplus position on their own. As Union pointed out many times, the storage balance is managed in aggregate. At Feb. 28th, Union had only 15% fill in storage instead of its targeted 20%<sup>30</sup>. Given that the total of all non-complying DP customers shortfalls were only 0.06PJ<sup>31</sup> and the rest of the DP customers were balance or in surplus, doing the math from the Union Exhibit K2.1, the system gas pool was at least 3.5PJ short. Therefore, there was no surplus to transfer because the system gas pool went through some extraordinary lengths to backstop the non-complying DP customers. Said differently, if the system gas pool was also held to a Checkpoint, the penalty would have been about \$275 million. As we have said before and will say again here for emphasis, these are accounting transactions. In our respectful submission, the Board has the discretion to create a more equitable outcome than Union has proposed.

Our third alternative, referred to previously, would have the penalty rate margins, over and above the cost of gas be used to, first, eliminate the proposed March balancing charge for DP of \$1.954M and then the remainder put into the spot gas variance account to be cleared against load balancing costs for all bundled customers. We respectfully submit that these penalties were inducements to make the DP system work for the benefit of all including the utility. If the Board does not view our proposed relief for the 0.8PJ charge as appropriate, we believe this proposal allows an equitable sharing of the proceeds from the inducement for DP customers with limited additional harm being brought to DP customers who, in our view, were not properly aware of cost consequences in the month of March.

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<sup>28</sup> Exhibit K2.6

<sup>29</sup> Transcript Volume 2, page 91, lines 25-28

<sup>30</sup> Exhibit K2.1

<sup>31</sup> EB-2014-0154 Exhibit B.BOMA.1, Attachment 1



Union has stated that the offset to the penalty is mechanically possible<sup>32</sup>. Notwithstanding Union's position that they may not see this as more equitable, we specifically request that they address the feasibility, in whatever fashion, of streaming the residual proceeds of the penalty rate (after eliminating the March imbalance costs) to load balancing for the benefit of bundled customers in their reply submissions.

All of which is respectfully submitted on behalf of FRPO and OGVG,

A handwritten signature in blue ink, appearing to read "Dwayne R. Quinn".

Dwayne R. Quinn  
Principal  
DR QUINN & ASSOCIATES LTD.

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<sup>32</sup> Transcript Volume 2, page 88, lines 2-5