Ontario Energy Board

Commission de l’énergie de l’Ontario

Ontario

EB-2008-0034

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 amending or varying the rate or rates charged to customers as of July 1, 2008.

BEFORE: Paul Vlahos
Presiding Member

Bill Rupert
Member

DECISION AND ORDER

The Proceeding

Union Gas Limited (“Union”) filed an application on March 4, 2008 with the Ontario Energy Board (the “Board”) seeking approval for final disposition and recovery of certain 2007 year-end deferral account balances including approval and disposition of the market transformation incentive and capital tax deferral amounts. The Board assigned docket number EB-2008-0034 to the application.

Union originally proposed that the resulting impacts from the disposition be implemented on April 1, 2008 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism (“QRAM”) process. Union subsequently revised the proposed timing to align with the July 1, 2008 QRAM.

The Board issued a Notice of Written Hearing and Procedural Order No. 1, dated March 31, 2008, which was served on a list of intervenors involved in certain related hearings. The Procedural Order set the dates for filing interrogatories and submissions on Union’s evidence and other procedural matters.

Interrogatories were submitted by the Industrial Gas Users Association ("IGUA"), London Property Management Association ("LPMA"), City of Timmins ("Timmins") and Board staff. Green Energy Coalition ("GEC") requested and was granted late intervenor status. IGUA, LPMA, Timmins and Board staff filed arguments and Union filed reply argument. The argument phase was completed on May 7, 2008.

The Board has summarized the record of the proceeding only to the extent necessary to provide context to its findings.

Deferral Accounts

Union has classified the deferral accounts into four groups:

a) Five Gas Supply accounts that are cleared through the QRAM process.
b) Two Gas Supply accounts that are not cleared quarterly in the QRAM process.
c) Five Storage and Transportation accounts.
d) Nine Other accounts.

The account balances, which are presented below, include interest at the applicable short-term interest rate approved by the Board in the EB-2006-0117 proceeding. The deferral accounts in category a) above are already being cleared through the QRAM process. The net balance of accounts in categories b), c), and d) above at December 31, 2007 is a $6.618 million credit payable to Union's ratepayers.

In addition to the above, Union sought to reflect in rates a Market Transformation allowance ($0.5 million debit) and the new capital tax rates ($1.813 million credit).

Therefore the total disposition amount is a $7.931 million credit. Union provided specifics regarding the disposition and allocation of this amount to its rate classes.

<u>Gas Supply Accounts – Cleared in the QRAM Process</u>
A credit balance (in parentheses) is money owed to ratepayers while a debit balance is money recoverable from ratepayers.

Under the Board-approved QRAM process, Union establishes reference prices for prospective recovery, or refund, of the projected balances (with interest) over the following 12-month period. Variances between the forecast and actual prospective recovery amounts for these five accounts are tracked and included in the amounts prospectively recovered in future QRAM proceedings.

The net balance of the five accounts has been cleared through four QRAM decisions in 2007. In this proceeding, Union is seeking the Board’s “final approval” with respect to these balances.

Account No.	**Name**	**Balance** (Dec 31, 2007, $ millions)
179-105	Northern and Eastern Purchased Gas Variance Account	$ (14.760)
179-100	TCPL Tolls and Fuel – Northern and Eastern Area	1.357
179-106	South Purchased Gas Variance Account	(98.140)
179-109	Inventory Revaluation Account	19.940
179-107	Spot Gas Variance Account	(1.716)
Total		**$ (93.319)**

Gas Supply Accounts – Not Cleared in the QRAM Process

The balances of the two accounts below are not cleared in the QRAM process. Union is requesting disposition of the total credit balance of $3.57 million.

Account No.	**Name**	**Balance** (Dec 31, 2007, $ millions)
179-89	Heating Value Deferral Account	$ (1.539)
179-108	Unabsorbed Demand Costs	(2.031)
Total		**$ (3.570)**

Storage and Transportation Accounts

Union defers the difference between actual net revenues from storage and transportation services and forecast revenues included in Union’s rates. The differences are currently shared on a 75/25 basis between ratepayers and Union. The net credit balance of $7.482 million represents the ratepayer portion in these accounts.

Account No.	Name	Balance (Dec 31, 2007, $ millions)
179-69	Transportation and Exchange Services Deferral Account	$ (4.589)
179-70	Short Term Storage and Balancing Services	(1.351)
179-72	Long Term Peak Storage Services Deferral Account	(2.196)
179-73	Other S&T Services Deferral Account	(0.146)
179-74	Other Direct Purchase Services Deferral Account	0.799
Total		**$ (7.482)**

Other Accounts

The nine other accounts have a net balance recoverable from ratepayers of $4.434 million.

Account No.	Name	Balance (Dec 31, 2007, $ millions)
179-26	Deferred Customer Rebates/Charges Account	$ -
179-75	Lost Revenue Adjustment Mechanism Deferral Account	(0.268)
179-102	Intra-period WACOG Changes Deferral Account	(0.779)
179-103	Unbundled Services Unauthorized Storage Overrun	-
179-111	Demand Side Management Variance Account	(0.863)
179-112	Gas Distribution Access Rule Costs	(0.557)
179-113	Late Payment Litigation Deferral Account	0.147
179-115	Shared Savings Mechanism Variance Account	6.754
179-117	Carbon Dioxide Offset Credits	-
Total		**$ 4.434**

Other Adjustments

In addition to the above named deferral accounts, Union claimed amounts for Market Transformation and Capital Tax Deferral.

Union claimed a $500,000 incentive for a Market Transformation program (drain water heater recovery program). The amount was linked to Union meeting or exceeding the performance goals as outlined by the Market Transformation "scorecard" filed and approved by the Board in Union's 2007-2009 DSM Plan.

In accordance with the Board's EB-2005-0520 Decision, enacted tax legislation changes that would result in tax rates different than those used to establish 2007 rates were subject to deferral account treatment for 2007. In 2007, enacted legislation reduced the capital tax rate from 0.285% to 0.225%. Consequently, Union recorded a credit of $1.813 million which represents the cost difference between the two capital tax rates.

The Issues

Intervenors and Board staff addressed issues in the following areas:

- 2007 Capital Cost Allowance Amendments
- Commodity Costs – Northern and Eastern Customers
- Interest on Deferral Account Balances
- Long Term Peak Storage Services Margin
- Gas Supply Related Deferral Accounts

The specific matters raised and the Board's findings are set out below.

<u>2007 Capital Cost Allowance Amendments</u>
LPMA argued that the approximately $1 million credit impact resulting from a change in capital cost allowance (CCA) rates, although not yet enacted, should be disposed of now rather than waiting for 2009 as suggested by Union.

In its reply submission, Union confirmed that it is industry practice to include the CCA amendments in tax filings for 2007 and that the Canada Revenue Agency would be accepting the CCA amendments even though they have not been enacted. Accordingly, Union agreed to dispose of the additional credit to customers of $1 million associated with amendments to CCA rates for 2007.

The Board accepts Union's amended request to dispose of the additional $1.0 million.

Commodity Costs – Northern and Eastern Customers
Timmins asserted that residential customers in the Northern and Eastern areas pay $50 million more per year in gas supply commodity charges than do residential customers in the South.

Union refuted Timmins' claim citing the April 2008 QRAM data (EB-2008-0033). Using data from its EB-2008-0033 filing[1], Union calculated the annual commodity and fuel cost for typical residential customers consuming 2,600 m^3 per year to be identical for Rate 01 Eastern Zone and Rate M1 Southern customers.

The Board accepts Union's calculations that, indeed, Timmins' claims are not substantiated.

Interest on Deferral Account Balances
Timmins noted that while Union earned an overall rate of return that exceeded 8% on its rate base that included inventory, Union was paying 4.59% or 5.14% in connection with the same inventory.

Union argued that the two matters were not related, indicating that it accrues interest on Board-approved deferral account balances in accordance with Board-approved accounting orders.

The Board agrees with Union. The interest rate applicable to balances in deferral accounts has been viewed by the Board to be a different matter than the overall cost of capital authorized by the Board for setting rates. The interest rates applicable to both the gas and electricity sectors are prescribed by the Board quarterly, pursuant to the EB-2006-0117 proceeding, and are posted on the Board's website. The interest rates used by Union are those prescribed by the Board for the applicable period.

Long-Term Peak Storage Services Margin
In Union rates cases for 2007 and earlier periods, the Board has approved a forecast of net revenue (total revenue less allocated costs) from long-term storage transactions for the period in question and has required Union to credit 90% of that forecast amount to customers. The Long-Term Peak Storage Services deferral account (No. 179-72) is intended to capture 75% of the difference between (i) Union's actual net revenue from

[1] EB-2008-0033 Pre-filed Evidence Tab 2, Schedule 4, Page 2, Line 24, Column (k)

long-term peak storage services, and (ii) the forecast revenue approved by the Board in the Union rates case.

In its application in this proceeding, Union indicated that actual net revenues for 2007 were $18.934 million and forecast revenues were $16.006 million. The December 31, 2007 deferral account balance of $2.196 million credit is 75% of the difference in those amounts.

In response to an interrogatory from Board staff, Union noted that in the EB-2005-0520 rate order, the Board approved net long-term storage revenues for 2007 of $21.405 million, not $16.006 million as shown in Union's application.

In it reply submission, Union stated that it decided not to calculate the deferral account balance using the Board-approved forecast of 2007 net revenues and actual long-term net revenues for that year. Union stated that it departed from that approach based on it's interpretation of the Board's November 2006 decision on the Natural Gas Electricity Interface Review ("NGEIR").[2] As Union interprets the NGEIR decision, account 179-72 is to be used only to track differences in actual and forecast net revenues in respect of storage contracts entered into before November 7, 2006. In support of that interpretation, Union noted that page 106 of the NGEIR decision states: "The Board finds there is no basis for retaining a requirement that Union share the margins on new long-term storage transactions, that is, long-term deals executed after the Board's forbearance decision." The actual ($18.934 million) and forecast ($16.006 million) net revenues that Union used to calculate the balance in account 179-72 relate only to long-term storage contracts entered into prior to the NGEIR decision.

Union also indicated that, in future years, contracts executed prior to the NGEIR decision will form the basis for calculating the balance in account 179-72.

The Board does not agree with Union's interpretation of the NGEIR decision. The sentence on page 106 of that decision that is quoted by Union in its reply submission is not the conclusion reached by the Board on how the transition provisions of that decision should be applied. The Board did not find that Union should separately track its margins on pre- and post-NGEIR decision transactions. This is quite clear from the following sentences on page 107 of the NGEIR decision:

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[2] EB-2005-0551 Decision with Reasons, November 7, 2006.

> The Board considered whether to require Union to record the margins on existing [pre-November 7, 2006] long-term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining term of those contracts. This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.
>
> The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of “proxy” for the conceptual approach described above. The phase-out of the sharing of margins on Union’s long-term storage transactions will, take place over four years. The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions. For 2007, forecast margins (on long-term and short-term transactions) now included in the determination of rates will remain unchanged. After 2007, Union’s share of long-term margins will be as follows: 2008 – 25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

The Board finds that the NGEIR decision does not require or permit Union to modify the method of calculating the balance in account 179-72 for 2007. The balance should equal 75% of the excess of (i) actual net revenues (on all long-term storage transactions, that is, transactions that occurred both before and after the publication of the NGEIR decision) for 2007, less (ii) the Board-approved forecast net revenue $21.405 million.

In the interest of not delaying the July 1, 2008 date of implementing the disposition of other accounts, the Board will accept for now disposing of the $2.196 million included in Union’s application. However, the Board directs Union to recalculate the 2007 balance in account 179-72 in accordance with the Board’s finding. The difference shall be carried forward for disposition at a later time.

Gas Supply Related Deferral Accounts

Under the QRAM process, the Board approves a gas supply charge for Union for the next three-month period. That process also provides for recovery, or refund, of the projected balances in the five gas supply deferral accounts, including interest, over the following 12-month period.

In its application in this proceeding, Union states: “Under the QRAM process, the actual year-end deferral account balances are subject to the Board’s final approval.”

Timmins disputed Union’s position that the examination of its gas purchase and sale activities in each of the 2007 QRAMs was qualitative and involved an assessment of prudence of that activity. Timmins submitted that in order to conduct a prudence review, the Board would require detailed evidence of Union’s gas purchase activities and transportation alternatives. It claimed that whenever it or FONOM (Federation of Northern Ontario Municipalities) sought to question Union’s gas purchase activities in past QRAM proceedings, it has faced opposition from Union, which has contended that such matters could not be addressed since the format of the QRAM was determined in RP-2003-0063 and that examination of QRAMs simply involved compliance with that format. Timmins submitted that based on the above understanding, QRAMs were indeed formulistic and mechanical once the basic format had been investigated and set.

Timmins noted that the question before the Board was whether to approve the final disposition of Union’s 2007 purchase gas cost deferral accounts. Timmins posed the question whether the Board should look at how those balances came to exist. It submitted that if the balances were approved, Union would be able to argue that since the dollar amounts had been approved, all of its gas buying and selling activities for 2007 were prudent and in the public interest.

In reply argument, Union argued that it filed four QRAMs in 2007 and all applications included evidence related to Union’s actual and forecasted cost of gas and the actual and forecasted gas purchases for a 24-month period. Union stated that it did not receive any submissions with respect to its past or forecasted gas purchases for 2007. Accordingly, Union requested the Board to approve the final disposition of its 2007 gas supply related deferral accounts.

The Board concludes it is not necessary to provide the “final approval” sought by Union with respect to the balances in the five gas supply deferral accounts listed in the first table on page 3. The Board issues decisions and orders on Union’s QRAM filings each quarter. Those orders, which include approval of the prospective disposition of deferral account balances, are issued as final orders (unless an interim status is required to accommodate other rate setting processes that are running in a parallel time frame). For example, the decision and order with respect to the period beginning October 1, 2007 (EB-2007-0720) stated: “The Board has considered the evidence and finds that it is appropriate to adjust Union's rates effective October 1, 2007 to reflect the projected changes in gas costs and the prospective recovery of the projected twelve-month balances of the gas supply deferral accounts for the period ending September 30, 2008."

Even if there were some purpose to be served by the Board granting the "final approval" that Union seeks, there has been no evidence filed in this proceeding that would permit this panel to reach any conclusion about the balances in those accounts.
The Board notes the concerns of Timmins. As Timmins indicates, the Board will undertake a review of the QRAM processes of both Union and Enbridge. However, the Notice of Proceeding issued on May 29, 2008 in this regard states that it is not intended that this proceeding will deal with transportation and gas supply contract issues. These issues, according to the Notice, are deferred to the establishment of guidelines through consultation at a later time and Timmins may wish to participate in that process.

Order and Cost Awards

The Board orders that the amounts Union seeks to dispose of in this proceeding, as adjusted or otherwise directed by the Board, shall be recovered from Union's ratepayers in accordance with the methodologies included in Union's application. The impacts which result from these adjustments shall be implemented on July 1, 2008 to align with other rate changes resulting from Union's QRAM application.

A decision regarding cost awards will be issued at a later date. Eligible parties shall submit theirs cost claims by June 18, 2008. Union may respond to such claims by June 25, 2008 and intervenors may respond to objections by July 4, 2008. The cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*.

ISSUED at Toronto, June 3, 2008.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary