



EB-2014-0375

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;

AND IN THE MATTER OF a Motion initiated by Natural Resource Gas Limited pursuant to the Ontario Energy Board's Rules of Practice and Procedure requesting that the Ontario Energy Board review its Decision and Order dated October 9, 2014 in its EB-2014-0154 proceeding.

Before: Cathy Spoel
Presiding Member

Marika Hare
Member

Ellen Fry
Member

DECISION AND ORDER ON MOTION

March 13, 2015

BACKGROUND

Natural Resource Gas Limited (NRG) filed a notice of motion dated December 10, 2014 with the Ontario Energy Board (the OEB) under Rule 40.01 of the OEB's Rules of Practice and Procedure (the Rules) requesting that the OEB review and vary its Decision and Order dated October 9, 2014 in its EB-2014-0154 proceeding as it relates to the penalty charge applicable to NRG.

NRG specifically requested the following:

- 1) An order setting aside the timeframe under Section 40.03 of the Rules for filing a motion to review and vary;
- 2) An order varying the OEB's October 9, 2014 Decision and Order in EB-2014-0154 directing that NRG pay only Union's average cost of natural gas (\$7.12 / GJ) for the 25,496 GJ of natural gas that NRG was short at the time of the Winter Checkpoint;
- 3) That the OEB combine its review of the Decision and Order in EB-2014-0154 with Phase 2 of the EB-2014-0053 proceeding (NRG's April 2014 QRAM) and the EB-2014-0361 proceeding (NRG's request for Interest Rate Relief / Stay); and
- 4) That the above noted issues all be heard by way of an oral hearing.

NRG relied upon Section 42.01 of the Rules for setting out the grounds for its motion to review and vary the EB-2014-0154 Decision and Order. Specifically, NRG sets the grounds for its motion as "new facts that have arisen" and "facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time." NRG, in its notice of motion, stated that it has discovered new evidence, facts and expert opinions that were not available and could not have been previously placed in evidence in the EB-2014-0154 proceeding, and could not have been discovered by reasonable diligence up to the time that the OEB rendered its Decision and Order on October 9, 2014.

In the Notice of Motion and Procedural Order No. 1 (the Notice), dated January 9, 2015, the OEB determined that, pursuant to Rule 43.01, it would hear submissions on the threshold issue of whether the motion should be heard on its merits. At the oral hearing the OEB heard argument from NRG, Union Gas Limited (Union) and OEB staff.

The following are the OEB's findings on the threshold question.

OEB FINDINGS

The motion is dismissed as the threshold test has not been met. However, as described in further detail below, the OEB will allow further evidence and submissions on a different issue on its own motion.

With respect to NRG's motion, NRG raised a number of facts that it believes were not available at the time of the EB-2014-0154 proceeding. NRG argued that these new facts could have impacted the OEB's decision had they been available at the time that the decision was rendered. Specifically, NRG characterized the facts outlined below as new evidence that could not have been placed on the record in the EB-2014-0154 proceeding:

NRG argued that it was unaware that Union itself was purchasing natural gas during the months of January and February 2014 at the same time that NRG was seeking to purchase natural gas. NRG argued that Union's own natural gas procurement activities impacted the price of natural gas in the market and impaired NRG's ability to meet its contractual obligations at a reasonable cost.

The OEB notes that the natural gas purchases made by Union over the 2014 winter were documented in Union's April 2014 Quarterly Rate Adjustment Mechanism (QRAM) application (EB-2014-0050). NRG was aware of Union's QRAM application, as it filed an intervention request in the proceeding. That application, and the information that it provided, was available to NRG in advance of the Decision and Order being issued in the EB-2014-0154 proceeding. The evidence in the QRAM proceeding indicated that it was necessary for Union, like many other market participants, to purchase incremental natural gas to meet the unusually high demands of its customers resulting from the weather conditions during the 2013-2014 winter. Accordingly, the OEB finds that this information cannot be characterized as a new fact. NRG ought to have been aware that Union was purchasing natural gas in the market during the 2014 winter and that this could have had an impact on the price of natural gas.

NRG also characterized a number of facts contained in the 2014 Natural Gas Market Review as new evidence.

NRG cited the fact that extreme winter weather conditions elevated natural gas demand through the U.S. and Ontario to record levels which led to a tight natural gas market and applied pressure on natural gas prices. NRG also referred to the fact that strong demand in the US Midwest impacted natural gas prices at Union's Dawn facility and caused higher than usual withdrawals from storage.

The OEB finds that this information was known by NRG at the time of the EB-2014-0154 proceeding. NRG in the EB-2014-0154 proceeding¹ accepted the fact that the 2014 winter was the coldest in Union's record for its Southern service area. It also referred to a Financial Times article that discussed the impact that the extreme cold weather conditions in the US had on the economy. This indicates that NRG was aware that the cold weather over the 2014 winter was a widespread phenomenon in the U.S. and Ontario.

The OEB considers that NRG ought to have been aware at that time that the sustained colder than normal weather (in both Canada and the US) would increase demand for natural gas and therefore apply upward pressure on natural gas prices, including at Union's Dawn facility. The OEB also considers that NRG should have been able to make the inference that increased demand for natural gas, both in Ontario and the US, would result in increased storage withdrawals (which would necessitate spot purchases later in the season as the weather continued to be colder than normal).

NRG also characterized as new evidence the fact that Union's checkpoint balancing requirements (for its direct purchase customers) coincided with ongoing strong demand in the market, which further exacerbated natural gas prices. The OEB considers that NRG must have been aware that there was significant demand for natural gas at the time of the winter checkpoint as NRG itself, as a direct purchase customer of Union, went to market to purchase natural gas immediately prior to the winter checkpoint and was unable to secure sufficient quantities to meet its own contractual obligations.

NRG also characterized as new evidence the fact that increased interruptible transport tolls, over the 2014 winter, limited the competitiveness of securing natural gas supply at Empress in Alberta. The OEB considers that this is evidence that could have been available to NRG at the time of the EB-2014-0154 proceeding. The OEB notes that TransCanada PipeLines' (TCPL) discretion to set its own interruptible tolls during the 2014 winter was approved by the National Energy Board (NEB) in a March 2013 decision.² Given the knowledge that TCPL had pricing discretion on its interruptible transportation services coupled with the fact that there was significant demand for natural gas over the 2014 winter, NRG ought to have been able to infer that TCPL was likely using its pricing discretion (and increasing its tolls in a tight gas market), which would apply pressure on natural gas prices at Dawn (as there were more limited economic supply options).

¹ Natural Resource Gas Limited, Submission, September 12, 2014, EB-2014-0154 at paragraphs 30 and 31.

² National Energy Board, Decision with Reasons, March 2013, RH-003-2011.

NRG also characterized some opinions expressed in the 2014 Natural Gas Market Review regarding gas supply planning as new evidence. These opinions are largely in relation to what natural gas prices may have been had the parameters underpinning the OEB-approved natural gas supply plans of the Ontario distributors been different (i.e. more base storage, increased firm transportation, and / or more conservative use of storage withdrawals). The OEB considers that the natural gas supply-related opinions cited are not relevant to this proceeding as they pertain to the implications of hypothetical gas supply planning parameters that were not in place over the 2014 winter.

The OEB agrees with Union and OEB staff that the information in the 2014 Natural Gas Market Review that NRG has characterized as new evidence is information that NRG either was, or ought to have been, aware of at the time that the EB-2014-0154 application was being heard, or is information that is not relevant to this proceeding.

For all of the above reasons, the OEB dismisses the motion at the threshold stage.

However, the OEB does have some concerns with the narrow question of whether the implications of NRG's status as a natural gas distributor regulated by the OEB was thoroughly addressed in the EB-2014-0154 proceeding. This issue was not submitted by NRG as grounds for the motion. However, the OEB will hear this issue on its own motion. The Board will combine this review with Phase 2 of NRG's QRAM proceeding (EB-2014-0053). Further procedural direction will follow.

COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. Filings related to cost awards shall be made in accordance with the schedule set out below.

THE OEB ORDERS THAT:

1. The Motion is dismissed.
2. Eligible intervenors shall file with the OEB and forward to NRG their respective cost claims within 14 days of the date of this Decision and Order.
3. NRG shall file with the OEB and forward to the intervenors any objections to the claimed costs of the intervenors within 21 days from the date of this Decision and Order.
4. If NRG objects to the intervenor costs, intervenors shall file with the OEB and forward to NRG any responses to any objections for cost claims within 28 days of the date of this Decision and Order.
5. NRG shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

All filings to the OEB must quote file number **EB-2014-0375**, be made electronically through the OEB's web portal at www.pes.ontarioenergyboard.ca/eservice in searchable / unrestricted PDF format. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Lawrie Gluck at Lawrie.Gluck@ontarioenergyboard.ca and Senior Legal Counsel, Michael Millar at Michael.Millar@ontarioenergyboard.ca.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

ADDRESS

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ISSUED at Toronto, March 13, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary