EB-2014-0053
EB-2014-0361
EB-2015-0044

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 Natural Resource Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board* Act, 1998, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission, and storage of gas as of April 1, 2014;

AND IN THE MATTER OF the Quarterly Rate Adjustment Mechanism;

AND IN THE MATTER OF an Application by Natural Resource Gas Limited, for an order or orders granting rate relief and/or a stay from the imposition of interest on any amounts due for payment to Union Gas Limited related to the application of certain penalty charges;

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 hearing on the Board's own motion.

Natural Resource Gas Limited Answers to Ontario Energy Board Staff Interrogatories in April 1, 2014 QRAM – Phase 2 made on April 8, 2015

April 22, 2015

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Board Staff Interrogatory #1

Ref: March 25, 2015 Affidavit at p. 7

Preamble:

NRG stated that it was diligent and watched market conditions / prices daily. NRG also stated that it purchased gas monthly without exception.

Question:

a) Please confirm that the monthly purchases referenced are the regular contracted purchases and do not reflect spot gas purchases made to meet incremental demand associated with colder than normal weather.

NRG Answer to Board Staff Interrogatory #1:

NRG does not agree that monthly purchases referenced above are only regular contracted purchases. They include spot gas purchases made from time to time. An explanation follows.

NRG has a complex set of gas purchasing obligations to meet on a regular basis. It must have regard to its obligations in Southern Bundled T Contract (the "NRG/Union Contract"). This contract requires NRG to meet its banked gas and checkpoint obligations. NRG has obligations to its direct marketers to leave room for them to change supply volumes within NRG's territory. These direct marketers have monthly input of natural gas into NRG's system.

In order to meet its gas supply obligations to Union, its own customers and provide pipeline room for direct marketers, NRG purchases gas from three different sources. The first are purchases of natural gas in strips. These strips could be for one year or for multiple years. The second is purchases on the spot market for same day, next day or next month delivery. The third are in-franchise transfers. These gas supply purchases vary depending upon volume usage.

As a result, NRG regularly purchases through the means set out above, including spot gas purchases, to meet its regular obligations which are not associated with colder than normal weather.

Board Staff Interrogatory #2

Ref: March 25, 2015 Affidavit at p. 11

Preamble:

NRG stated that Union Gas Limited (Union) has an obligation to protect NRG's ratepayers because Union must look through the corporate structure of NRG and determine what is in the best interest of NRG's customers. NRG stated that Union and NRG have a joint responsibility in protecting NRG's customers.

Questions:

a) Please confirm that NRG is a direct purchase customer of Union.

b) Please provide a legal or broader regulatory basis for NRG's claim that Union has an obligation to protect NRG's ratepayers.

c) Does NRG accept that it has an obligation to protect its own ratepayers?

NRG Answer to Board Staff Interrogatory #2:

(a) NRG is a direct purchase customer of Union, but with a difference. It is a direct purchaser of natural gas for all of its system customers. As such, it receives no profits for this service and should suffer no loss in executing its obligation to purchase natural gas. In this regard, it has the same obligations as Union Gas itself.

(b) The basis for NRG's claim that Union has an obligation to act in the public interest when assessing a penalty amount has been admitted by Union when it applied on its own motion to reduce the penalty rate from the $78.73 per GJ (being the highest spot rate for natural gas in February 2014 and prescribed by Union as the penalty rate for the NRG/Union Contract) to $50.50 per GJ. Union made its application based upon two propositions: the first was the unique and harsh winter conditions extant in January and February 2014; the second was Union's concern about the financial stability of companies that might have to pay the high penalty rate.

In making this application, Union was recognizing the public interest. In so doing, it knew that it was a utility with public obligations under the *Ontario Energy Board Act*. It knew that the penalty rate drawn from the formula was harsh and unjustified in the circumstances and sought relief from the Board. NRG agreed with this public obligation on Union to apply to reduce the penalty rate. The Board agreed that Union was exercising a public interest mandate and itself exercised its mandate in the public interest and granted Union's request for a lower penalty rate. All of this was done in the public interest. The only issue was the amount of the penalty rate. NRG was the only entity to seek a rate which was based on Union's cost. The rationale for this is that NRG, unlike any other Union customer, has no opportunity to make a profit on its gas purchases. Unlike any other Union customer, NRG has public obligations itself to protect the purchasing public in its territory from unnecessarily high natural gas costs. The penalty rate amount above Union's actual cost of gas is a pure windfall to Union's customers. The Board has a statutory obligation to protect all consumers of natural gas in the province in the public interest. It is not in the public interest to benefit one set of customers in the province at the expense of another set of customers to provide windfall gains to the second group at the expense of the first. It is in the public interest to protect all customers in the province, including NRG's customers. In this case, the public interest is best served by charging a penalty rate based on Union's actual cost of gas, namely $7.12 per GJ.

Union recognized the legal and philosophical basis in rate regulation and the law in seeking to amend the penalty rate in the exceptional circumstances extant in the winter of 2013/2014. The Board concurred with the legal and philosophical basis for Union's application and amended the penalty rate accordingly. NRG says that its customers should be protected on the same legal and philosophical basis that Union and the Board have already recognized. This is accomplished by reducing the cost of gas for 25,496 GJ of gas to NRG, the only other public utility in the Union franchise territory, to Union's actual cost of natural gas, namely $7.12 per GJ.

Through its own application to the Board and its success achieved in the application, Union therefore admits an obligation to protect its own direct purchase customers from the exceptional and unprecedentedly high penalty rate. Union did so because of the circumstances extant in the winter of 2013/2014 driving the penalty rate of $78.73 per GJ, a rate never previously experienced in Ontario. NRG is one of Union's customers. To Union's knowledge, NRG has the same obligations to protect its customers from windfall rates in the same manner as Union. In these circumstances, NRG's own customers are deserving of protection from Union's windfall gains. This obligation falls on NRG and Union.

The legal and broader regulatory basis for a penalty rate based on Union's actual cost of gas is bound up with the obligation to protect the public. This obligation includes Union which is required to prevent gratuitous charges leading to windfall gains in favour of its own customers, including NRG and its customers. The direct precedent for this application is therefore Union's own application and the Board's earlier decision regarding the reduced penalty rate from $78.73 per GJ to $50.50 per GJ.

(c) NRG has an obligation to protect its own ratepayers. That is why it asked that the Union penalty rate for NRG be reduced to Union's own cost of gas in the unusual circumstances extant in January and February 2014. That obligation continues in this application to request that the Board treat NRG differently in the penalty rate application from all other customers of Union. That is why NRG continues its principled position in favour of its own customers to obtain the lowest price possible for natural gas.

Board Staff Interrogatory #3

Ref: March 25, 2015 Affidavit at pp. 3 & 9

Preamble:

NRG stated that if it is required to pay $50.50 / GJ it will be borne either by NRG's customers or its shareholder. Assuming that the cost is borne by NRG's customers, those customers will pay $1,828,316 over Union's costs.

NRG also calculated that the difference between the Board approved penalty rate ($50.50 / GJ) and Union's average cost of gas ($7.12 / GJ) is $45.38, which results in a total cost of $1,157,008 (for 25,496 GJ of gas).

Question:

a) Please provide detailed explanations supporting the above calculations. Please correct for any errors in the calculations.

NRG Answer to Board Staff Interrogatory #3:

The following are two corrections to the Affidavit of Brian Lippold filed on behalf of NRG.

The first correction is found in paragraph 14. In the second last sentence, the words "… over and above Union's costs …" should be removed.

The second correction is in paragraph 56. The last sentence should now read as follows: "The delta between Union's average cost of gas at $7.12 per GJ and the Board ordered penalty rate of $50.50 per GJ is therefore $43.38 on 25,496 GJ totalling $1,106,016.40.".

Board Staff Interrogatory #4

Ref: March 25, 2015 Affidavit at p. 13

Preamble:

NRG stated that it should be treated differently than an industrial customer when the Board fixes a penalty rate for NRG. NRG requested that the Board set the penalty rate at Union's cost of gas ($7.12 / GJ). NRG stated that the Board should weigh the analysis in favour of NRG's customers as opposed to enforcing the penalty aspect of the contract due to the extreme weather conditions experienced over the 2013 / 2014 winter.

Questions:

a) Please explain how NRG's proposal to pay only Union's cost of gas ($7.12 / GJ) is fair to Union's other direct purchase customers (both compliant and non-compliant customers) who paid more than $7.12 / GJ for gas associated with their winter checkpoint obligations.

b) Please advise whether NRG is suggesting that it not be applied checkpoint balancing penalties on a going forward basis?

NRG Answer to Board Staff Interrogatory #4:

(a) NRG has explained why the penalty rate should be reduced to Union's cost of gas based on the application of the public interest mandate of Union, the Board and NRG. No other Union direct purchase customer has a claim to NRG's situation as a supplier itself to consumers who are directly protected under the *Ontario Energy Board Act*. This unique position eliminates the applicability of any notion of fairness. There is simply no comparison between NRG's customers and the interests of other direct purchase customers on Union's system that would permit the word "fair" to apply to the difference in the public interest position in this application.

In any event, no other Union direct purchaser customers have an obligation to reduce gas costs in the public interest. Additionally, no other direct purchase customer brought an application to re-open the hearing or brought an appeal to the Divisional Court. The notion of comparing the position of NRG with other Union direct purchase customers in the present circumstances is therefore irrelevant.

As far as the evidence is concerned, NRG is the only customer that sought relief from Union and from the Board during the crisis. NRG sought this relief as part of its obligations to its own customers. NRG received no relief for its own customers in answer to these requests. If it is necessary to compare the position of NRG with Union's other direct purchase customers, this request eliminates any unfairness that might be said to exist.

(b) NRG's central claim for relief in this case is based upon its obligation to protect its customers in the unique and unprecedented weather conditions extant in the winter of 2013/2014. NRG is not suggesting any change in the checkpoint balancing penalties going forward, but by making this submission it does not agree that it will not apply to the Board for relief in order to protect its customers if unique circumstances arise in the future, or if Union seeks to change the checkpoint balancing penalties on a going forward basis.

Subject to these comments, NRG is not suggesting in this application that checkpoint balancing penalties not apply to it on a going forward basis.

Board Staff Interrogatory #5

Preamble:

Assuming the Board approves the recovery of the penalty amount from NRG's ratepayers, please answer the following questions.

Questions:

a) Would the amount be entirely allocated to system supply customers? Or both system supply and direct purchase customers? Please provide the rationale for the proposed cost allocation methodology.

b) Please provide the estimated bill impacts by rate class.

NRG Answer to Board Staff Interrogatory #5:

(a) The amount would be allocated to system supply customers. The gas purchases by NRG for which there were contractual obligations to meet winter checkpoint amounts at the end of February 2014 were obligations for system supply customers. The penalty costs are for natural gas and are borne by system supply customers. NRG makes no gain and should suffer no loss for these purchases or for these contractual obligations, subject to the decision in this hearing. The costs are related to the purchase of the gas commodity and as such are only recoverable from system gas customers that continue to purchase their gas from NRG.

(b) In the EB-2014-0053 Decision and Interim Order dated April, 2014, the Board approved, on an interim basis, a gas commodity charge that reflected a cost of $27.276 per GJ for the 25,496 GJ in NRG's QRAM Application that NRG was short at the time of its Winter Checkpoint with Union Gas. The $27.276 reflected the average price NRG paid for the incremental gas that it was able to purchase in February, 2014.

The Board approved a penalty rate of $50.50 per GJ in the EB-2014-0154 Decision and Order dated October 9, 2014.

NRG has estimated the bill impacts by rate class under the assumption that the Board approves the recovery of the penalty amount from NRG's ratepayers under three scenarios.

The first of these scenarios reflect the increase cost between the approved penalty rate of $50.50 per GJ and the cost included in NRG's interim rates of $27.276 GJ. This additional cost is $592,119.10 (calculated as ($50.50/GJ - $27.276/GJ) x 25,496 GJ).

The second scenario reflects the increase cost between the approved penalty of $50.50 per GJ and the cost incurred by Union Gas to purchase the gas of $7.12 per GJ. This additional cost is $1,106,016.48 (calculated as ($50.50/GJ - $7.12/GJ) x 25,496 GJ). As noted above, a portion of this amount has already been included in NRG's interim rates and recovered from system gas customers beginning April 1, 2014.

NRG has calculated the rate impacts by rate class based on the EB-2014-0274 Rate Order dated April 2, 2015 for distribution rates and on the EB-2015-0046 Decision and Interim Rate Order dated March 20, 2015 for gas supply rates. NRG has excluded all rate riders in the rate impact calculations.

The impacts are based on the addition of the costs in both scenarios to the PGCVA (Purchased Gas Commodity Variance Account) and reflect a recovery over a prospective 12 month period based on changes to the required PGCVA reference price and the associated change in the GPRA (Gas Purchase Rebalancing Account) rate. Table 1 below shows the impact of the first scenario, which is the recovery of the incremental $592,119.10 over and above the amount already recovered, while Table 2 shows the impact of the second scenario, which is the recovery of the $1,106,016.48, which includes amounts already recovered through the interim rates from system gas customers.

The tables show the impact on an average customer using system gas in Rates 1 through 5. There is no impact on direct purchase customers in any of these rate classes. Since Rate 6 has no system gas customers, there is no impact on the Rate 6 customer.

Table 1

Total Annual Bill Impact by Rate Class - $592,119.10

Rate	$	%
1 - Res	54.27	5.9%
1 - Com	269.54	7.5%
1 - Ind	384.57	7.8%
2	186.05	7.3%
3	14,822.66	9.2%
4	533.42	7.8%
5	5116.19	9.1%

Table 2

Total Annual Bill Impact by Rate Class - $1,106,016.48

Rate	$	%
1 - Res	101.48	11.1%
1 - Com	504.03	13.9%
1 - Ind	719.13	14.6%
2	347.90	13.7%
3	27,717.85	17.3%
4	997.48	14.5%
5	9,567.09	17.0%

The third scenario reflects a cost of gas to NRG based only $7.12 per GJ for the entire $25,496 GJ which Union supplied to NRG at the end of February 2014 for checkpoint balancing. If the Board does not approve any recovery of the penalty rate (above Union's own cost) from the NRG system consumers, including the $27.276 per GJ already included in interim rates, but fixes the penalty rate at Union's costs of $7.12 per GJ and thereafter allows a recovery to the NRG system consumer at the cost of $7.12 per GJ, there would be a refund applied to the PGCVA in the amount of $513,897.38 (calculated as (($27.276/GJ - $7.12/GJ) x 25,496 GJ).

Table 3

Total Annual Bill Impact by Rate Class - ($513,897.38)

Rate	$	%
1 - Res	-50.27	-5.5%
1 - Com	-249.70	-6.9%
1 - Ind	-356.26	-7.2%
2	-172.35	-6.8%
3	-13,731.60	-8.5%
4	-494.16	-7.2%
5	-4,739.60	-8.4%