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May 13, 2016

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON  
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DELIVERED BY EMAIL

Dear Ms. Walli,

**RE: Board File No. EB-2015-0276 Union Gas Limited 2014 DSM Deferral and  
Variance Accounts**

Please find enclosed the submissions of the Ontario Greenhouse Vegetable Growers in the above noted proceeding.

Yours very truly,



Michael R. Buonaguro

CC: All Parties

**Board File No. EB-2015-0276**

**Union Gas Limited 2014 DSM Deferral and Variance Accounts**

**May 13, 2015**

**INTRODUCTION AND SUMMARY**

These are the submissions of the Ontario Greenhouse Vegetable Growers (OGVG) with respect to the application by Union Gas Limited (Union) for approval and clearance of its 2014 DSM Deferral and Variance Accounts.

In summary, OGVG makes the following submissions with respect to the application:

- a) OGVG notes that Union has been using and continues to use the same Free Ridership rate of 54% for its commercial and industrial custom programs since 2009, and asks that the Board confirm the importance of the completion of the Free Ridership Study agreed to by Union in EB-2014-0273 and stipulate, at a minimum, that the results of that study apply to the 2015 results when those results are put forward for clearance;
- b) OGVG asks the Board to confirm that contract customers have the option as of right (as opposed to at the discretion of Union) to pay DSM amounts owing to Union as a result of the clearance of DSM related accounts over time if they so desire;
- c) OGVG notes that participation by contract class customers in Union DSM programs over the past several years has included nearly all (if not all) members of those classes. Accordingly OGVG asks that Union explain how continued significant spending in these classes remains warranted;

- d) OGVG is concerned that Union may be double recovering amounts from contract classes as a result of accounting for reduced volumes resulting from DSM twice, first as charges against individual customers as a result of falling below their contracted for minimum annual volumes (MAVs), and then again through the Lost Revenue Adjustment Mechanism (LRAM). Accordingly OGVG asks that Union be required to review any MAV related charges against individual customers in 2014 and refund to those customers MAV charges that are also being claimed in the 2014 LRAM account.

## **FREE RIDERSHIP FOR COMMERCIAL AND INDUSTRIAL CUSTOM PROGRAMS**

OGVG notes that Union has been using the same free ridership rate of 54% since 2009, that rate having been determined pursuant to based on the Custom Projects Attribution study performed by Summit Blue Consulting in 2008.<sup>1</sup>

Union notes in its application that in the context of EB-2014-0273 the Board agreed that an updated custom free ridership study should be completed as soon as possible to support free ridership estimates in the future.<sup>2</sup>

Such a Study has yet to be completed; Union notes that it expects results from such a study to be available in mid 2016.<sup>3</sup>

In OGVG's respectful submission the concerns raised by parties in the context of EB-2014-0273 with respect to the static Free Ridership Rate for custom projects remain at issue in this case.<sup>4</sup> In that application Board Staff recommended that a Free Ridership Report be completed and applied to the 2013 results, a recommendation that the Board rejected. In OGVG's view it would be appropriate for the Board to stipulate that the study referred to by Union as being available in mid-2016 be applied, at a minimum, to the 2015 results.

## **PAYMENT TERMS FOR DSM CLEARANCE AMOUNTS-CONTRACT CLASSES**

As part of its application Union confirms that for in-franchise contract rate classes it is proposing to dispose of the net 2014 DSM-related deferral and variance account balances as a one-time adjustment with the first available QRAM after Board approval of the clearance of the accounts.<sup>5</sup>

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<sup>1</sup> Exhibit A, Tab 2, Appendix A, Page 5

<sup>2</sup> Exhibit A, Tab 2, page 11

<sup>3</sup> Exhibit A, Tab 2, page 11

<sup>4</sup> EB-2014-0273 Decision dated June 4, 2015.

<sup>5</sup> Exhibit A, Tab 4 pages 3-6 setting out the Board's summary of the issues that were raised.

OGVG, through the interrogatory process, asked Union to confirm that in-franchise contract class customers have the option of paying the approved one-time adjustment over time, and as part of that request asked Union to confirm how payment terms were determined.

Union response was that:

In-franchise contract class customer's one-time adjustment invoice is payable when the invoice is due and late payment charges will apply for unpaid amounts. Customers may contact their Account Manager to propose alternative payment arrangements depending on their circumstances on a case-by-case basis.<sup>6</sup>

Accordingly it appears to OGVG that Union's initial position is that the invoiced amount is payable immediately, and that payment over time is at the discretion of Union when approached by customers that request accommodation.

In OGVG's respectful submission, while it expects that Union rarely if ever rejects requests from customers to paying such amounts over time, the ability to pay such amounts over time should be at the option of the customer rather than left to the discretion of Union. OGVG notes that the claimed one-time adjustments in this proceeding range as high as \$272,405;<sup>7</sup> depending on the nature of the customer such a one time adjustment may be easily paid all at once, but it may also be the case that it is not so easily done and that payment terms over time are a necessity, particularly for customers operating at a narrow profitability margin over the cost of their business including energy costs. OGVG notes that the fact that a contract customer may use very large amounts of gas it does not necessarily mean that large adjustments such as the ones requested by Union in this proceeding are easily absorbed.

### **CONCERN OVER POSSIBLE SATURATION OF DSM IN CONTRACT CLASSES**

Exhibit C.OGVG.2 Attachment 1 page 2 suggests that there Union has 449 contract customers.

Exhibit C.OGVG.2 Attachment 2 suggests that a total of 531 contract customers have participated in Union Custom Projects (and/or Custom Project Studies) in the period between 2012 and 2014.

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<sup>6</sup> Exhibit C.OGVG.2 b)

<sup>7</sup> Exhibit C.OGVG.2 attachment 2

OGVG expects that the two numbers are reconcilable as a result of many different factors (i.e. some customers may have first engaged in a Custom Project Study and then a Custom Project). However OGVG remains concerned that projected DSM spending in contract rate classes remains very high in the near future despite it appearing that most if not all contract rate customers have already participated to one extent or another in Custom Projects, such that the market for such programs is or will soon be fully served. This concern is exasperated by Union's apparent position that it does not account for participation levels when determining the appropriate budget allocation across rate classes:

Union does not redirect budget to individual rate classes based on participation levels within the rate class. Union does not set participation restriction for a rate class as all customers have equal access to a variety of Union's DSM offerings. Union may restrict spending within a rate class due to budget rules as set out in the 2012-2014 Multi-year DSM Plan proceeding (EB-2011-0327) Settlement Agreement.<sup>8</sup>

Accordingly OGVG would respectfully ask that Union, if it can, explain in its reply argument why there is no concern with respect to the fact that it appears that the contract class customers have already all or nearly all participated in DSM Custom Projects such that continuing high levels of DSM spending in those classes remains feasible.

### **POSSIBLE DOUBLE RECOVERY OF DSM AMOUNTS THROUGH BOTH MAV RELATED CHARGES AND AS LRAM AMOUNTS**

At Exhibit C.OGVG.3 Attachment 2 Union confirms that:

- a) 34 contract customers incurred a total of \$625,426 in MAV charges in 2014, and
- b) of those 34 customers, 28 engaged in DSM activities at least once in the period from 2012-2014.

At the same time, Union's total LRAM claim for 2014 from contract classes is \$847,857.

The fact that of the 34 customers that incurred MAV charges in 2014 28 of them engaged in DSM during 2014 or in the two years immediately prior to 2014 raises the concern that Union may be recovering the revenue impact from its DSM activity twice; first as an MAV charge, then again as an LRAM amount.

MAV charges are incurred when a contract customer does not consume enough natural gas to meet its contracted for MAV in the year; the charge essentially recovers revenue from the specific customer to make up for the unused volume.

LRAM amounts also relate to unused volumes, and are also related to specific quantities "not" consumed by specific customers. The differences between MAV charges and LRAM amounts are that:

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<sup>8</sup> Exhibit C.OGVG.2 a) iv)

- a) LRAM amounts are specifically related to DSM activities and results, whereas MAV charges are not necessarily tied to any particular cause for the unused volumes, and
- b) LRAM amounts are recovered from the entire class they relate to, whereas MAV charges are paid for directly by the customer who exhibits the reduced volume relative to their contracted for MAV as an MAV charge.

OGVG's concern is that contract customers may be entering into contracts that include MAVs for one or more years including, in this case, 2014, and then engage in DSM activities that materially affect their 2014 consumption so that they fall below their contracted MAV. If this happens, Union will recover MAV charges from the specific customer in 2014, and then claim revenue related to that same unused volume as a 2014 LRAM amount. In OGVG's view this would represent an unacceptable double recovery by Union.

Union confirmed that it does not consider the impact of MAV charges in the calculation of its LRAM balance.<sup>9</sup>

In OGVG's submission Union should be required to identify any contract customers that have a 2014 MAV requirement that was established prior to engaging in DSM activity and then incurred a 2014 MAV charge. In OGVG's view, unless those customers were given the opportunity to amend their 2014 MAV requirement subsequent to engaging in DSM, it is inappropriate to contract with those customers for a specific MAV, then engage those customers in DSM activities that drive their volumes below their MAV, then charge those customers for falling below their MAV, and then claim an LRAM amount for those same lost volumes. Where these circumstances have occurred it is OGVG's submission that the lost revenues are most appropriately recovered through the LRAM mechanism, and that any MAV charges that have been paid should be returned the customer; additionally the customers' MAV should be amended to reflect the impact of their DSM activity going forward.

To be clear, OGVG's proposal keeps Union whole; all DSM related volume reductions continue to be fully recoverable through the LRAM. The only amounts refunded to customers are MAV charges, and only to the extent that those customers have amounts contributing to the LRAM claim; if the volumes contributing to the MAV charges are in excess of the volumes contributing to the LRAM claim then the difference would continue to be recoverable as an MAV charge.

It may be that a customer established their MAV for 2014 after they engaged in DSM. If so then presumably their MAV reflects their forecast consumption after accounting for the impact of their DSM activity and any MAV charges would be connected to causes other than DSM impacts; if so such MAV charges would remain fully recoverable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13<sup>th</sup> DAY OF MAY, 2016**

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<sup>9</sup> Exhibit C.OGVG.3 c)