

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by Union Gas Limited, for an order or orders clearing certain non-commodity related deferral accounts.

**ARGUMENT-IN-CHIEF OF
UNION GAS LIMITED**

April 20, 2018

A. Overview

1. In this application, Union Gas Limited requests an order or orders of the Ontario Energy Board approving the final audit adjusted balances for all of its 2015 DSM deferral accounts, in the amounts of \$0.617 million for the Lost Revenue Adjustment Mechanism, (\$0.195) million for the Demand Side Management Variance Account, and \$7.472 million for the Demand Side Management Incentive Deferral Account, for a net balance of \$7.895 million for collection from ratepayers, and an order or orders of the Board for final disposition of those balances.¹

2. The audit adjusted balances reflect the final audited DSM amounts, adjusted to remove the incomplete and ongoing commercial and industrial Custom Project Net to Gross study (the “NTG Study”) results and instead applying the 2014 audited 46% Net to Gross (“NTG”) adjustment factor.

3. In this Argument-in-Chief, Union first explains that the application of the NTG Study to its 2015 DSM results is inappropriate. It then explains why its proposed allocation methodology is reasonable and appropriate. Finally, it sets out substantial concerns regarding the Evaluation, Measurement and Verification (“EM&V”) process which further support not applying the NTG

¹ Exhibit A, Tab 3, Appendix A, Schedule 1.

Study to adjust Union's 2015 DSM results. With the exception of the NTG Study, Union accepts all other adjustments put forward by the Evaluation Contractor ("EC").

B. The Application of the NTG Study to 2015 Results Is Inappropriate

4. In its Final Verification Report, the EC applied the adjustment factors set out in the incomplete and ongoing NTG Study to Union's 2015 DSM results. Applying the NTG Study's adjustment factors to Union's 2015 results: (a) is inconsistent with the OEB's prior decisions; (b) inappropriately calculates 2015 DSM program results using different NTG factors than those used to calculate the OEB-approved 2015 targets; (c) is inconsistent with the scope of the NTG Study Request for Proposal; and (d) inappropriately applies a deemed Spillover value without Evaluation Advisory Committee ("EAC") Consultation and fails to apply Secondary Attribution.²

5. Instead of using these results, Union proposes to dispose of the final audited DSM amounts included in the EC's Final Verification Report, adjusted to remove the incomplete and ongoing NTG Study results and instead use the same 46% custom program NTG adjustment factor used to create the OEB-approved program targets in Union's 2015-2020 DSM Plan.³

Background to the NTG Study results

6. The OEB established, as part of the Filing Guidelines for the Demand Side Management Framework for Natural Gas Distributors (2015-2020),⁴ that the OEB should take on coordination of the EM&V process effective the beginning of the 2015 DSM program year. The roles of the OEB acting as coordinator, of the gas utilities (Union and Enbridge Gas Distribution Inc.), and of stakeholders were subsequently described in a series of documents released by the OEB over the course of 2015 and 2016. As part of the Report of the Board on the DSM Framework, the OEB noted that the EM&V process would be collaborative with the utilities and that it would seek their expert opinion.⁵ In a letter dated August 21, 2015, the OEB further defined the roles of OEB Staff and the gas utilities and explained the formation and role of the EAC. Membership of

² Exhibit A, Tab 2, pp. 7-15.

³ Exhibit A, Tab 1, p. 2, Table 1; Exhibit A, Tab 2, p. 11.

⁴ EB-2014-0134, Filing Guidelines to the Demand Side Management Framework for Natural Gas Distributors (2015-2020), p. 15.

⁵ EB-2014-0134, Report of the Board, DSM Framework for Natural Gas Distributors (2015-2020), Section 7.2, p.30.

the EAC was to include representatives of each gas utility, and acting members were expected to provide input and advice to the OEB on the evaluation and audit of DSM results.⁶ In a letter dated March 4, 2016, the OEB clarified the transition of DSM evaluation activities including the completion of the NTG Study.⁷

7. In April 2016, OEB Staff selected the EC to audit Union's 2015 portfolio of DSM programs without collaboration with Union or other EAC members.⁸ The EC's Final 2015 Natural Gas Demand Side Management Annual Verification Report ("Final Verification Report") was released to the utilities on October 16, 2017.⁹ This represents an unacceptable 22-month lag after the close of the utilities' 2015 program year. The Final Verification Report was subsequently reissued on December 20, 2017 with additional corrections. Further, OEB Staff directed the EC to apply the results of the incomplete and ongoing NTG Study retroactively to the 2015 DSM program year within its Final Verification Report.¹⁰

The application of the NTG Study to 2015 results is inconsistent with the OEB's prior decisions

8. In its Revised Decision and Order on Union's and EGD's 2015-2020 DSM Plans dated February 24, 2016 (the "Revised 2015-2020 DSM Decision"), the OEB confirmed that "input assumptions and net-to-gross adjustment factors are finalized for a given year based on the previous year's final DSM audit."¹¹ This means that input assumptions and NTG adjustment factors for the 2015 year should have been based on the 2014 final DSM audit, as Union has submitted, and not on the 2015 DSM audit results.

9. The application of the 2014 NTG factors to the 2015 program year is consistent with the Board's statement, in its Decision and Order on Union's and EGD's 2015-2020 DSM Plans dated January 20, 2016 (the "2015-2020 DSM Decision"), that free rider rates for Union's

⁶ EB-2015-0245 OEB Letter, 2015-2020 DSM Evaluation Process of Program Results, August 21, 2015, p.4.

⁷ EB-2015-0245 OEB Letter. 2015-2020 Transition of Technical Evaluation Committee Activities to the OEB, March 4, 2016.

⁸ Exhibit A, Tab 2, p. 21.

⁹ Exhibit B, Tab 2.

¹⁰ Exhibit A, Tab 2, pp. 18-21.

¹¹ EB-2015-0029 Revised Decision and Order, February 24 2016, p. 3.

Commercial and Industrial custom program would be updated in 2016 based on the results of the NTG Study and the annual evaluation process, and applied beginning in 2017.¹²

10. This approach is consistent with the 2015-2020 DSM Framework, which recognized that 2015 would be a transition year. The Board stated that “[t]he gas utilities should roll-forward their 2014 DSM plans, including all programs and parameters (i.e., budget, targets, incentive structure) into 2015,” because this would “allow the utilities to fully consider the new DSM framework and appropriately develop their DSM portfolio and suite of programs that will make up their new multi-year plans.”¹³

11. Further, this approach is consistent with Union’s submissions in the 2015-2020 DSM Plans proceeding. Union submitted that:¹⁴

- (1) 81% of U.S jurisdictions apply updated input assumptions prospectively, including leading jurisdictions such as California, Vermont, Rhode Island, Connecticut and New York;
- (2) it expected that targets and achievements would be based on the same input assumptions, which would ensure that targets would be neither easier nor harder to achieve as a result of changes to input assumptions resulting from these studies; and
- (3) it expected that updates to input assumptions would be applied to targets prospectively, which would ensure an accurate measurement of achievement vs. target.

The application of the NTG Study to 2015 DSM program results causes misalignment between program results and targets

12. It would also be inappropriate to apply a retroactive adjustment to program results for the purpose of determining the shareholder incentive, given that targets are determined in advance and applied on a prospective basis. Applying adjustments to one component of the equation

¹² EB-2015-0029 Decision and Order, January 20, 2016, p. 21.

¹³ EB-2014-0134, DSM Framework, p. 37.

¹⁴ EB-2015-0029, Interrogatory Responses, Exhibit B.T2.Union.GEC.31, p.1.

would create an “apples to oranges” comparison by determining the actual results using factors that are different than those used in setting the target.

13. In the 2015-2020 DSM Decision, the Board stated “to calculate next year’s targets, the OEB directs the utilities to use the new, updated input assumptions and net-to-gross factors that are the result of the annual evaluation process.”¹⁵ Consistent with this direction, Union used input assumptions that were the result of 2014 program EM&V when establishing its 2015 targets, including the 46% NTG adjustment factor for Union’s Commercial Industrial and Large Volume custom programs.¹⁶

14. It would be inappropriate and unfair to use an NTG adjustment factor to calculate program results and incentive amounts different than the factor used to calculate the targets. Union made this submission in its comments on the 2015-2020 DSM Decision, and stated that targets and achievements should be based on the same input adjustments and NTG adjustment factors:¹⁷

“Consistent with the Board’s previous EB-2006-0021 Decision, Union interprets the above to mean that input assumptions and net-to-gross adjustment factors are finalized for a given year based on the previous year’s final DSM audit. By way of example, upon the completion of the 2016 audit in June 2017, the best available input assumptions and net-to-gross adjustment factors used to determine the 2016 LRAM results will be used to determine the 2017 scorecard targets and the final 2017 savings results for the purpose of determining the 2017 DSM Incentive. This process ensures that targets and achievements are based on the same set of input assumptions and net-to-gross adjustment factors.”

“Given that the Board’s Decision is effective for 2015 and based on the process outlined above, Union’s 2015 results for the purpose of determining the 2015 DSM Incentive will be based on the same input assumptions and net-to-gross adjustment factors used for setting Union’s 2015 targets. These inputs were finalized in Union’s 2014 DSM audit.” [Emphasis added.]

¹⁵ EB-2015-0029 Decision and Order, January 20, 2016, p. 75 [Emphasis added].

¹⁶ Exhibit A, Tab 2, p. 11.

¹⁷ EB-2015-0029 Union Gas Limited 2015-2020 DSM Plan Written Comments, February 3, 2016, pp. 2-3.

15. As set out above, in response to Union's comments, the Board in its Revised 2015-2020 DSM Decision stated that "Union interpreted the OEB's Decision to mean that input assumptions and net-to-gross adjustment factors are finalized for a given year based on the previous year's final DSM audit." The Board confirmed that Union's interpretation was correct.¹⁸

The application of the NTG Study to 2015 is inconsistent with the NTG Study RFP

16. The approach of applying the NTG Study results only to future years on a prospective basis was also confirmed in the RFP for the NTG Study, which stated that one of the Study's objectives would be to "[p]rovide guidance on the development of a strategy for applying free ridership and spillover data collected on previous program participation to forward looking DSM program activity."¹⁹

The application of the NTG Study to 2015 is inappropriate while that study remains incomplete and ongoing

17. It is all the more inappropriate to apply the results of the NTG Study to 2015 results while that study remains incomplete and ongoing. In accordance with its Scope of Work, the NTG Study was to include a Spillover value,²⁰ and the Free Ridership rate was to consider both Primary and Secondary Attribution.²¹ Despite this, the Final Verification Report inappropriately used a deemed Spillover value from another jurisdiction without EAC consultation and failed to include any Secondary Attribution.

18. ***The Final Verification Report applied a Deemed Spillover value without EAC Consultation.*** Spillover effects refer to customers that adopt energy efficiency measures because they are influenced by a utility's program-related information and marketing efforts, but do not actually participate in the program.²² This component counter-balances the Free Ridership rate, which quantifies the level of program participation that was not influenced by the utility.²³ The Spillover component of the NTG Study was not completed by the time the Final Verification

¹⁸ EB-2015-0029 Revised Decision and Order, February 24 2016, p. 3.

¹⁹ Exhibit A, Tab 2, Appendix B, p.10 [Emphasis added.]

²⁰ Exhibit A, Tab 2, Appendix D, pp. 14-15.

²¹ Exhibit A, Tab 2, Appendix D, pp. 90-92.

²² Exhibit A, Tab 1, Appendix A, p. 4.

²³ Exhibit A, Tab 1, Appendix A, p. 2.

Report was issued.²⁴ Board Staff directed the EC to apply a deemed Spillover value from Massachusetts as a proxy to Union's Commercial and Industrial and Large Volume custom programs, without consulting the EAC.²⁵ The EC's Final Verification Report provides little basis explaining how the deemed Spillover rate was reached.²⁶

19. OEB Staff's direction to apply this value circumvented the completion of the EC's evaluation work to quantify Spillover for Union's custom programs as part of the NTG Study (consistent with the NTG Study scope of work) and completely bypassed the EAC. Since the NTG Study was published prior to the completion of the Spillover component, it reports incomplete conclusions and therefore should not be used to adjust Union's 2015 DSM results.²⁷ Regardless of the results of the Spillover component of the NTG Study, it is not appropriate to apply the NTG Study to Union's 2015 DSM program results in these circumstances.

20. ***The Final Verification Report inappropriately excluded Secondary Attribution.*** Primary Attribution refers to project-specific influence that a utility has had on a customer's decision to participate in a DSM program. Secondary Attribution refers to the longer-term effect that a utility relationship with a customer has had on the customer's decision to participate. If the utility is found to have influenced a customer's project in either a primary or secondary manner, the utility is credited with having influenced the project. Otherwise, the customer's project is considered a Free Rider. Therefore, if Secondary Attribution is not measured, a program's Free Rider rate might increase, leading to incorrect and understated program results.²⁸

21. The original NTG Study scope of work provided that Secondary Attribution would be included. The EC measured Secondary Attribution (6% secondary attribution for Union's custom Commercial and Industrial program and 4% secondary attribution for Union's custom Large Volume Direct Access program).²⁹ Despite this, the Final Verification Report does not consider these findings as part of the NTG calculation.³⁰ By excluding Secondary Attribution, the NTG

²⁴ Exhibit B, Tab 2, p. 146.

²⁵ Exhibit A, Tab 2, p. 14; Exhibit A, Tab 2, p. 19.

²⁶ Exhibit B, Tab 2, Appendix N.

²⁷ Exhibit A, Tab 2, p. 14.

²⁸ Exhibit A, Tab 2, pp. 31-32.

²⁹ Exhibit B.EP.5.

³⁰ Exhibit B, Tab 2, p. 315.

rate decreased from 45% to 39% for Union's custom Commercial and Industrial program and from 12% to 8% for Union's custom Large Volume Direct Access program.³¹ Including Secondary Attribution would increase the EC's audited Demand Side Management Incentive Deferral Account balance from \$7.040 million to approximately \$8.001 million.³²

22. In any event, regardless of the impact of the NTG Study's findings on Union's 2015 DSM results, Union submits that application of any component of the incomplete and ongoing NTG Study's recommendations to its 2015 DSM results is inappropriate, as it would deviate from the practice of ensuring that targets and actual results are measured on the same basis. It would only be appropriate to include the NTG Study's findings to Union's actual DSM program results once that study is complete and its results reflected in Union's targets.

C. The Allocation Methodology that Union Proposes is Reasonable and Appropriate

23. Consistent with the treatment of 2015 as a transition year and the Board's DSM Framework, Union rolled forward its 2014 DSM plan into 2015.³³ Union therefore proposes to allocate the 2015 DSM deferral and variance account balances in a manner consistent with the allocation methodologies approved by the Board in Union's 2014 Disposition of DSM Deferral and Variance Account proceeding.³⁴

24. In summary, Union proposes to allocate the balances as follows:

- (1) the Lost Revenue Adjustment Mechanism Deferral Account (No. 179-75) balances to contract rate classes in proportion to the margin reduction attributable to DSM activities;
- (2) the Demand Side Management Variance Account (No. 179-111) balances to rate classes in proportion to the variance between budgeted and actual DSM spending by rate class in 2015, with the exception of low-income spending which is allocated in proportion to the most recent OEB-approved distribution revenue by rate class; and

³¹ Exhibit A, Tab 2, p. 32.

³² Exhibit B.GEC.2.

³³ EB-2014-0134, DSM Framework, p. 37.

³⁴ Exhibit A, Tab 4, p. 2.

- (3) the Demand Side Management Incentive Deferral Account (No. 179-126) balances to rate classes in proportion to the actual DSM spending by rate class in 2015 for scorecards where Union has achieved a DSM incentive.³⁵

D. Union Has Serious Concerns Regarding the 2015 DSM Evaluation and Audit Process

25. Union acknowledges the Board's decision, in its Procedural Order No. 2, that it would not provide direction on the OEB Staff's evaluation policy or its implementation. However, Union has serious concerns regarding the application of the NTG Study to its results in light of the substantial procedural deficiencies that have plagued the 2015 DSM EM&V process.

26. First, Union has serious concerns regarding procedural shortfalls that limited its participation rights and ability to provide meaningful comment throughout the EM&V process. These concerns include (1) that OEB Staff hired the EC without consulting the members of the EAC,³⁶ (2) that the EC failed to provide the calculations it used as a basis for its conclusions,³⁷ (3) that OEB Staff's comments made on advanced copies of EC deliverables were not shared with the members of the EAC,³⁸ and (4) that OEB Staff directed the EC to apply a deemed Spillover rate and to apply the results of the incomplete and ongoing NTG Study retroactively to Union's 2015 results.³⁹

27. Second, the process has been plagued by an unreasonable delay of approximately one year. This delay is in part due to the prolonged time taken to finalize the EM&V Plan and excessive project sampling for the 2015 Custom Project Savings Verification process.⁴⁰ It is unreasonable for Union's customers to be required to bear the burden of disposition of 2015 DSM deferral balances in 2018. Due to this delay, customers impacted by clearance of Union's

³⁵ Exhibit A, Tab 4, pp. 2-3.

³⁶ Exhibit A, Tab 2, pp. 21-24.

³⁷ Exhibit A, Tab 2, pp. 34-36.

³⁸ Exhibit A, Tab 2, pp. 28-29.

³⁹ Exhibit A, Tab 2, pp. 18-21.

⁴⁰ Exhibit A, Tab 2, p. 33.

2015 DSM deferral accounts in 2018 are less likely to be the same customers that benefitted from these programs.⁴¹

28. Third, the delay in fielding the NTG Study negatively impacted the Free Ridership results. Commercial and industrial customers participating in the NTG Study were required to remember details from projects that were commissioned on average two years in the past. This risks increasing customer recall bias and decreasing the quality of information customers have provided for the purpose of the EC's NTG Study. It also risks increasing the likelihood that customer employees active in commissioning projects in 2015 are no longer available.⁴²

29. Union is hopeful that the procedural issues experienced and identified during the 2015 DSM Evaluation and Audit Process will be remedied and improved upon in the future.

* * *

30. Union therefore respectfully requests that the relief it seeks in this application be granted.

All of which is respectfully submitted this 20th day of April, 2018.

[Original signed by Myriam Seers]

Torys LLP
Lawyers for Union Gas Limited

⁴¹ Exhibit B.OSEA.1 g) i).

⁴² Exhibit B.OSEA.1 g) iii).