

Ontario Energy Board

**IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Sch. B, as amended;**

**AND IN THE MATTER OF IN THE MATTER OF Union Gas
Limited's Application for 2015 Disposition of Demand Side
Management Deferral and Variance Accounts**

**AND IN THE MATTER OF IN THE MATTER OF Enbridge Gas
Distribution's Application for 2015 Disposition of Demand Side
Management Deferral and Variance Accounts**

ENERGY PROBE RESEARCH FOUNDATION

("ENERGY PROBE")

Introduction

1. This is Energy Probe Research Foundation's ("Energy Probe") submission on the EB-2017-0323 and EB-2017-0324 applications from Union Gas ("Union") and Enbridge Gas Distribution ("Enbridge"), respectively, regarding the disposition of their 2015 Demand Side Management deferral and variance accounts. Energy Probe is submitting one argument for both cases, as our comments apply equally to both applications and, largely, deal with overarching issues central to both applications.

Summary Position

2. The OEB should approve the disposition of the 2015 Audited Results for both Union and Enbridge, amounting to \$7.447 million and \$7.049 million, respectively, which are based on Net-to-Gross ("NTG") figures and a spillover proxy estimate contained in the Evaluation Contractor's ("EC") audit of the DSM programs.¹ While both utilities provided detailed comments on why the EC's figures should not be used – or applied retroactively – those arguments, in Energy Probe's view, are unpersuasive. As addressed in more detail below, the NTG figure from the EC's audit is the most recent and accurate estimate of free ridership in the utilities' DSM programs. As such, that should be the figure used in determining the disposition of the DSM deferral accounts – most of which is an incentive paid to the utilities' shareholder for their DSM programs.

Detailed response

3. The Board should accept the findings contained in the EC audit (completed by DNV GL) for two reasons. First, the utilities' concerns with the report don't – in Energy Probe's view – undermine the results from the EC audit. Second, the utilities repeatedly highlight their concerns with the "process" surrounding the EC audit and Board Staff's involvement in it and whether the EAC was adequately consulted when Board Staff requested changes to EC's work, among numerous other complaints. While some of those concerns are valid, they don't lead Energy Probe to dismiss the entire EC audit on the grounds of a flawed process, which was largely the result of it being overseen by Board Staff for the first time (i.e. growing pains). Additionally, the Board ruled in Procedural Order No. 2 that the "evaluation process itself is not the subject of this proceeding." Ultimately, the findings in the EC audit are highly concerning to Energy Probe, as they contain free rider estimates that are significantly higher than what the utilities are proposing to use to clear their deferral accounts. The utilities' figures are based on an empirical study from 2008.² Ratepayers shouldn't be paying DSM incentives to the utilities based on free rider estimates that are now out-of-date and no longer empirically valid.

¹ EB-2017-0323, Exhibit A, Tab 1, Page 7, Table 2 and EB-2017-0324, Exhibit A, Tab 1, Schedule 3, Page 4, Table 2

² EB-2017-0323, Exhibit B, Staff 7 and EB-2017-0324, Exhibit I, Staff 2

4. The biggest criticism from the utilities is that the EC's audit didn't meet the "best practice standard." Yet, their own evidence from Navigant suggests that the study did, largely, meet those standards, given some of the unique timelines associated with this audit and the fact that many of the best practice standards described by Navigant – Fast Feedback, Sensitivity Analysis and Triangulation – didn't apply unilaterally to the jurisdictions reviewed. It's not clear to Energy Probe why those best practices should be applied unilaterally in this case – and, if not, used to dismiss the study – when they aren't always evident in the three jurisdictions with DSM programs that most resemble Ontario.³ It's certainly not clear to Energy Probe that the EC audit should be fully dismissed based on that argument, particularly when it's clear that the EC audit – using the most recent and accurate empirical data – contains significantly higher free rider estimates than those proposed by the utilities.
5. The utilities' biggest complaint seems to be that the EC audit didn't meet the best practice for "Fast Feedback." For starters, the Board's Decision in the 2015-2020 DSM plans was not finalized until February 24, 2016. As such, work on the audit was not able to begin before that point, even if the audit was undertaken by the utility-led Technical Evaluation Committee (TEC), as was done prior to it being moved to the OEB. Just two weeks after that decision, on March 4, 2016, the OEB announced that DNV was working to complete a Work Plan for an EAC meeting the following week.⁴
6. The Navigant study says the "Fast Feedback" best practice means that respondents are asked about their participation in a DSM activity "within 3 months of completing participation."⁵ For obvious reasons, it would have been impossible for the EC auditor to meet the three-month standard put forth by Navigant and relied upon by the utilities to dismiss its findings. And it would have been impossible due to factors that were totally out of its control, as Board Staff, the utilities and other parties were waiting for the Board to finalize its decision on the 2015-2020 DSM plans before moving forward with the audit. It's unreasonable for the utilities to criticize the EC audit for failing to meet the "fast feedback" best practice when, due to delays largely out of its control, it would have been impossible to meet.
7. Energy Probe acknowledges that the final EC audit wasn't completed until the end of 2017, which, to the utilities' point, is a significant delay for an audit examining 2015 results. That said, we are of the view that much of that delay was largely a result of the DSM audit being moved from the TEC and to Board Staff (a move Energy Probe opposed at the time). We see no reason to fully dismiss its results due to a delay that was, to a large part, caused by a changed in the audit process from one run by the utilities to one overseen by Board Staff and not the fault of the auditor.

³ EB-2017-0323, Exhibit B, Staff 18.

⁴ See EB-2017-0324, Exhibit I, Staff 5 for a timeline.

⁵ EB-2017-0323, Exhibit A, Tab 2, Appendix E, page 5

8. Secondly, the utilities say the EC audit failed to meet the best practice standard of “Sensitivity Analysis.” Yet, of the three states reviewed as part of Navigant’s jurisdictional review, one state (Massachusetts) didn’t require a sensitivity analysis, while the other two states (California and Illinois) do require them, but the experts interviewed as part of the evidence admitted that either “no one pays attention to it” in the case of Illinois or it “makes little difference” in the case of California, largely because the scoring process is mature and has been reviewed and commented upon by stakeholders.⁶ Furthermore, the EC audit does include a Scoring Algorithm and a Vendor Survey Instrument and that process will likely undergo review by the EAC – a very similar, if not the same, process to what has occurred in other jurisdictions. Again, it seems completely unreasonable to dismiss the EC’s findings because they didn’t meet “best practice” standards that either aren’t evident in the three jurisdictions that --- according to Navigant – most closely resemble Ontario in terms of DSM programs, or underwent a similar stakeholder review as will occur in Ontario with the EAC.
9. That said, Energy Probe does support the utilities’ view that some of the scoring appeared arbitrary.
10. Thirdly, regarding the best practice of “Triangulation”, it’s only used in Massachusetts when a particular respondent highlights that the “vendor recommendation was an important factor in their decision.”⁷ In California, it’s only applied to residential programs or, similar to Massachusetts, when a respondent places the vendor as the “highest influence.”⁸ In Illinois, it’s largely used only for residential projects. In each jurisdiction it’s typically applied selectively. Again, it’s counterproductive for the utilities to fully dismiss the EC’s finding based on a “best practice” that isn’t applied universally in the jurisdictions reviewed in Navigant’s evidence.
11. Both Enbridge and Union also want the Board to dismiss the EC audit due to mistakes made in the auditor’s final report or because the utilities couldn’t confirm the results.⁹ As such, they say it “should not be accepted and relied upon for a final determination.”¹⁰ But, in reality, nearly all of the mistakes made in the EC audit were either corrected in the updated report by DNV or weren’t material to its findings.¹¹

⁶ EB-2017-0323, Exhibit A, Tab 2, Appendix E, page 20 and page 26

⁷ EB-2017-0323, Exhibit A, Tab 2, Appendix E, page 5, page 12

⁹ EB-2017-0324, Exhibit A, Tab 1, Schedule 3, Page 5 and EB-2017-0323, Exhibit A, Tab 2, Page 26, among other references.

¹⁰ EB-2017-0324, Exhibit A, Tab 1 Schedule 3, Page 4

¹¹ EB-2017-0323, Exhibit B, Staff 18 and

12. Union, in fact, admits that all of the errors it identified “were corrected” in the final report, but then says it can’t confirm “whether or not other errors persist” because it doesn’t have sufficient data to replicate all of the EC’s findings. We find this response disingenuous. Union provided the EC with corrections, which the EC included in its final report, but then says that because it wasn’t able to correct every, tiny piece of data or finding contained in the EC’s report, it won’t sign off on the audit.
13. In the case of Enbridge, when it was asked whether all of the errors it had highlighted had been corrected, it doesn’t answer the question and, instead, points out that the reference in the interrogatory that is asking them whether all of the errors have been fixed is incorrect.¹² In its argument, Enbridge admits that the errors it found in the original final EC report filed in October 2017 had been fixed in the revised final report filed in December 2017. Enbridge is asking the Board to completely dismiss a study – which finds materially higher free rider rates than the utility’s estimate – even though the errors that were made in that report have largely been corrected.¹³
14. The utilities also aren’t immune to errors in their data or instances where they provided insufficient detail. In fact, the EC audit found that both Union and Enbridge (although they were minimal in Enbridge’s case) had a number of “inaccurate savings entries due to data entry errors.”¹⁴ The EC also highlighted that in some cases, project data was missing, descriptions were difficult to understand or there were undocumented assumptions, among many other problems.¹⁵ While Energy Probe fully recognizes that errors are, in many cases, to be expected in large studies of this nature, we don’t expect the utilities to rely on those errors to fully dismiss the results of the EC audit, particularly when – as addressed above – most, if not all, of those errors have been addressed.
15. The utilities also appeared to interfere with data collection, as the EC audit highlighted that utility staff “at a handful of sites responded to questions in place of participating customers and in one case interfered with data collection.”¹⁶ Throughout both of their applications and responses to interrogatories, the utilities repeatedly discuss how their concerns were either not fully addressed or considered by the EC auditor, yet, at the same time the EC auditor says the utilities may have interfered with its study.

¹² EB-2017-0324, Exhibit I, Staff 3

¹³ EDG AIC, page 18

¹⁴ EB-2017-0323, Exhibit B, Tab 3, page 8 and EB-2017-0324, Exhibit B, Tab 3, Schedule 1, page 13

¹⁵ EB-2017-0323, Exhibit B, Tab 2, page 58

¹⁶ EB-2017-0323, Exhibit B, Tab 2, page 57

16. And finally, the utilities repeatedly highlight concerns over the “self-report” method, but the evidence from Navigant states many times that this is still the most common and best method used in NTG studies, particularly when reviewing custom commercial and industrial projects.¹⁷ We addressed the timing of the self-report surveys in this case – and the reasoning for that delay – and see no reason why the EC’s findings should be wholly dismissed, given that it remains the most common method for auditing DSM programs.
17. It appears to Energy Probe that one of the motivating factors for the utilities to dismiss the EC audit is that, frankly, its findings are alarming. In particular, some of the large volume custom DSM projects have free rider levels of more than 90%.¹⁸ Those differences are highly noticeable in Union’s interrogatory response #3 to Board Staff, where in every category – accept for Custom Low-Income projects – the EC audit is applying a higher free rider rate than Union. Enbridge did not provide a similar table.

Table 1

NTG strata as defined by the EC	EC Free Rider rate*	EC Spillover rate	Union Free Rider rate	Union Spillover rate
Custom Commercial & Institutional Buildings-Banner projects	59.4875861 613878%	3.4%	54%	0%
Custom Commercial & Institutional Buildings-Contrax projects	55.5752365 045723%	3.4%	54%	0%
Custom Agriculture & Greenhouse-Banner projects	62.6919985 626682%	3.4%	54%	0%
Custom Agriculture & Greenhouse-Contrax projects	58.7836857 460643%	3.4%	54%	0%
Custom Industrial-Banner projects	70.7516474 681682%	3.4%	54%	0%
Custom Industrial-Contrax projects	59.9631861 363962%	3.4%	54%	0%
Custom Large Industrial R100 projects	91.8260361 7511760%	3.4%	54%	0%
Custom Large Industrial T1 projects	90.8753705 80202480%	3.4%	54%	0%
Custom Large Industrial T2 projects	92.3286399 86915410%	3.4%	54%	0%
Custom Low Income projects	5.0%	0%	5%	0%

** The EC did not round the Free Rider rates it used to calculate findings. The full values as presented in Table 1 are needed to recreate 2015 Audited Results*

¹⁷ See, in particular, EB-2017-0323, Exhibit A, Tab 2, page 11

¹⁸ EB-2017-0323, Exhibit B, Tab 2, page 178, Table 1-3 and Table 1-4.

18. Ultimately, Energy Probe encourages the Board to accept the findings of the EC audit, which found a free-ridership rate that is higher than that being proposed by the utilities. Contrary to claims from the utilities, the findings in the report do, largely, meet standard of best practice.
19. And finally, it should again be pointed out that the utilities are proposing to use a NTG figure based on a study completed in 2008.¹⁹ Energy Probe fails to see how ratepayers benefit from paying an incentive to the utilities for DSM programs using figures from an empirical study that is now ten years out of date.

“Retroactive” application

20. The Board should apply the findings in the EC audit report to the disposition of 2015 DSM deferral accounts. Energy Probe’s reasoning for this is largely straightforward: the EC audit figures are the most recent and accurate empirical free rider estimates available.
21. The utilities are relying on comments in the EB-2015-0029 decision for their claims that the EC audit results should be applied prospectively. In that decision, Union asked the Board whether its interpretation of the decision was correct: “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.” To which the Board confirmed that interpretation is “correct.”
22. But the utilities are asking the Board in this proceeding to approve NTG values based on an empirical study completed in 2008 that audited projects that may have been initiated as far back as 2004.²⁰ The Board is not approving NTG estimates from the previous year, based on an empirical audit of DSM project, but rather, on figures that are nearly a decade old at this point. Energy Probe fails to see how that’s a reasonable proposition for natural gas customers – i.e. reward the utilities for the DSM programs based on out-of-date data when a more recent and accurate estimate is available. Applying previous NTG estimates for 2015 variance accounts, as the utilities propose, simply ensures that ratepayers are paying incentives to the utilities for DSM programs that were empirically less effective than initially estimated. Worse still, is that *we know* the DSM programs had a higher rate than what the utilities previously estimated, but they still want us to use the old figures.
23. The Board would not be acting out of the norm if it were to apply the NTG figures retroactively. According to the Navigant report, of the 24 jurisdictions that use net savings to evaluate their DSM programs, nearly half (13) apply those results retroactively.²¹

¹⁹ EB-2017-0324, Exhibit I, SEC.81 and EB-2017-0323, Exhibit B, SEC.8

²⁰ EB-2017-0324, Exhibit I, Staff 8, part c

²¹ EB-2017-0323, Exhibit B, SEC 50

24. A number of experts in the Navigant report also admit that the retroactive application of the NTG results is likely “more accurate” than prospective values. But the utilities don’t like retroactive application, as it creates “uncertainty” and “risk” for the utility and its shareholders. This is a key point. Regulators can either use the more accurate figures for NTG values and apply them retroactively – based on the actual results from DSM programs – knowing that those figures are more accurate. Conversely, regulators can help mitigate risks to the utility of lower DSM incentives due to significant free ridership. Energy Probe, given the large free ridership figures reported by the EC audit for particular DSM programs – notably some of the custom projects – urges the Board to consider a retroactive application, using the most recent and accurate figures.²²
25. And finally, many of the comments that the EC auditor received from participants in the utilities’ DSM programs are highly concerning to Energy Probe and reinforce our view that a retroactive application of NTG figures should be used due to high free ridership rates in particular programs. We present a few of these comments, which are verbatim, as they highlight our concern with the high free ridership rates reported in many DSM programs.²³
- “Did this work before we knew it qualified for incentives.”
 - “Incentives were mostly an afterthought and icing on the cake financially.”
 - “We needed to do those changes anyways. But, it was good that we had incentives on the side. But, when you’ve got to do it, you’ve got to do it.”
 - “It all comes back to I need to do what I think I need to do to give me the best ROI. If I rely on some government program then we are all in trouble.”

The Process and the Claims Made About It By the Utilities

26. Energy Probe won’t comment on the process of the EC audit, but would like to point to the concerns raised in SEC’s argument regarding numerous comments made by the utilities throughout their applications and interrogatory responses. Energy Probe was not part of the EAC and, as a result, can neither confirm nor deny the allegations put forth by the utilities. But we do believe that many of those allegations likely would have been addressed through cross examination and support many concerns raised by SEC in its argument.

Costs

²² EB-2017-0323, Exhibit A, Tab 2, Appendix E, page 9, 16 and 23

²³ EB-2017-0323, Exhibit B, Tab 2, page 275-284

Energy Probe submits it has conducted its intervention in the EB-2017-0323 and EB-2017-0324 applications in an efficient manner. Accordingly, Energy Probe requests an award of 100% of its legitimately Incurred costs.