

**ONTARIO ENERGY BOARD**

**Enbridge Gas Distribution Inc. (EGD) and Union Gas Limited (Union)  
Applications to dispose of balances in certain deferral and variance accounts  
related to the delivery of conservation programs in 2015**

**Industrial Gas Users Association (IGUA)  
Submissions**

1. IGUA provides these submissions in respect of each of EB-2017-0323 and EB-2017-0324, being the proceedings to consider applications by EGD and Union, respectively, for clearance of 2015 Demand Side Management (DSM) Deferral and Variance Accounts. While the two proceedings are separate, they have proceeded in tandem and raise the same policy issues, which are the issues which IGUA wishes to address.
2. In respect of the amounts which the applicants in these two proceedings seek to clear to customers, the proposed clearances to the rate classes through which IGUA's members primarily take services are either small charges or are credits.<sup>1</sup> Both utilities underspent, relative to the 2015 budget, DSM funds for large industrial customers. IGUA believes that this signals a continuing decline in the value of DSM programs to the province's largest gas consumers, given the implementation of carbon pricing and the plethora of energy efficiency activities and programs in the marketplace for these customers. Aspects of this topic are already the subject of the Board's DSM mid-term review<sup>2</sup>, which IGUA believes is an appropriate forum in which to examine this topic further.

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<sup>1</sup> In respect of Union; EB-2017-0323, Exhibit A, Tab 4, Appendix A, Schedule 1 and Appendix B, Schedule 1, and the rate classes of interest to IGUA – 100, T1 and T2. In respect of EGD; EB-2017-0324, Exhibit B, Tab 2, Schedule 1, p.3 and Schedule 2, p.1, and the rate classes of interest to IGUA – 110, 115 and 170.

<sup>2</sup> EB-2017-0127/0128, June 20, 2017 OEB Letter to Parties, page 3.

3. We also note that the utilities propose to clear their DSM variances (including shareholder incentives) in a manner consistent with previous DSM clearance determinations by the Board, which IGUA supports.
4. The policy issues raised in these two applications relate to the Net to Gross (NTG) study yet to be completed, and the appropriate identification and application of the components of a net to gross mechanism; “free ridership”, “spillover” and “secondary attribution”.
5. Based on the records in these proceedings, it is our understanding that:
  - (a) The net to gross study commenced under the previous DSM regulatory framework by the (then) Evaluation and Audit Committee (EAC) and since taken under the responsibility of OEB Staff pursuant to the current DSM regulatory framework has yet to be completed, in particular in respect of the concept of “spillover”.
  - (b) In the interim, at the direction of OEB Staff, the Evaluation Contractor (EC) which prepared the evaluation report on which OEB Staff relies in assessing the results of the utilities’ 2015 DSM activities applied a “proxy” spillover factor used in Massachusetts, thus increasing DSM results by 3.4%. (EGD and Union say this is too low.)
  - (c) The EC also applied “free ridership” results from studies recently completed, which depart from, and are significantly higher than, the free ridership assumptions embedded in the utilities’ 2015 DSM targets. (EGD and Union say these are too high.)
  - (d) The assumptions used in setting the utilities’ DSM targets were carried forward (at the direction of the Board in the 2015-2020 DSM Framework) from 2014, and are in fact several years old.
  - (e) While the EC considered, and derived a factor for, “secondary attribution” (which refers to the longer-term effect that a utility relationship with a customer has had on the customer’s decision to participate in DSM, and which is assumed to increase the utility’s DSM results), the “secondary attribution” factor was not applied by the EC in deriving the utilities’ 2015 DSM results.
6. In the result, Union and EGD assert that the EC’s derivations;
  - (a) understate the utilities’ DSM results; and
  - (b) unfairly “move the goalposts” for DSM incentives by using higher “free ridership” rates in evaluating the 2015 programs than were used in setting 2015 targets for those programs.



7. The foregoing characterizations have been formulated without the benefit of understanding OEB Staff's views on these issues, pending the filing of Staff's Submissions in response to the utilities' arguments.
8. IGUA has a number of concerns with the apparent current status of the NTG topic:
- (a) ***The application of "spillover", however derived, has not been considered or approved by the Board.*** In this respect, IGUA agrees with the position in EGD's Argument in Chief herein that<sup>3</sup> *"Board Staff, in its role as the coordinator and overseer of the evaluation and audit process...is not the entity that should be, in effect, rendering a determination about how a Board Decision and Order should be interpreted and applied. ....Board Staff's role does not contemplate a decision making function..."*. If, and if so how, "spillover" should be considered by the Board is a matter that should be considered in an open forum in which those who will be required to bear the impact of the determination (through DSM costs recovered in rates) can provide informed and considered input. IGUA and its members have long struggled with the notion of "spillover", in particular in respect of the largest gas consumers, in the increasingly crowded conservation landscape in Ontario, and submits that the Board should determine if and how spillover should be applied in assessing DSM results and associated customer cost impacts, and should do so in a transparent forum in which IGUA and other interested parties can provide their considered and informed input. The 2015 DSM evaluation process is not such a forum.
  - (b) ***IGUA has the same concerns with respect to "secondary attribution", a concept which has formally come before the Board for the first time (to our knowledge) in these applications.*** Like "spillover", whether and if so how to consider and apply "secondary attribution" is a policy determination which should not be made by Board Staff, nor through a relatively narrow process such as this one to dispose of 2015 DSM variances based on evaluation work overseen off the public record by Board Staff.
  - (c) ***DSM protocols have become temporally disconnected from reality.*** EGD and Union are advocating application of "free ridership" factors developed several years ago. Board Staff appears to be advocating application to 2015 DSM results of "free ridership" factors more recently (and long after 2015) determined, and which differ significantly from those used to set the utilities' 2015 targets. While it would seem that Board Staff's "free ridership" factors would be more reflective of the current conservation landscape in Ontario than those developed several years ago, IGUA has some sympathy for the "moving the goalposts" concern expressed by the utilities in their final arguments. Finally on this timing point, while the DSM Framework appears (there seems to be a lack of clarity on this point as well) to direct that DSM targets in a year be set with reference to NTG factors determined in respect of the verified DSM results of the most recent year, in practice this doesn't seem to work. The verified DSM results for an earlier year are not available until at least part way through the subsequent year, by which point the targets for

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<sup>3</sup> EGD Argument in Chief, paragraphs 65-66.

that subsequent year (and much of the programming for that subsequent year) would have already been set. Accordingly, it is really the verified results for the year before the previous year that would be available to inform the targets (and thus also be used to verify the results) for the current year.

9. All of which leads IGUA to the conclusions that:

- (a) The consideration of “spillover” and “secondary attribution” are matters for the DSM mid-term review (which is what EGD has suggested<sup>4</sup>), provided however that parties are given appropriate opportunity in the course of that review to both understand the competing positions on the issues and then to provide informed and considered input. In any event, “spillover” and “secondary attribution” should not be applied in any fashion to determine DSM cost (including incentive) recovery until considered and determined by the Board following opportunity for informed and considered input from those who will end up paying.
- (b) In the interim, and without the benefit of Board Staff’s position on the matter, it would appear that EGD and Union have a legitimate concern with applying one set of “free ridership” assumptions to set targets and a different set of “free ridership” assumptions to evaluate performance against those targets.
- (c) The purpose and usefulness of ratepayer funded DSM for large industrial gas consumers is increasingly unclear and merits early reconsideration by the Board in light of the implementation of carbon pricing in Ontario.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED by:**



**GOWLING WLG (CANADA) LLP, per:**

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April 27, 2018

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<sup>4</sup> EGD Argument in Chief, paragraph 70.