

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.

**REPLY ARGUMENT OF
UNION GAS LIMITED**

May 7, 2018

A. Overview

1. In this reply argument, Union responds to the submissions of OEB Staff and intervenors, as follows:

- (1) First, Union addresses the inappropriateness of applying the NTG Study results to Union's 2015 DSM program year. BOMA¹ and OSEA² support Union's position on this issue.
- (2) Second, Union responds to the inaccurate allegations made regarding its contribution to oversampling, its interference with the EC's data collection and the inaccurate assertion that Union refused to sign-off on the audit without access to the EC's detailed calculations.
- (3) Third, Union addresses the comments submitted by EAC expert member Marion Fraser.

¹ EB-2017-0323 BOMA Submission (dated April 27, 2018), p.2.

² EB-2017-0323 OSEA Submission (dated April 27, 2018), p. 2. IGUA acknowledges Union's position: EB-2017-0323 IGUA Submission (dated April 27, 2018), pp. 3-4.

- (4) Fourth, Union addresses OEB Staff's request for explanation of its LRAM calculation including the appropriateness of consideration of 2014 lost revenues within Union's 2015 LRAMVA.
- (5) Fifth, Union addresses the timing of rate adjustment implementation resulting from the OEB's final decision in this matter.

2. This reply argument should be read together with Union's argument-in-chief.³ The fact that Union has not addressed a specific submission does not mean that Union accepts that submission. Defined terms bear the meanings assigned to them in the argument-in-chief.

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

3. As set out in paragraphs 4 to 22 of Union's argument-in-chief, the application of the NTG Study's adjustment factors to Union's 2015 program year is inappropriate because: (a) it is inconsistent with the OEB's prior decisions; (b) it inappropriately calculates 2015 DSM program results using different NTG factors than those used to calculate the OEB-approved 2015 targets; (c) it is inconsistent with the scope of the NTG Study RFP; and (d) it inappropriately applied a deemed Spillover Value without EAC Consultation and fails to apply Secondary Attribution.

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

4. At paragraphs 8 to 11 of its argument-in-chief, Union established that the application of the NTG Study to 2015 results is inconsistent with the OEB's prior decisions, and in particular with the OEB's Revised 2015-2020 DSM Decision through which 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."⁴

5. In its submission, OEB Staff states:

"...the OEB's 2015-2020 DSM Plan Decision and Order (Decision and Order) is clear that the application of the NTG results for custom programs is retrospective." [...]

³ EB-2017-0323 Union Argument in Chief (dated April 20, 2018).

⁴ EB-2015-0029 Revised Decision (dated February 24, 2016), p. 3.

*“...although the treatment of updated information for prescriptive programs is to be applied on a prospective basis, best available information related to custom programs that are the result of the program evaluation of that program year are to be applied to the program results of the same year.”*⁵

6. Contrary to OEB Staff’s submission that the 2015-2020 Decision is “clear” that the application of NTG results for custom programs is retrospective, there is nothing in the decision that states this. Contrary to OEB Staff’s submissions, and to those of LPMA⁶ and OGVG,⁷ Union sought further clarification regarding the 2015-2020 DSM Decision related to the treatment of prospective input assumptions and NTG adjustment factors related to all programs, including custom projects. The clarification sought was not limited to prescriptive programs. Union provided examples of the impact of its understanding on the resulting application should its understanding be implemented, without delineating between prescriptive and custom programs. As set out at paragraph 8 of Union’s argument-in-chief, Union submitted that *“input assumptions and net-to-gross adjustment factors are finalized for a given year based on the previous year’s final DSM audit.”* Union explained that, *“This process ensures that targets and achievements are based on the same set of input assumptions and net-to-gross adjustment factors.”*⁸ In the Revised 2015-2020 DSM Decision, the OEB confirmed that Union’s interpretation was correct.⁹ Union subsequently applied this interpretation to measuring its DSM shareholder incentive for 2015 DSM program year results.

7. Nothing in the 2015-2020 DSM Decision directs that different rules apply to the prospective application of NTG adjustment factors for prescriptive programs than those that apply to the prospective application of NTG adjustment factors for custom programs for 2015.

8. At paragraph 9 of its argument-in-chief, Union submitted that the application of the 2014 NTG factors to the 2015 program year is consistent with the OEB’s statement, at p. 21 of the 2015-2020 DSM Decision, that Free-Ridership rates for Union’s Commercial and Industrial custom program would be updated in 2016 based on the results of the NTG Study and the annual

⁵ EB-2017-0323 OEB Staff Submission (amended) (dated April 30, 2018), pp. 3-4, 6.

⁶ EB-2017-0323 LPMA Submission (dated April 27, 2018), p. 3.

⁷ EB-2017-0323 OGVG Submission (dated April 27, 2018), p. 5.

⁸ EB-2015-0029 Union Gas Limited 2015-2020 DSM Plan Written Comments (dated February 3, 2016), p. 2.

⁹ EB-2015-0029 Revised Decision (dated February 24, 2016), p. 3.

evaluation process, and applied beginning in 2017. OEB Staff seeks to limit the application of this finding on the basis that its placement in Section 5.2.6 rather than Section 9.5 of the 2015-2020 DSM Decision means that it refers only to improvement of custom programs, and not to input assumptions and NTG values.¹⁰ Nothing in the decision limits the application of the finding as OEB Staff suggests. The finding is appropriately placed within Section 5.2.6, which addresses exclusively the utilities' respective C&I custom programs. Further, OEB Staff's interpretation suggests that the utilities should rely on different sets of NTG values for each of DSM program design, results, and targets. As set out in the following section, this is undesirable and would unfairly expose Union to incremental risk associated with any variances between the NTG values applied across these three DSM program aspects.

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

9. At paragraphs 12 to 15 of its argument-in-chief, Union established that applying the NTG Study to 2015 program results would be inappropriate because it would cause misalignment between program results and targets. In their submissions, SEC¹¹ and GEC¹² assert that since, in their view, Union had the ability to influence Free-Ridership (and thus NTG) in its 2015 custom C&I and Large Volume program results, it is acceptable to apply a different NTG adjustment to actuals than was applicable to the target. Effectively, they argue that the utility should be at risk for the variance between the assumed NTG adjustment used in setting targets and the measured NTG adjustment applied to actual results.

10. SEC's and GEC's statements regarding the level of influence that Union can assert, and thus the standard that Union should be held to, are exaggerated. As set out in Union's response at Exhibit B.EP.9, regarding Union's Large Volume program:

"...attempting to measure program influence (through a NTG adjustment) on customers who have a direct line-of-site to the available incentive budget they can access is not reasonable". [...]

¹⁰ EB-2017-0323 OEB Staff Submission (amended) (dated April 30, 2018), p. 7.

¹¹ EB-2017-0323 SEC Submission (dated April 27, 2018), p. 10.

¹² EB-2017-0323 GEC Submission (dated April 25, 2018), pp.2-3.

“[w]hile Union can attempt to influence a customer by providing incentives and identifying/quantifying opportunities to save energy, the customer prioritizes projects depending on its own needs. If a project meets the eligibility criteria of the program, Union will not refuse a customer access to its own money, thus impeding the possibility for Union to affect the associated NTG value.”

11. Union has limited control over the Free-Ridership associated with its custom C&I and Large Volume programs. If a customer meets the program’s eligibility criteria, they cannot be turned away based only on the determination that they may have proceeded with the project absent the incentives offered. Acting in this manner would be discriminatory, in that it would refuse a customer access to a program for which it is paying, and would be inconsistent with the program’s eligibility criteria.

12. Moreover, Union’s 2015 DSM program year ended almost 2 ½ years ago. Since that time, Union has acted to lower Free-Ridership in its C&I programs within its limited capacity.¹³ These steps are examples of Union’s proactive and continuous efforts to influence the program where possible. However, they have no bearing on a program year that ended almost 2 ½ years ago.

13. Because Union has limited control over the Free-Ridership experienced within its C&I and Large Volume programs, it is appropriate to apply a consistent set of data to determine actual results and targets rather than a piecemeal combination from both the 2008 and 2015 NTG studies. There is no evidence to support the submission that Union should bear responsibility for “making up the gap” left between the adjustment factors used in setting the targets and those ultimately applied to actual results. While Union has stated that its Large Volume “*program design is entirely incompatible with the application of a Free Rider rate*”,¹⁴ to the extent that one is to be applied, it should be equally applicable to the target as it is to the actuals. Contrary to SEC’s¹⁵ criticisms, this simply allows for an equitable evaluation of program performance against established targets.

¹³ Exhibit B.SEC.10.

¹⁴ Exhibit B.EP.9.

¹⁵ EB-2017-0323 SEC Submission (dated April 27, 2018), p. 10.

14. Given that Union's 2015 DSM program year targets were set using the 2008 NTG study parameters, Union submits that it was appropriate to adjust the actual audit results using the same adjustment factors, in order to arrive at an "apples to apples" basis to evaluate its 2015 results. As an alternative, had the 2015 NTG Study been complete, applying the 2015 Study's adjustment factors to both targets and actuals may have also been an appropriate approach. However, given the outstanding components of the 2015 NTG Study, using the 2008 NTG values (which were set in December 2015 within Union's final 2014 DSM Annual Report) to adjust the actual audit results for the 2015 DSM program year was appropriate.

15. Intervenors, including SEC, GEC, OGVG, LPMA and EP, suggest that it is appropriate to use the best available information (the 2015 NTG Study results) as the basis for calculating 2015 DSM program year results, however, they do not offer any compelling reasons why the targets should be left unaltered and calculated using a different basis.

16. As set out in Union's argument-in-chief, "[i]t 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."¹⁶ Therefore, Union is not suggesting to outright dismiss the 2015 NTG Study's results, but instead to choose the appropriate time to implement them prospectively. Regardless of a decision by the Board on the appropriate time to implement the 2015 NTG Study results, Union reiterates that program design, targets and results should all be based on a consistent set of underlying data.

17. Union submits that it is inappropriate to compare OEB-approved 2015 targets, that are based on a 2008 NTG study, to results calculated based on a 2015 NTG Study completed in 2018. As noted in its response at Exhibit B.Staff.7, it is "*Union's position that targets should be set using the best available information and subsequently that the results of the NTG Study should be applied prospectively to targets and results of future DSM program years*".

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

18. At paragraphs 17 to 22 of its argument-in-chief, Union submitted that it would be inappropriate to apply the results of the NTG Study to 2015 while that study remains incomplete

¹⁶ EB-2017-0323 Union Argument-in-Chief (dated April 20, 2018), p. 8.

and ongoing, and in particular because it fails to include any Secondary Attribution. In its submission, OEB Staff claims that “Secondary Attribution was included by the EC as a lower priority element that was to be calculated for information purposes only.”¹⁷ Similarly, both OGVG¹⁸ and SEC¹⁹ conclude that the incorporation of Secondary Attribution into the final audit results would be inappropriate.

19. Contrary to these submissions, and as set out in Union’s argument-in-chief, the original NTG Study scope of work provided that Secondary Attribution would be included in the NTG Study.²⁰ Accordingly, 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).²¹ However, the Final Verification Report does not consider the findings as part of the NTG calculation.²² By excluding Secondary Attribution, the NTG 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.²³ 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.²⁴

20. While there is nothing on the public record to support that the TEC came to the conclusions noted by SEC,²⁵ the “magnitude” of Secondary Attribution established by the EC through the NTG Study is clearly significant enough to warrant the Board’s consideration in this proceeding for application to Union’s future DSM program year results (approximately \$0.961 million for the 2015 DSM program year).

21. As set out in Union’s argument-in-chief,²⁶ 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

¹⁷ EB-2017-0323 OEB Staff Submission (amended) (dated April 27, 2018), p. 11.

¹⁸ EB-2017-0323 OGVG Submission (dated April 27, 2018), p. 9.

¹⁹ EB-2017-0323 SEC Submission (dated April 27, 2018), pp. 19-20.

²⁰ EB-2017-0323 Union Argument-in-Chief (dated April 20, 2018), p. 7.

²¹ Exhibit B.EP.5.

²² Exhibit B, Tab 2, p. 315.

²³ Exhibit A, Tab 2, p. 32.

²⁴ Exhibit B.GEC.2.

²⁵ EB-2017-0323 SEC Submission (dated April 27, 2018), p. 19.

²⁶ EB-2017-0323 Union Argument-in-Chief (dated April 20, 2018), pp. 4-6 & 8.

incomplete and ongoing NTG Study's recommendations to its 2015 DSM results is inappropriate, as it would deviate from the practice of ensuring targets and actual results are measured on the same basis. Only once complete and encompassed in Union's targets would application of the NTG Study's findings to Union's actual DSM program results be appropriate.

C. Union Did Not Contribute to Oversampling, Impede the EC or Inappropriately Refuse Sign-off

22. Contrary to the unsubstantiated statement made by OEB Staff that oversampling of custom projects was caused by inaccurate information provided by Union,²⁷ Union reiterates that the information it provided to the EC for the purposes of establishing a CPSV sample was complete and accurate. Neither OEB Staff nor the EC requested any corrections to the information provided by Union. Further, the information that Union provided the EC was supported with sufficient detail to ascertain the extent of potential oversampling that would occur. Union understands, through ongoing discourse with the EC since filing its Application, that oversampling was actually caused by the EC's incomplete understanding of custom project distribution across sampled sites.

23. In its submission, EP makes a number of inaccurate statements regarding the quality of Union's reporting and project data and asserts that the utilities interfered with data collection.²⁸

24. EP's reference to data entry error relates to Union's Home Reno Rebate and Low-Income Weatherization programs only. In these programs, parties external to Union submit data for tracking to Union. The EC found a 2% over-reporting and a 7% under-reporting of savings for these two programs respectively and Union accepted these adjustments. The EC made no other adjustments due to data entry errors of any of Union's remaining programs.

25. EP's references to missing project data, to descriptions that were difficult to understand, and to undocumented assumptions, relate specifically to custom projects and completely ignore Union's efforts to continuously improve the comprehensiveness of custom project documentation. Union worked with the EC to provide all data available. As a result, the EC was able to reach an informed conclusion for each project that underwent verification. EP's reference

²⁷ EB-2017-0323 OEB Staff Submission (amended) (dated April 30, 2018), p. 10.

²⁸ EB-2017-0323 EP Submission, April 27 2018, p. 5.

also ignores a principal EC finding that Union's custom project savings claims were calculated with a high level of accuracy. This EC finding is set out below in its entirety:²⁹

***“ESI. Finding:** Both utilities exhibit a strong commitment to accurate energy savings estimates. Both utilities have made significant investments in developing calculation tools which model savings accurately. For example, Union's dock door seal calculator is well considered and designed, and Enbridge's Etools calculator is very thorough in attempting to model savings for key measures.*

Both utilities chose to retain engineers with strong understandings of their customers' building and process systems. We had numerous opportunities to interact with these engineers on phone calls and site visits, and have grown to respect their knowledge and engagement with the types of systems that matter to their customers.

Both utilities showed a commitment to finding accurate savings. On several occasions, both on the phone and in writing, the evaluation team suggested a value that would have increased savings in a way that the program engineer did not think was valid. When this happened, neither utility was shy in suggesting that we may want to make a more conservative choice.

***Recommendation:** The utilities should continue in their commitment to accuracy.*

***Outcome:** Accurate energy savings.”*

26. EP's claim that Union “appeared to interfere” with data collection shows a lack of understanding of the audit process and of the appropriate role of the EC and the utilities' representatives in the process.³⁰ The same section of the EC's report quoted by EP³¹ goes on to recommend that a verification code of conduct be established for both verifiers and utility staff to address the concerns noted by EP as well as customer complaints made against verifiers. As per the code of conduct that was established for the 2016 DSM program year audit, utility staff can assist in situations where customer and verification staff struggle to understand one another. Utility staff can also answer questions posed to them by the customer/vendor or verification

²⁹ Exhibit B, Tab 3, p. 15.

³⁰ EB-2017-0323 EP Submission (dated April 27, 2018), p. 5.

³¹ Exhibit B, Tab 3, pp. 23-24.

staff. Union notes that out of the 192 projects verified during the 2015 verification, the EC reported one single instance where a Union representative may have inadvertently interfered with data collection. Upon receiving feedback on interference from the EC, Union communicated verification expectations to its representatives and no further complaints against Union were received.

27. EP also states that Union's assessment that it cannot confirm whether or not other errors persist because it doesn't have sufficient data to replicate the EC's findings is "disingenuous".³² Union has noted that it supports all EC audit findings despite the issues that persist regarding the NTG Study. As explained above, Union is not suggesting that the OEB should dismiss the 2015 NTG Study's results outright, but instead should implement them prospectively while ensuring that both targets and results are based on a consistent set of underlying data. While Union appreciates that the errors that it identified and communicated to the EC were eventually rectified, Union was not provided sufficient data to replicate and check the accuracy of the EC's findings to ensure additional errors do not persist.³³

D. Union Supports the Comments of EAC Expert Member Marion Fraser

28. In a letter dated April 27, 2018, EAC expert member Marion Fraser notes:³⁴

"Throughout the evaluation process and the many meetings of the Evaluation Advisory Committee, I identified numerous issues that were not addressed by the Evaluation Contractor. I provided comments on the narrowly specified survey to determine free riders, the individual responses provided by customers, and the interpretation of the customer responses who were considered full and partial free riders. Despite requesting a response on how these comments were addressed on more than one occasion, I received no response from either the Evaluation Contractor or Board Staff.

While the Evaluation Contractor is qualified to evaluate DSM programs in the traditional fashion, the predominant experience of the Evaluation Contractor relates to projects in the United States and the DSM framework there based on "The California Standard

³² EB-2017-0323 EP Submission (dated April 27, 2018), p. 5.

³³ Exhibit B.Staff.17.

³⁴ EB-2017-0323 Marion Fraser Submission (dated April 27, 2018), p.2.

Practice”. The Evaluation Contractor failed to display knowledge, understanding or appreciation of the significant differences between the United States and Canadian markets. Ontario’s market, given Ontario’s role as industrial heartland of Canada, adds to its unique qualities. As well, Ontario’s policy framework with respect to conservation, cap and trade, and publishing of public and private sector energy and water consumption data and conservation plans creates a vastly different environment.

I acknowledge that the Board’s evaluation process is outside the scope of these proceedings, pursuant to Procedural Order No. 2 dated April 10, 2018.

Notwithstanding, I think the number of issues with the evaluation process raises legitimate concerns about the 2105[sic] DSM evaluation, measurement and verification results that are being used in these two proceedings. I do not support the findings of the Evaluation Contractor and echo many of the comments and concerns raised by the utilities in their written submissions.”

29. Union notes that a number of intervenors extol the expertise of the EC within their submissions. While Union agrees that the EC is qualified, it appreciates the comments from Ms. Fraser above acknowledging the EC’s lack of Ontario-specific knowledge. Overall, Ms. Fraser’s comments support the need: (a) for a more transparent exchange of audit calculations to ensure accuracy; and (b) for broader policy considerations including the appropriate application of Spillover, Secondary Attribution and NTG Study results.

E. LRAMVA Calculation – 2014 Lost Revenue Amounts

30. In its submission, OEB Staff states:

“As part of the EC’s 2015 final report it provided a total 2015 LRAMVA balance of \$154,368. OEB staff is unable to discern why Union has included any 2014 lost revenues in its 2015 LRAMVA.” [...]

“OEB staff requests that as part of its final submission Union fully address the appropriateness of including any 2014 lost revenues in its 2015 LRAMVA.”³⁵

³⁵ EB-2017-0323 OEB Staff Submission (dated April 27, 2018), p. 13.

31. Union addresses the appropriateness of including 2014 lost revenues in its 2015 LRAM deferral account in its application at Exhibit A, Tab 3, pp. 2-4.

“The LRAM deferral account is used to track, at a rate class level, the variance between the actual impact of DSM activities undertaken by the natural gas utility and the forecasted impact included in distribution rates. There is a time lag from when Union receives audited volume savings to the time those volume savings are reflected in distribution rates.”

32. As noted in Union’s application at Exhibit A, Tab 3, p. 4, the 2014 audited LRAM volume savings were reflected in contract delivery rates beginning January 1, 2016. No amount of 2014 audited LRAM savings were included in Union’s OEB-approved 2015 distribution rates. Therefore, Union is proposing to recover the lost revenues from audited 2014 annual contract rate class volume savings in the 2015 LRAM deferral account.

33. This approach is consistent with past OEB-approved dispositions of the LRAM deferral account. Most recently, in EB-2015-0276 (2014 DSM Deferrals), Union appropriately recovered LRAM volume savings in the same fashion, and recovered a full year for 2013 audited DSM activities through the 2014 LRAM deferral account.

F. Timing of Rate Adjustment Implementation

34. Union proposes to update rates as part of the next available QRAM application following the date of the Decision and Final Rate Order in this proceeding. Union could meet the implementation date of July 1 proposed by LPMA³⁶ if the OEB issued its decision by June 7, 2018. Otherwise, Union expects that implementation would be delayed to the October 1 QRAM.

* * *

35. For these reasons and those set out in its argument-in-chief, Union respectfully requests that the relief it seeks in this application be granted.

³⁶ EB-2017-0323 LPMA Submission, April 27 2018, p. 6.

All of which is respectfully submitted this 7th day of May, 2018

Original signed by Myriam Seers

Torys LLP
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