K1.6

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario Energy Board
FILE No. EB 2014-0053
EXHIBIT No. K1.6
DATE May 14, 2015
08/99

Ontario

EB-2014-0145

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

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

AND IN THE MATTER OF an application by Union Gas Limited for an order approving a deferral account to capture variances between balances approved for disposition and amounts actually refunded/recovered.

Before: Marika Hare
Presiding Member

Ellen Fry
Member

DECISION AND ORDER
October 30, 2014

Introduction

Union Gas Limited ("Union") filed an application dated May 2, 2014 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B (the "Act"), for an order of the Board approving the final disposition of 2013 year-end deferral account balances (the "Application"). The Application also requested the approval of a new Deferral Clearing Variance Account (Account No. 179-132).

The Board granted intervenor status to the Building Owners and Managers Association ("BOMA"), the Canadian Manufacturers and Exporters ("CME"), the Consumers Council of Canada ("CCC"), the Federation of Rental-housing Providers of Ontario ("FRPO"), the Industrial Gas Users Association ("IGUA"), the City of Kitchener ("Kitchener"), the London Property Management Association ("LPMA"), the Ontario Greenhouse Vegetable Growers ("OGVG"), TransCanada Energy Ltd. ("TCE"), TransCanada PipeLines Ltd. ("TransCanada"), and the Vulnerable Energy Consumers Coalition ("VECC"). The Board also determined that BOMA, CME, CCC, FRPO, IGUA, LPMA, OGVG and VECC will be eligible to apply for an award of costs under the Board's *Practice Direction on Cost Awards.*

Intervenors and Board staff filed interrogatories on July 3, 2014 and Union responded to the interrogatories on July 17, 2014. In responding to the interrogatories, Union identified a number of necessary updates it considered appropriate to make to the Application. Union filed an updated Application on July 23, 2014.

A Settlement Conference was held on August 7, 2014. Union filed a proposed Settlement Agreement on August 22, 2014. BOMA, CME, Kitchener, FRPO, IGUA, LPMA, OGVG, TransCanada and VECC were parties to the Settlement Proposal. Board staff filed a letter dated August 27, 2014 stating that Board staff did not oppose the proposed Settlement Agreement.

The Board held an oral hearing on September 3 and 4, 2013, which covered some, but not all, issues in this proceeding. The following intervenors participated in the hearing: CME, FRPO, IGUA, LPMA, and OGVG. At the hearing, the Board accepted the proposed Settlement Agreement, with a minor revision to reflect a clarification requested by the Board.[1] The proposed Settlement Agreement did not include agreement on the following four items, which were the subject of the oral hearing:

1) Union South Bundled Direct Purchase Load Balancing Costs (Spot Gas Variance Account)
2) Unaccounted For Gas ("UFG") Price Variance (Spot Gas Variance Account)
3) Average Use Per Customer Deferral Account
4) Allocation of Checkpoint Balancing Penalties

Union provided its argument-in-chief at the oral hearing. The Board subsequently received written submissions from Board staff, BOMA, CME, FRPO / OGVG, IGUA, LPMA, and VECC and a written reply submission from Union.

[1] The revision was reflected in the Updated Settlement Proposal filed on September 5, 2014.

1) Union South Bundled Direct Purchase – Load Balancing Costs (Spot Gas Variance Account)

Background

Union retains load balancing obligations for South bundled direct purchase customers associated with variances relative to the February 28 checkpoint[2] (for variances that occur after the establishment of the checkpoint) and March weather and consumption variances. The purpose of Union's load balancing obligations is to ensure that there is sufficient gas in storage at March 31 in order to maintain system integrity. Union, in some cases, will require incremental spot gas purchases to load balance for these customers.

In the winter of 2014, which was colder than normal, Union purchased 0.8 PJs of incremental gas in order to meet its load balancing obligations related to its South bundled direct purchase customers. The incremental gas purchased by Union and consumed by South bundled direct purchase customers in February and March 2014 is returned to Union by direct purchase customers in the summer (prior to the contractual year-end).

The balance in the Spot Gas Variance Account associated with the 0.8 PJs of spot gas purchased for the South bundled direct purchase customers is $1.801 million. The load balancing costs associated with the 0.8PJs of incremental gas purchased are $1.954 million. The load balancing costs were calculated by applying the winter/summer price differential to the 0.8 PJs of gas purchased.

Union proposed to allocate the load balancing costs ($1.954 million) associated with the 0.8PJs of incremental gas purchased to the South bundled direct purchase customers that were below their planned Banked Gas Account balances as of March 31, 2014. Union proposed to allocate the credit balance of $0.153 million to Union South sales service customers. The $0.153 million credit arises as a result of the difference between the load balancing costs (which are calculated based on the winter/summer price differential) and the variance account impact of the spot gas purchase.[3]

There are three questions that the Board will make findings on with respect to this issue: (i) whether Union is permitted to recover the load balancing costs; (ii) if recovery is permitted, whether it should be addressed in this proceeding or in Union's 2014 non-commodity deferral account proceeding; and (iii) the appropriate allocation of these costs.

[2] The February 28 checkpoint is the deadline whereby a South bundled direct purchase customer must have delivered incremental gas to Union if it is short of gas relative to its planned Banked Gas Account balance.
[3] Union Revised Application, EB-2014-0145, July 23, 2014 at Exhibit A / Tab 1 / pp. 4-7.

Board Findings

(i) Permissibility of Cost Recovery

FRPO / OGVG submitted that Union could be held responsible for the load balancing costs because a portion of the 0.8 PJs of gas that Union purchased for its South bundled direct purchase customers resulted from Union under-forecasting the balancing requirements for direct purchase customers at the February checkpoint. In addition, FRPO / OGVG submitted that because Union did not give customers an opportunity (through the provision of notice) to take action and purchase gas to be in balance at March 31, Union should be disallowed recovery of the load balancing costs.

In addition, cross-examination raised the issue of whether Union's system integrity inventory, rather than incremental spot gas purchases, should have been used to manage the consumption variances for Union's South bundled direct purchase customers.

Other intervenors and Board staff accepted the premise that Union should be permitted to recover the load balancing costs. These parties argued that Union incurred real incremental costs to load balance for South bundled direct purchase customers, therefore, the Board should approve cost recovery.

The Board does not agree with the FRPO / OGVG arguments on this question. The evidence does not indicate that Union's forecasting of the balancing requirements at the February checkpoint was deficient. Furthermore, the evidence does not provide support for the theory that direct purchasers, if given notice, would necessarily have taken action that decreased the load balancing requirements.

The Board also does not consider it appropriate that Union should have used its system integrity inventory to cover its load balancing obligations for its South bundled direct purchase customers. The Board accepts Union's evidence that system integrity inventory is intended to cover "unforecasted or expected variances" and that the "incremental consumption of the direct purchase customers was not unforecasted or unforeseen"[4] as at a certain point it was obvious to Union that additional gas would need to be purchased in order for Union to fulfill its load balancing obligations for this group of customers.

[4] Oral Hearing Transcripts, EB-2014-0145, Vol. 1 at p. 36.

Accordingly, the Board finds that Union should be permitted to recover the load balancing costs.

(ii) Timing of Cost Recovery

All intervenors and Board staff agreed with Union's proposal to deal with the load balancing costs in this proceeding. The Board also agrees. These are commodity-related costs that would normally be dealt with through the QRAM process. However, in this instance the cost allocation issue being addressed is more complex than is normally intended to be dealt with in the QRAM process.

(iii) Cost Allocation

As indicated above, Union proposed to allocate the load balancing costs ($1.954 million) associated with the 0.8PJs of incremental gas purchased to the South bundled direct purchase customers that were below their planned Banked Gas Account balances as of March 31, 2014. Union proposed to allocate the credit balance of $0.153 million to Union South sales service customers. The $0.153 million credit arises as a result of the difference between the load balancing costs (which are calculated based on the winter/summer price differential) and the variance account impact of the spot gas purchase. LPMA and VECC agreed with Union's proposal.

Union submitted that its proposal is based on cost causality. In its view, the South bundled direct purchase customers that did not meet their required Banked Gas Account balances as of March 31 were the customers that caused Union to buy the spot gas at issue here. Accordingly, in Union's view these customers should bear the cost.

Board staff submitted that the load balancing cost of $1.954 million should be recovered from all Union South bundled direct purchase customers (not just those below their Banked Gas Account balances on March 31) and that the associated $0.153 million credit should be allocated to Union South sales service.

In support of its argument, Board staff referred to the evidence that South bundled direct purchase customers do not have a contractual obligation to balance on March 31, and were not given advance notice by Union that the planned Banked Gas Account balances as of March 31 would be used to determine the allocation of the load balancing costs. Board staff argued that because there is no March 31 balancing checkpoint in Union South the situation is analogous to that in Union North, where load balancing costs are allocated to all direct purchase customers (as part of the allocation to all Northern customers) based on overall volume.

CME, IGUA and BOMA agreed with Board staff that costs should be allocated to all South bundled direct purchase customers. However, CME submitted that the costs allocated should be limited to the actual cost of $1.801 million and that the proposed credit of $0.153 million to sales service customers should not be approved. BOMA indicated that it takes no position on the allocation of the proposed $0.153 million credit.

Union submitted that its proposal differs from the cost allocation applicable to Union North, where load balancing for sales service and bundled direct purchase customers is managed on an aggregate basis, because in Union North there are no balancing checkpoints to determine which direct purchase customers contributed to the load balancing costs.

Regarding CME's argument concerning the amount to be allocated, the Board finds that the appropriate amount is $1.954 million as proposed by Union rather than $1.801 million as proposed by CME. The Board also finds it appropriate that sales service customers should receive an associated $0.153 million credit. Applying the winter/summer price differential to the cost of the gas purchased ensures that sales service customers do not bear the costs related to relatively more expensive incremental winter purchases.

The Board finds that the spot gas at issue was purchased to meet the needs of Union South bundled direct purchase customers who were below their planned Banked Gas Account balances as of March 31. It is true that these customers did not have a contractual obligation to meet these balances as of March 31 and that Union did not give notice that March 31 balances would be used for the allocation of load balancing costs. However, the Board is of the view that the principle of cost causality makes it appropriate to allocate the load balancing costs to this group of Union South bundled direct purchase customers.

Therefore, the Board finds that, in accordance with the principle of cost causality, Union South direct purchase customers that were below their planned Banked Gas Account balances as of March 31 should be allocated the load balancing costs of $1.954 million. The Board also finds that the proposed allocation of the associated $0.153 million credit to sales service customers is appropriate.

Unaccounted for Gas ("UFG") Price Variance (Spot Gas Variance Account)

Background

Union purchased 2.1 PJs of incremental gas for delivery in March because of actual UFG variances experienced for the 2014 winter. Union noted that if it had not purchased the incremental supply there would not have been adequate gas in storage to meet customer demands in March and April, 2014.

Union proposed to allocate the price variance associated with UFG (a $4.729 million debit) to Union South sales service customers consistent with historical practice. This historical practice has resulted in a benefit to Union South sales service customers over the past six years (averaging $5.5 million per year).[5] The issue for the Board to determine is the appropriate allocation of this price variance.

Board Findings

Union submitted that the price variance should continue to be allocated to Union South sales service customers. It submitted that to allocate it to all Union South customers would be difficult because it would require a change in Union's methodology and processes. IGUA and VECC supported Union's proposed allocation. IGUA also submitted that, on a going forward basis, it has no objection to a review of how the UFG price variances should be allocated.

Other intervenors and Board staff submitted that the price variance should be allocated to all Union South customers (with the exception of those customers that supply their own fuel), in accordance with the principle of cost causality.

Union testified that the costs associated with UFG are recovered in delivery rates from all Union South customers other than those with customer-supplied fuel. The Board finds that cost causality requires the price variances associated with UFG to be allocated in the same way as the underlying costs, both in the current proceeding and going forward. Therefore, the Board finds that the UFG price variance should be allocated to sales service customers and the direct purchase customers for which Union provides fuel.

The Board notes that although this change in allocation entails a debit for direct purchase customers that did not share in past benefits, the direct purchase customers may benefit in future if these price variances revert to the historical credit position experienced over the past six years.

Average Use Per Customer Deferral Account

Background

The total balance in the Average Use Per Customer Deferral Account for all four general service rate classes (M1, M2, Rate 01 and Rate 10) for 2013 is a credit to customers of $11.475 million.[6]

[5] Union Revised Application, EB-2014-0145, July 23, 2014 at Exhibit A / Tab 1 / p. 9.
[6] Union Revised Application, EB-2014-0145, July 23, 2014 at Exhibit A / Tab 1 / p. 36.

The Average Use Per Customer Deferral Account records the variance resulting from the difference between the actual average gas use by Union's customers and the forecast average use included in delivery rates. The issue before the Board in this proceeding is whether, in addition to delivery rates, storage revenues and costs should also be included when calculating the balance in the Average Use Deferral Account.

Board Findings

All intervenors and Board staff agreed with Union that, as currently worded, the Accounting Order for the Average Use Per Customer Deferral Account does not include storage related revenues and costs.

However, Board staff submitted that the fundamental purpose of this Deferral Account is to ensure that neither customers nor Union's shareholder are harmed by differences between forecast and actual average gas use by the general service rate classes. Board staff submitted that variances in average use can impact storage-related revenues and costs just as they can impact delivery-related revenues and costs. Accordingly, Board staff submitted that the Accounting Order for the Average Use Per Customer Deferral Account should be amended so that storage-related revenues and costs are included going forward, effective in 2014. Intervenors that made submissions on this issue generally supported Board staff's position.

Union submitted that as part of its Board approved Incentive Rate Mechanism for 2014-2018 a Normalized Average Consumption ("NAC") Deferral Account was established to replace the Average Use Per Customer Deferral Account and to capture the variance resulting from the difference between forecast NAC included in rates and actual NAC for general service customers. Union submitted that the NAC Deferral Account already contemplates the inclusion of storage related revenues and costs for general service customers.

The Board agrees with the parties and Union that storage related revenues and costs are not included in the Accounting Order for the Average Use Per Customer Deferral Account, and accordingly should not be included in the calculation of the balance in this account for 2013. The relevant portion of the accounting order for this deferral account describes it as follows:

> To record as a debit (credit) in Deferral Account No. 179-118 the margin variance resulting from the difference between the actual rate of decline in use-per-customer and forecast rate of decline in use-per-customer included in ***gas delivery rates*** as approved by the Board in 2013.[7] [Italics and bold added]

[7] Decision and Rate Order, EB-2011-0210, January 17, 2013, at Appendix G.

Accordingly, the Board approves disposition of the 2013 balance in the Average Use Per Customer Deferral Account as filed.

The Board also agrees with Union that, starting in 2014, the NAC Deferral Account, which replaces the Average Use Per Customer Deferral Account, will include storage related revenues and costs for general service rate classes. Accordingly, there is no need for the Board to make a finding on whether storage revenues and costs should be included in the Average Use Per Customer Deferral Account going forward.

Allocation of Checkpoint Balancing Penalties

Background

In the EB-2014-0154 proceeding, Union requested that, on a one-time basis, the penalty charges applied for Rate T1 / T2 Supplementary Inventory and Rate 25 Unauthorized Overrun Gas Commodity in February and March, 2014 be reduced. In addition, Union requested that the penalty charge applied to bundled T-Service customers that did not meet their contractual balancing obligations in February 2014 be reduced. The quantum of these penalty charges was the subject of the Board's EB-2014-0154 proceeding.

The issue in this proceeding is how to allocate the amount that Union collects from these penalty charges.

Union proposed to allocate the amount collected from these penalty charges to Union South sales service customers only.

Board Findings

Union submitted that the amount paid in penalty charges should be allocated only to sales service customers because it was their gas that was used to balance for the direct purchase customers that failed to meet their contractual obligations. Union submitted that direct purchase customers, even those that met their contractual obligations, should not share in the allocation of the penalty amount because they did not contribute to the management of customers' failures to meet their obligations.

Board staff, LPMA, and VECC supported Union's proposal. Board staff submitted that meeting contractual obligations is a duty and accordingly does not warrant a reward. Board staff also submitted that allocating any credit amount from the penalty charges to direct purchase customers who had not met their contractual obligations would effectively reduce the price of the penalty charges, which would not be appropriate.

CME, BOMA, FRPO / OGVG, and IGUA submitted that sales service customers should be allocated an amount that reflects the actual cost of gas used to cover the direct purchase customers' defaults related to their contractual obligations.

CME argued that the checkpoint balancing revenues were realized by Union through the performance of its function as the system operator for direct purchase customers. On that basis, CME submitted that the excess penalty amount (i.e. the margin over the actual cost of gas) should be allocated to all Union South bundled direct purchase customers.

BOMA argued that the excess penalty amount should be allocated to both sales service and compliant direct purchase customers on a pro rata basis.

FRPO / OGVG argued that Union's position that sales service customers' gas was used to balance for the direct purchase customers that failed to meet their contractual obligations is not correct. FRPO / OGVG submitted that this gas transfer was only an accounting transaction. FRPO / OGVG submitted that the excess penalty amount should be used to offset the load balancing costs for Union's South bundled direct purchase customers and the remainder should be allocated to all bundled customers.

IGUA submitted that the excess penalty amount should be used to offset the UFG price variance to sales service customers.

The Board agrees with the submissions of Union and the parties that supported Union's proposal on this issue, because the Board is of the view that it was sales service customers' gas that was used to balance for the direct purchase customers that failed to meet their contractual obligations. Accordingly, the Board finds that the amount paid in penalty charges should be allocated to sales service customers.

Implementation

The Board directs Union to file a Draft Rate Order which reflects the Board's findings in this Decision and Order. The Board will provide Board staff and intervenors an opportunity to comment on the Draft Rate Order. Union will also be given the opportunity to respond to the comments of Board staff and intervenors.

Once the Draft Rate Order has been filed and all parties have had the opportunity to comment on it, the Board will issue a subsequent Decision and Rate Order.

The Board asks Union, in its Draft Rate Order, to make a proposal regarding when the rate impact arising from this Decision can be implemented. The Board is of the view that the implementation of this decision should occur as soon as possible.

The Board notes that the process for cost claims will also be set out in the subsequent Decision and Rate Order.

THE BOARD ORDERS THAT:

1. Union shall file a Draft Rate Order reflecting the Board's findings in this Decision on, or before, November 13, 2014.

2. Board staff and intervenors who wish to file comments on the Draft Rate Order shall do so on, or before, November 20, 2014.

3. Union shall file responses to the comments of Board staff and intervenors on, or before, November 27, 2014.

All filings to the Board must quote file number **EB-2014-0145**, be made electronically through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Lawrie Gluck at Lawrie.Gluck@ontarioenergyboard.ca and Senior Legal Counsel, Michael Millar at Michael.Millar@ontarioenergyboard.ca.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

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DATED at Toronto, October 30, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary