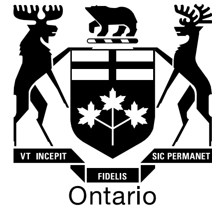
Ontario Energy Board | **Commission de l'énergie de l'Ontario**



EB-2012-0337

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 Limited pursuant to Section 36(1) of the *Ontario Energy Board Act*, 1998, for an Order or Orders approving the 2013-2014 Large Volume Demand Side Management Plan.

BEFORE: Paula Conboy
Presiding Member

Marika Hare
Member

DECISION AND ORDER
March 19, 2013

Union Gas Limited ("Union") filed an application with the Ontario Energy Board (the "Board") dated August 31, 2012, seeking approval for its 2013-2014 Large Volume Demand Side Management ("DSM") Plan. The proposed budget is $4.664M plus inflation in both 2013 and 2014. With the inflation factored in, Union estimates the 2013 budget to be $4.769M and the 2014 budget to be $4.876M delivered to customers utilizing rates 100, T1 and T2.

The application was filed pursuant to the Board's DSM Guidelines for Natural Gas Distributors ("DSM Guidelines") that were issued on June 30, 2011, as well as in accordance with the Union Settlement Agreement, January 31, 2012 (EB-2011-0327) which was accepted by the Board on February 21, 2012.

Union stated that it had consulted with stakeholders when developing the Plan and incorporated, where in Union's view appropriate, the feedback provided. However, it noted that it did not achieve consensus on the Plan.

The Board held an oral hearing on February 5, 2013 and heard oral submissions on Union's 2013-2014 Large Volume DSM Plan from the following parties:

- Association of Power Producers of Ontario ("APPrO");
- Board staff;
- Canadian Manufacturers and Exporters ("CME");
- Environmental Defence ("ED"); and,
- Industrial Gas Users Association ("IGUA").

Written submissions were filed by the following parties:

- Building Owners and Managers Association ("BOMA");
- Consumers Council of Canada ("Council");
- Green Energy Coalition ("GEC");
- School Energy Coalition ("SEC");
- London Property Management Association ("LPMA");
- Low-Income Energy Network ("LIEN"); and,
- Vulnerable Energy Consumers Coalition ("VECC").

Union presented its Argument-in-Chief orally on February 1, 2013, and filed reply argument on February 12, 2013.

The complete record for this proceeding is available on the Board's website.

Decision on Union's 2013-2014 Large Volume DSM Plan

The Board has reviewed all submissions on Union' 2013-2014 Large Volume DSM Plan and has chosen to summarize the record to the extent necessary to provide context to its findings.

1. APPrO's Opt-out Proposal

APPrO participated in the proceeding on behalf of its large gas-fired generation membership to propose that generators (or even all large volume customers) be given the option of "opting-out" of Union's DSM programs. Under APPrO's proposal, generators would neither pay nor be eligible to participate in Union's DSM programs.

APPrO presented expert evidence ("Navigant's Jurisdictional Review") to demonstrate that other jurisdictions were supportive of opt-out programs. One of APPrO's members appeared as a witness to attest to the position that by the very nature of the industry, generators already are effectively mandated to actively seek out and expertly implement energy efficiency projects on their own.

APPrO also submitted that DSM has a disproportionately negative impact on generators in particular. In APPrO's view many generators operate relatively new facilities that are already very efficient. Finally, APPrO argued that the opt-out proposal is supported by the DSM Guidelines in that large volume customer DSM programs are non-mandatory.

IGUA did not take a position on opt-out, but added the qualification that opt-out, if pursued, should be on a rate-class basis and not on a customer basis. This rate class argument was supported by other parties.

Some parties argued that an opt-out program would expose those customers that do not opt-out to be burdened with more costs than originally anticipated as the DSM budget would be recovered over a smaller number of customers.

Other parties submitted that the opt-out proposal would reduce net investment in energy efficiency among the specific large volume customers that opt-out, decrease DSM energy savings and result in Ontario losing the 8-1 ratio of benefits to costs for this program[1].

The Council submitted that if the Board is interested in considering an opt-out proposal it should be done as a generic policy issue when the DSM Guidelines are next reviewed. At that point, the impacts on other rate classes and customers within each of those classes could be properly addressed. SEC made similar submissions.

GEC and Union made submissions regarding the adequacy of Navigant's Jurisdictional Review stating that it was neither sufficiently detailed nor representative to render appropriate conclusions.

Union argued that APPrO's proposal failed to address the "fatal flaw" in that an opt-out option for APPrO members would be contrary to the fundamental class ratemaking

[1] Evidence of Union Gas (Exhibit A, Tab 1, pg 30)

principle that “all customers in the class pay the same rates”. Union was concerned that a departure from this principle would invite many similar requests for special exemptions, both within large volume rate classes and in other rate classes.

Board Findings

The Board does not accept APPrO’s proposal to allow large volume customers to be able to opt-out of DSM programs. Industrial DSM programs, both those funded though rates and by individual customers, have shown to be efficient and to have societal benefits with respect to reducing greenhouse gas emissions and encouraging wiser energy usage.

Comparisons were made to Enbridge Gas Distribution Inc.’s (“Enbridge”) rates for generators, who do not have and therefore do not pay for DSM programs. However, in the Enbridge example, entire rate classes are exempt, not certain customers within a rate class.

The Board agrees that an opt-out proposal would expose those customers that do not opt-out to be burdened with more costs than originally anticipated. The Board heard that large volume users are most concerned about rate predictability and stability when it comes to DSM and was urged to be guided by this concern.

The Board’s DSM Guidelines do not make it mandatory for natural gas distributors to have DSM programs for industrial classes, but once the distributor decides to provide for such programs, the entire class is responsible for paying for those programs.

While there was discussion about the rigour around Navigant’s Jurisdictional Review, the Board does not need to opine on this because it agrees with the principle that allowing certain customers in a rate class to opt-out of the costs allocated to that class is contrary to the fundamental class ratemaking methodology that all customers in the class pay the same rates. This, and the unintended consequences of increasing costs for customers that do not opt-out, are sufficient reasons for the Board to deny the opt-out proposal.

2. Self-Direct Program

Union is proposing a new customer incentive budget process for Rate T2 and Rate 100 customers (“Self-Direct” access budget mechanism) whereby customers will each have direct access to the full customer incentive budget they pay in rates (as opposed to the

an aggregate pool approach). Customers must use the funds to identify and implement energy efficiency projects by August 1st , or lose the funds to be used by other customers in their rate class[2].

Union stated that the Self-Direct program is being introduced in response to feedback received from customer focus group sessions and a jurisdictional review of similar programs in North America. Union stated the program will provide Rate T2 and Rate 100 customers with enhanced flexibility to access a greater and more predictable level of incentives for individual large projects or studies. Under the “use it or lose it” condition customers will be motivated to “take action” with their available incentive budget. This program also aims to minimize intra-rate class cross subsidization.

LPMA submitted that this option should be considered as part of a longer term review of the delivery of DSM programs. LPMA noted that in the 2013-2014 period, the Board may wish to allow such an option as a pilot program in order to obtain information on how such a program option would work and its take up by customers.

SEC similarly submitted that Union’s Self-Direct Program proposal should be approved only as a type of pilot project, to see how unbundling would work in a limited scenario. In SEC’s view, Union and Enbridge will be before the Board no later than the end of 2013, to consider the policy direction of their next three-year plans. SEC noted that this would be the appropriate time to consider a review of the mandatory nature of ratepayer payment for DSM programs.

GEC supported the Self-Direct Program approach but submitted that Union’s yearly proposal is not optimal and argued that a multi-year plan was more appropriate. GEC’s expert witness submitted that a single year approach will tend to favour smaller, less desirable projects over larger projects that offer far more cost-effective savings potential per DSM program dollar. In his testimony he suggested that a multi-year approach would greatly enhance the Self-Direct Program proposal. He notes:

> “*Put simply, a one year direct access budget may not be large enough to overcome other internal barriers to the investment. The end result of this program*

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[2] Under its Plan, Rate T1 customers will maintain access to an aggregate pool of customer incentives throughout the year, consistent with the DSM program structure in Union's bundled contract rate classes that serve other similarly sized customers.

> *design feature is that the Company may artificially constrain the amount of savings and even the cost-effectiveness of the savings that are realized."*
>
> *"In short, a multi-year direct access budget gives customers much greater flexibility to plan and pursue projects that provide the biggest bang for the buck and/or make the most sense for their business.*

IGUA and APPrO supported GEC's multi-year plan proposal as it would provide more time for planning and greater flexibility. APPrO suggested that in the future a further extended period might even be considered.

CME submitted that it did not oppose the multi-year plan proposal so long as it didn't affect rate stability or predictability. However, CME cautioned that a two-year window may cause customers to defer their programs to the end of the two years.

Union remained concerned that GEC's proposal could result in procrastination, lost conservation opportunities and further deferral charges to customers that would disrupt rate predictability and rate stability. There were also implementation issues with respect to paying out the DSM incentive at the end of two years for industrial programs, as opposed to one year at a time. These deferral impacts could negate many of the improvements Union has incorporated into this application to enhance rate predictability and rate stability.

Board Findings

The Board approves Union's Self-Direct Program for Rate T2 and Rate 100 customers. The Board acknowledges that a multi-year approach could be advantageous, as a longer-term mechanism to implementing conservation programs, but finds that Union's concern about disrupting rate predictability and rate stability outweighs the benefits of implementing a new approach at this time.

The Self-Direct Program should be run as a pilot project for 2013 and 2014. The Board's expectation is that Union will be applying to the Board for approval of DSM programs for 2015 and beyond. The Board expects Union to provide quantitative results and analysis of how the Self-Directed Program plan has worked for 2013 and 2014 when it files its next DSM Plan.

3. Increasing the Large Volume DSM Plan Budget for 2014

In ED's submissions, the Board should approve the 2013 plan and budget only, and direct Union to develop a new large volume DSM plan and budget for 2014; one that pursues all cost-effective DSM opportunities (subject to the constraint that it must not lead to undue rate increases). In ED's view larger DSM budgets, especially given their cost effectiveness, can result in lower gas bills and lower greenhouse gas emissions at no net cost. In ED's submission, the Board's objectives under the Act support an increased 2014 budget. This, in ED's view, is a necessary component of fulfilling government policy and reaching the Government's 2020 greenhouse gas targets.

ED argued that the uncontested 8.1:1 TRC test net of free ridership implies that every $100 in spending results in $810 in savings to consumers. ED pointed out that when compared with electricity programs, natural-gas programs (which are also more efficient) are underfunded. As such delaying DSM spending will result in long-term lost conservation opportunities.

GEC supported ED's submissions. Other parties supported the budget as filed by Union. Some parties highlighted that large volume customers are very sensitive to rate increases and do not support a larger budget. CME's theme of the importance of rate predictability and stability underscored its concern with ED's proposal.

While agreeing that there remains much cost-effective DSM to be procured in Union's territory, whether from large users or from others, SEC submitted that the Board recently established a policy balance between aggressive DSM and rate impacts where all views were debated and considered, including the view now being proposed by ED in this proceeding. SEC concluded that nothing in the evidence in this proceeding suggests the policy balance established by the Board is no longer appropriate.

Union submitted it did not support an increase in the budget stating that such a proposal ignores the need to balance conservation objectives with the objectives of ensuring rate predictability and stability.

Union also pointed to the impractical implication of preparing and filing an application for 2014.

Board Findings

The Board does not support increasing the Union's large volume DSM plan budget for 2014, nor does it accept ED's proposal to approve 2013 only. Both Union and its customers need certainty with respect to the DSM budgets and impact on rates, and given that Union has applied for a 2 year program, the Board finds this is preferable to budget approval on a year by year basis.

While the Board agrees that Union's DSM programs have shown to be successful, many large industrial customers possess the expertise and incentive to undertake energy efficiency programs on their own in addition to availing themselves of those offered by Union. As such, the Board indicated that ratepayer-funded DSM programs for large industrial would not be a required component of the overall DSM program. The Board finds that Union has put forward a proposed budget that adequately balances conservation objectives with the objectives of ensuring rate predictability and stability.

The Board notes that as it has not approved the opt-out provision, increasing the budget would only exacerbate the position of parties claiming they either do not support rate payer funded DSM or who require better rate stability and predictability to run their operations.

The Board finds a practical option is to encourage Union to give careful consideration to the 2015 multi-year plan, and the appropriate DSM budget for large industrial programs for that period.
For all these reasons the Board finds the 2013 and 2014 budgets as filed to be appropriate.

4. Union's proposed changes to Shareholder Incentive Metrics

a. 30% Savings Reduction for Direct Access Program

Union is proposing to apply a 30% discount factor to the Rate T2/Rate 100 cumulative natural gas savings target on its 2013 scorecard.

Union submitted that the 30% discount reflects a considered "exercise of judgment" on its part and the discount to reflect the transition and cost effectiveness between 2012 and 2013 programming for rate T2 and Rate 100 customers. Union submitted such an

adjustment is reasonable in light of Union's introduction of the new direct access budget mechanism. Union also submitted that this gives customers the flexibility to fund a greater percentage of incremental project costs, studies and audits than was possible under the 2012 program. Union argued that as customers fund a greater percentage of incremental costs through their available incentives, the cubic meter dollar customer incentive cost-effectiveness will be lower for rate T2 and Rate 100 than it was in 2012. In addition, these customers will receive incentive funding for developing energy plans that will generate no direct cubic meter savings.

Given Union's proposal that the actual 2013 results reflect the cost-effectiveness of programming under the direct access budget mechanism, the company did not include the discount factor in the 2014 target conclusion.

GEC pointed out that Union did not provide any empirical evidence to support a 30% reduction and submitted that Union's proposal should be rejected as an unsupported attempt to extract unearned rewards. GEC's expert witness cited evidence of the effects of switching to a self-direct program approach – the ACEEE paper which comprehensively reviewed all such programs in North America – that suggests that such programs, if well designed, may actually increase results.

SEC supported GEC's submissions.

Board staff did not support the 30% discount and submitted that targets are meant to be aggressive to ensure efficient program design to maximize savings. Board staff also submitted that the DSM Guidelines states the following:

> *"…an incentive payment should be available to natural gas utilities to encourage them to aggressively pursue DSM savings and recognize exemplary performance."*

Board Findings

The Board does not find Union's proposal to apply a 30% discount factor to the Rate T2/Rate 100 cumulative natural gas savings target on its 2013 scorecard appropriate. Targets are meant to be aggressive and to ensure efficient program design to maximize savings. In addition the Board's notes GEC's suggestion that the Self-Direct Program may actually yield to greater savings. The quantitative analysis of the Self-Direct

Program results to be filed with Union's next DSM application may provide an empirical basis for any proposed change to the discount rate going forward.

a. Proposal for 15% DSM Variance Account ("DSMVA") Overspend

The DSM Guidelines provides for a DSMVA "over-spend" option for Union to spend and recover up to an additional 15% of its approved annual DSM budget, with all additional funding to be used on incremental program expenses only.

Union proposes to remove the ability to overspend the budget by 15% in Rate T2 and Rate 100 to provide greater rate predictability and stability for these customers.

GEC did not support the proposal to eliminate the overspend allowance, stating that Union's proposal sacrifices potential DSM program benefits.
Much of the concern over rate predictability and volatility during this proceeding was as a result of a large and unexpected DSMVA account balance recovery in 2011. In GEC's submission, large volume customers had in recent years experienced major variations in their rates due to the manner in which DSM budgets and shareholder incentives were allocated and controlled. For 2011 Rate T1 [3]customers ultimately faced an allocation of DSM costs that was 440% higher than expected. While the problem of large deferral account balances peaked in 2011, GEC submitted that it had been an issue for some time. The issue of rate predictability and stability was sufficiently addressed, in GEC's view, with the DSM budget caps.

However, GEC submitted that if the Board remains concerned that the numerous changes implemented in 2012 do not adequately control rate impact volatility, the answer is not to eliminate the DSMVA overspend allowance for large volume users, which would effectively reduce available resources to a level below that allowed in the Board's recent DSM Guidelines (which GEC argues are already restrictive spending levels). Rather, GEC proposes the answer is to include into rates the 15% allowance, making it a regular and predictable part of the rate impact. Any unspent funds would, as in the past, be refundable to ratepayers.

SEC supported GEC's submissions.

[3] The Rate T1 class referred to is now split into the Rate T1 mid-market service and a new Rate T2 large market service.

GEC's expert witness stated through oral evidence that he was not aware of the fact that the average T1 customer's cost associated with DSM for 2013 was between three and a half to four times what was paid in 2012, and that this would have been an important factor to consider in developing his recommendations.[4]

CME supported Union's efforts to provide greater rate predictability and stability for Rate T2 and Rate 100 customers. CME stated that 2011 was a point in time where some large volume users in Ontario, who were supporters of DSM, began to question the value of DSM delivered by natural gas utilities and whether it should be delivered from natural gas utilities on a going-forward basis. CME submitted that some of its membership started to come to the view it was better to receive no DSM than to be exposed to this type of unpredictability, this type of charge a year or two years after it's incurred and, in terms of the manufacturing cycle, too late to be able to incorporate it into costs and into sales. CME urged the Board to consider rate predictability and stability in any decision it made in this proceeding.

APPrO, IGUA and Board staff supported Union's proposal to remove the ability to overspend the budget by 15% in Rate T2 and Rate 100 for the reasons set out in the company's application.

Union submitted that GEC's proposal is not aligned with an objective of Union's direct access proposal, which is to provide customers with direct access to 68% of what they pay in rates for DSM. Union further submitted that the proposal undermines rate predictability and stability.

Board Findings

The Board accepts Union's proposal to not be able to overspend the large use DSM budget in the Rate T2/Rate 100 class, but maintain the overspend for Rate T1. The Board agrees with the submission of parties that the proposal could undermine rate predictability and stability.

[4] Transcript reference page 167of Volume 1.

b. Pegging 2013 Metrics to 2012 Program Performance

Union has proposed two cumulative natural gas savings metrics. The first measures the cubic metres results generated by Rate T2/Rate 100 customers, and the second the cubic metres savings generated by Rate T1 customers. For both metrics, Union proposes to base the cumulative natural gas savings targets on the cost-effectiveness of the previous program year. Union states that the overall approach is similar to the cumulative natural gas savings targets for 2013 and 2014 in Union's Resource Acquisition scorecard. Through using a formulaic approach, the targets will be adjusted based on the performance of the prior calendar year.

GEC noted that the savings per dollar of incentive can fluctuate considerably from year to year given the small number of large customers involved. GEC submitted that the 2012 full year results are not available to the Board or intervenors and this is an invitation for gaming. GEC proposed that the scorecard target should be set 5% above the average of 2010 and 2012 results.
SEC supported GEC's submissions.

IGUA also supported the use of a three-year rolling average, as opposed to data from only one year stating it would reduce the likelihood of volatility.

Board Findings

The Board does not accept Union's proposal to tie the 2013 scorecard to 2012 performance. The Board agrees that a three-year rolling average based on cubic metre targets is more appropriate than using data from only one year. The Board agrees with IGUA that this would reduce the likelihood of volatility. This notes that this is consistent with the methodology used in the previous TRC-based shareholder incentive.

c. Upper Band Savings Metric of 110% of Target for T2/Rate 100

In addition to the proposal to eliminate the 15% DSMVA overspend for the T2/Rate 100 program, Union proposed to reduce its Rate T2/Rate 100 program scorecard upper band target by 15% from 125% to 110% of Target.

GEC did not support Union's proposal. GEC's argument centred on its submission that Union should be allowed to access its 15% DSMVA overspend, therefore a reduction to

the program scorecard would not be necessary. GEC argued that the upper band should be set at 125% of the target as it is for programs directed at other rate groups.

Board staff submitted that the 125% upper band program metric should remain as a challenge, and therefore did not support the 15% reduction in the scorecard.

In its reply, Union submitted that the proposed 110% upper band is aggressive and that, if achieved, a 10% increase above target without any additional funding, due to not accessing its DSMVA and up to an additional 15%, would be exemplary.

Board Findings

The Board does not accept Union's proposal that the upper band metric be reduced by 15% and directs Union to set the upper band at 125% of the target. The Board agrees that the targets are meant to be aggressive and to reward exemplary performance.

d. Customer Incentive Budget Spending metric

To ensure Union balances the goal of maximizing gas savings with generating broad customer participation amongst its largest volume gas users, Union proposed to introduce a Rate T2/Rate 100 Percentage of Customer Incentive Budget Spent metric on its scorecard. This metric, in Union's view, will incent the company to drive participation from each customer, maximizing individual customer value under the self direct program.

GEC did not support the introduction of the new metric and submitted that Union is already achieving very high levels of industrial customer participation in recent years (T2 60% and Rate 100 72% in 2011). GEC submitted that coupled with Union's success and the 'use it or lose it' architecture of the direct access proposal, further incentives for the company to pursue widespread customer participation are not required.

GEC also submitted that the effect of Union's proposed incentive metric would be to reward Union for no incremental effort over prior year's work in ensuring customer take-up and in turn, would "steal" available incentive from other elements of the scorecard which could otherwise more effectively encourage better cubic meter performance.

Board Findings

The Board does not approve the DSM budget spending metric. The Board agrees that Union's should not require further incentives given its previous success and the approval of the self direct program. Union's review of its self direct program pilot will provide the Board with empirical analysis as to whether further metrics are required.

THE BOARD ORDERS THAT:

1. Union Gas Limited's 2013-2014 Large Volume Demand Side Management Plan is approved as filed, except as modified by the Board's findings in this decision.

2. Intervenors shall file with the Board and forward to Union Gas Limited their respective cost claims within **7 days** from the date of this Decision and Order.

3. Union Gas Limited shall file with the Board and forward to intervenors any objections to the claimed costs within **14 days** from the date of this Decision and Order.

4. Intervenors shall file with the Board and forward to Union Gas Limited any responses to any objections for cost claims within **21 days** of the date of this Decision and Order.

5. Union Gas Limited shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings with the Board must quote the file number EB-2012-0337, and be made through the Board's web portal at https://www.pes.ontarioenergyboard.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.
If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@ontarioenergyboard.ca. All other filings not filed via the Board's web portal should be filed in accordance with the Board's *Practice Directions on Cost Awards*.

DATED at Toronto, March 19, 2013

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary