



EB-2009-0166

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 approving its 2010 Demand
Side Management Plan

BEFORE: Paul Sommerville
Presiding Member

Cynthia Chaplin
Member

DECISION AND ORDER

Union Gas Limited ("Union") has filed an application with the Ontario Energy Board (the "Board") dated June 1, 2009 seeking an order granting approval of its 2010 Natural Gas Demand Side Management ("DSM") plan. The Board assigned File No. EB-2009-0166 to this application.

Union was informed through a letter dated April 14, 2009, that the Board determined it would not be appropriate to consider developing a new multi-year DSM framework for implementation in 2010. The Board made this decision based on the uncertainties surrounding the forthcoming Bill 150, *An Act to enact the Green Energy Act, 2009, and to Build a Green Economy, to repeal the Energy Conservation Leadership Act, 2006, and the Energy Efficiency Act and to Amend Other Statutes*. On May 14, 2009, the Green Energy and Green Economy Act, 2009 (the "Green Energy Act") received Royal Assent and on September 9, 2009, except for Section 3, the Green Energy Act, 2009, S.O. 2009, c. 12, Schedule A was proclaimed to be in force.

The current multi-year DSM plan for Union expires on December 31, 2009. The one year DSM plan is intended to bridge the gap between the current DSM framework, established in Board Proceeding EB-2006-0021 (the "Generic DSM Proceeding"), and the next generation DSM framework.

The Board requested that Union file its 2010 DSM Plan consistent with the current DSM framework, with the exception that the Board directed the removal of the budgets and targets related to DSM programs directed to low-income energy consumers. Such programs were intended to be dealt with in a separate proceeding.

On June 25, 2009, the Board directed Union to serve the Notice of Application on all intervenors in the Generic DSM Proceeding and to all of the parties in the DSM Guidelines proceeding (EB-2008-0346). In response to the Notice of Application, Consumers Council of Canada ("CCC"), Canadian Manufacturers & Exporters ("CME"), Energy Probe, The Green Energy Coalition ("GEC"), Industrial Gas Users Association ("IGUA"), Low Income Energy Network ("LIEN"), the London Property Management Association ("LPMA") and Pollution Probe requested intervenor status and requested eligibility for an award of costs. Enbridge Gas Distribution Inc. ("Enbridge"), Direct Energy and the City of Kitchener requested intervenor status and indicated they were not seeking an award of costs. All requests were granted.

On July 27, 2009, the Board issued Procedural Order No. 1 which outlined the schedule for parties to file interrogatories and submissions on Union's application. The interrogatories filed by intervenors focused on four central areas of Union's application: deviation from the current DSM framework established through the Generic DSM Proceeding; performance metrics tied to market transformation programs; input assumptions; and an historical summary of Union's DSM spending and results.

On August 6, 2009, Union provided its responses to all interrogatories. Within its responses Union confirmed that other than the reduction of budgets and targets for Low-Income programs, it based its 2010 plan on the existing DSM framework established in the Generic DSM Proceeding.

GEC requested information pertaining to the Drain Water Heat Recovery program that Union relied upon while making program decisions for 2010. Union provided builder participation figures, as well as responses to each of GEC's interrogatories on the subject.

Intervenors interrogatories also indicated an interest in Union's historical results from its DSM spending and in particular, the associated savings and performance bonuses awarded for its efforts. Union provided full historical figures of its spending over the life of the Generic DSM Framework as well as Total Resource Cost savings and Shared Savings Mechanism ("SSM") payouts.

On August 11, 2009, Union filed its updated 2010 DSM Plan with the Board. The filing was to incorporate updates to Union's 2010 DSM input assumptions associated with the faucet aerator (kitchen and bathroom) measure.

On August 13, 2009, the final written submissions from intervenors were filed with the Board. Submissions were received from IGUA, CCC, CME, LPMA, GEC and LIEN.

The submissions from the intervenors consistently urged the Board to conduct a robust and exhaustive review of a new multi-year DSM Framework for implementation in 2011 and beyond.

All intervenors agreed that Union's proposal for the one year DSM Plan was consistent with the approved DSM framework established in the Generic DSM Proceeding.

The one area of concern identified by intervening parties centered on the performance incentive scorecard for the Drain Water Heat Recovery market transformation program. Intervenors argued that the targets proposed by Union were too low. LPMA, supported by CME, submitted a proposal for new metrics to be used by Union in connection with this program. GEC and CCC suggested that the Board require Union to consult with the Evaluation and Audit Committee ("EAC") in the fourth quarter of 2009 to develop an agreed upon scorecard for the program.

In its reply submission, Union requested that the Board allow it to develop a finalized market transformation scorecard for 2010 through consultations with the EAC.

As a matter of more general concern, unrelated to any specific component of Union's programs, IGUA noted that it was not clear from Union's evidence whether Union was asserting that it can change program design (as distinct from SSM input assumptions) without Board approval.

Union replied that its 2010 DSM programs will be largely consistent with the programs delivered in 2009. Union noted changing market conditions, new information, or process improvements as factors to compel it to possibly alter its DSM programs to effectively utilize its DSM budget.

Board Findings

The Board finds that Union's proposal is consistent with the approved DSM framework established in the Generic DSM Proceeding.

The Board notes the proposal by Union to meet with the EAC to resolve the performance incentive scorecard issues raised by GEC and adopted by a number of other intervenors in regards to the Drain Water Heat Recovery program. The Board accepts this proposal subject to a deadline of October 30, 2009. On or before this date, Union shall file a proposal reflecting a consensus of the EAC with respect to the scorecard. If no such consensus is reached by that date, the Board will become engaged to resolve any unsettled elements on the basis of the existing record. The Board feels that there should be little difference in the performance incentive scorecards for market transformation programs involving both Union and Enbridge. Any differences will need to be appropriately supported by data and reasons. Otherwise, the scorecard for this program should be the same for each of the respective utilities.

With respect to the issue raised by IGUA concerning unilateral changes to the utility's DSM programs, the Board expects that any material changes to programs or the introduction of new programs will be submitted to the EAC for its consideration. Such changes ultimately require Board approval. Mere operational changes can be undertaken by the utility without the input of the EAC and would not normally require Board approval. The Board emphasizes the importance of the utility's relationship with the EAC and expects this relationship to continue throughout 2010.

The Board notes the comments from the intervenors with regard to the development of a new, comprehensive multi-year DSM framework in Ontario. The Board has initiated its process to develop a new multi-year DSM framework (EB-2008-0346) and will continue its review of the long-term future of gas DSM in Ontario throughout the remainder of this year and into 2010.

In the Board's letter dated April 14, 2009, requiring the gas utilities to file one year DSM plans for 2010, the Board instructed the utilities that it would address DSM programs for low-income consumers separately. The Minister of Energy and Infrastructure (the "Minister") has since informed the Board, by letter dated September 8, 2009, that the government plans to develop a province-wide integrated program for low-income energy consumers. In light of these plans, the Minister requested that the Board not proceed to implement new support programs for low-income energy consumers in advance of a ministerial direction.

The Board issued a letter on September 28, 2009, updating interested stakeholders on the Board's Low-Income Energy Assistance Program (LEAP) initiative in light of the Minister's letter. In the letter, the Board requested Union and Enbridge to file a one year low-income DSM plan for 2010 by October 15, 2009, consistent with the framework established in the Generic DSM Proceeding, including increases based on the established budget escalators. The letter further indicates that the one year plans will be addressed in a second phase in these proceedings. The Board will communicate further regarding the process for considering those applications once the filings are made.

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Union within 15 days of the date of this Decision and Order. Union may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

THE BOARD ORDERS THAT:

Union Gas Limited is granted approval of its updated 2010 DSM Plan filed on August 11, 2009, subject to the findings noted above.

DATED at Toronto September 30, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary