RP-2000-0078

IN THE MATTER OF the Ontario Energy Board Act 1998;

AND IN THE MATTER OF an application by Union Gas Limited for an order or orders approving the unbundling of certain rates charged by Union Gas Limited for the sale, distribution, transmission and storage of gas.

ARGUMENT OF THE CITIES OF GREATER SUDBURY AND TIMMINS

1. INTRODUCTION:

The Cities of Greater Sudbury and Timmins ("the cities") have approximately 34,000 residents and businesses who are gas customers prospective users of Union's unbundled service under Rates 01A, 10 and S1.

In addition the cities are affected by the situation that Union advances as one of the justifications for rejecting third party billing. As the grantors of a franchise right to Union they find, when seeking to assume (or investigating the possibility of) operation of the gas distribution system within their boundaries, that the billing function affords Union an effective propaganda medium to resist such efforts.

2. ISSUE 3.3- DEFERRAL ACCOUNT TREATMENT- SYSTEMS AND PROCESS CHANGES

a) Prudence of Expenditures

It appears to the cities that there has never been any agreement or prior approval to any level of expenditure to achieve unbundling. The ADR for RP—1999—0017, the proceeding, which set the stage for this current application, is silent on the subject and the matter is not addressed in the Board Decision.

Certainly it was Union's decision to proceed with the second phase expenditures without any prior discussion as to quantum.

It is always difficult to assess the reasonableness of operations expenditures but in this case the magnitude of the amount ($15.7MM) suggests to the cities that there must be very specific explanation and justification for the full amount to be passed on to the consumers. There has been no cost benefit study produced by Union. In the cities' judgment the level of detail and explanation of just what was necessary and how it was accomplished remain somewhat thin.
The cities make no specific recommendation as to the level of costs that should be allowed by the Board but recommends that some portion of the costs be directed by them to be shareholder costs.

b) Method of recovery

The cities' primary concern is that there be an equal treatment between the customers on the Northern and Central versus the Southern portion of Union's system. There is no basis for there being any discrimination between customers of the same class with regard to this charge. In its Undertaking to the Board –Revised Ex. G8.1== Union has shown the results of doing the allocation on a volume basis. This results in an equal charge to comparable customer classes. The cities while they do not support the one-time-charge proposed by Union (see "Recovery Period" below) support this approach to allocation.

The results of a customer number approach, which would seem to be the approach favoured by Union, (see C. 22.44) results in an extremely disproportionate recovery for which there is no justification.

c) Recovery Period

In the past Union's steps to change elements of direct purchase practice have not necessarily yield the benefits that were anticipated or done so on a timely basis.
In the present circumstances, where there is no assurance that there will be any substantial use of the unbundling provisions let alone any assurance that the provisions if utilized by the REMs will function efficiently and satisfactorily, it would seem appropriate that there be some period of amortization of any costs allowed by the Board. Such a period would allow time for the proper assessment to determine if the costs incurred are, in fact, used and useful. To the extent they were not the Board would then have the appropriate of actual experience to apply in making any disallowance.

The cities leave the appropriate period to the expertise of the Board.

Issue 4.3—Deferral Account Treatment—Communication/Education

The cities take no position on this issue.

IV. Billing

<u>Marketer-consolidated billing</u>

The cities recommend that the Board order Union to make this billing alternative available.

> One of the prime purposes of the Board's regulatory function as spelled out in the Board's Act is to promote competition in the sale of gas. The provision of billing is a concomitant of that service and has no inherent characteristics that would require it to continue to be a monopoly service.
>
> The aim of the Board in regulation is to see that gas service is provided at the lowest reasonable rates and with acceptable service. Billing is certainly an important part of the service and constitutes a significant portion of the costs. As observed earlier it is always

difficult for the Board to establish the proper "reasonable level" of any operations expenditure. The nose effective tool for determining the best level, and therefore one that should be used by the Board whenever possible, is competition.

With better than 40% of Union's small volume users having chosen direct purchase it is evident that marketer-consolidated billing if it is available will be utilized by the REM community. This may not be an immediate thing but unless it is available customers will not have the opportunity of having least cost best service in this area.

The cities think that it is significant that Union has turned to jurisdiction as a means of dissuading the Board from making this billing alternative available. It is the classic monopoly approach to protection of the monopoly privilege.

The cities believe that a reading of the Board's Act confirms that the legislature generally opted for parallel treatment of gas and electricity. The differences in treatment are confined to those areas where the inherent nature of the commodities required differentiation. Certainly there is no inherent difference between the two that would call for different billing regimes between the two in the course of deregulation and unbundling.

The cities think that it is significant that Union's approach to justifying their rejection of marketer-consolidated billing focuses on their total investment to provide customer service and suggests the "orrible consequences" possibility. All this may be put at risk if marketer-consolidated billing is allowed. The obvious alternative approach would have been to recite Union's efforts in the customer billing area including the history of the reduction of costs in this area and the projection of further gains in productivity and cost reductions in this area. The theme would be that no one else could do it as efficiently and therefore the customer would be achieving maximum benefit. This lack of any evidence along these lines is, the cities suggest, significant.

Union proposes that it is necessary for them to hold onto the customer billing function as it needs "the most efficient channels to promote gas usage". That raises the question of why, if that is a paramount corporate aim, the company chose to sell off Union Energy. Surely that company as a sister company sharing essentially the same name made the package of gas delivery and provision of all the attendant service and support by the same company the most effect promotion of gas use that could be available to Union.

The billing function relation to Municipal Franchises

The cities concede the accuracy of Union's evidence that the billing function yields Union an extremely effective tool for perpetuating their franchises. Over the long period between franchise renewals Union does acquire an ersatz "official" status in the eyes of the gas users. With the customer communications making reference to what the Ontario Energy Board has allowed or not allowed them to do they begin to seem like some quasi government agency instead of a for profit corporation.

The cities have become very much aware of the effectiveness of Union through their billing activity to convey a subliminal message to the voters of the municipality in which they hold a franchise. The arrival of the bill over a long period with only Union being identified has its effect. The unsaid but very effective message becomes: "Union is THE company—don't even think about another distributor particularly a municipal one." This subliminal message provides underpinning, when a franchise is in jeopardy, for assertions such as: "We have provided safe reliable service for 40 years." (when the fact is the period of service by Union has been much shorter and came about by purchase of the franchise in the marketplace). It also provides popular support for the cry of "expropriation!". It is difficult to educate the public to the fact that the property involved is largely a franchise privilege of limited term awarded by the municipality itself.

The cities support marketer-consolidated billing first on the basis of its introduction of competition in the delivery of gas services. They also support it as an antidote to the acquisition of "official" status by Union but in doing so they are aware that even if allowed marketer-consolidated billing will not be a very effective antidote. The cities recognize that redressing this situation may not seem like a necessary action for the Board in the course of this hearing. However, given Union's frank disclosure of the considerable advantage it gives the company in franchise renewals, failing to do something about it would amount to a dereliction of the Board's duty to see that all sides of the public interest are properly served.

The cities have no specific suggestions but would urge that the Board consider directing Union to include in its billing inserts to customers messages from the municipalities that would redress the imbalance of the situation. Such messages could be subject to prior review by the Board to ensure their fairness. Short of some such action by the Board Union would continue to enjoy an unfair advantage any disagreement over the proper entity to provide this necessary serice.

V. Costs

The cities submit that they have participated responsible in this proceeding since being admitted as late intervenors. They have brought a unique perspective to these proceedings with respect to the question of marketer-consolidated billing, one that—considering Union's position—was required for the Board to have a complete picture of the issues involved. The cities have shared a consultant and representative thus reducing the costs of their participation and making it more efficient. In addition the cities attended the hearing only when the subject matter seemed most directly related to their interests and relied on the transcript and the hearing broadcast to follow the remainder of the proceedings.

For these reasons the cities respectfully request the Board to award 100% of its costs reasonably incurred in participating in these proceedings.

VI. Undertakings given by Union during Argument-in-Chief

The cities are aware of several undertakings given by the Union during argument-in-chief. As of this date the cities are not aware of whether those undertakings were complied with and consequently whether they affect any of the matters raised in the cities' argument. The cities therefore ask to be allowed to reserve their position to enter further argument if, and only to the extent that, the fulfillment of Union's undertakings does relate to this argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2nd DAY OF APRIL, 2002.

THE CITIES OF GREATER SUDBURY AND TIMMINS

By their consultant
Peter. F. Scully

_____
Peter F. Scully