



**EB-2014-0053**

**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 Natural  
Resource Gas Limited, pursuant to section 36(1) of the  
*Ontario Energy Board Act, 1998*, for an order or orders  
approving or fixing just and reasonable rates and other  
charges for the sale, distribution, transmission, and storage  
of gas as of April 1, 2014; and

**AND IN THE MATTER OF** the Quarterly Rate Adjustment  
Mechanism.

**Before:** Ken Quesnelle  
Presiding Member and Vice Chair

Marika Hare  
Member

**DECISION AND INTERIM ORDER**  
**April 1, 2014**

Natural Resource Gas Limited (“NRG”) filed an application dated March 11, 2014, with the Ontario Energy Board for an order or orders approving or fixing just and reasonable rates and other charges for the sale and distribution of natural gas commencing April 1, 2014.

The application was made in accordance with the Quarterly Rate Adjustment Mechanism (“QRAM”) established by the Board for dealing with changes in gas costs for all rate regulated gas distributors (EB-2008-0106).

NRG provided written evidence in support of the proposed changes outlined in the application. The application and pre-filed evidence was served on all parties of record in NRG’s last cost of service proceeding (EB-2010-0018).

Parties wishing to comment on the application were required to file their submissions with the Board by March 16, 2014.

On March 13, 2014, Board staff asked NRG a number of questions. On March 19, 2014, NRG filed responses to Board staff's questions. On March 20, 2014, after reviewing NRG's responses, Board staff filed a letter requesting that the Board offer Board staff the opportunity to file a submission on the record in the proceeding.

On March 21, 2014, the Board issued a letter granting Board staff, and any other interested parties, the opportunity to file a submission in the proceeding. The Board also offered NRG the opportunity to reply to any submissions received. Board staff filed its submission on March 24, 2014 and NRG filed its reply submission on March 27, 2014. No other parties filed a submission in this proceeding. The Board notes that no letters of comment were received from private citizens.

As part of its application, NRG noted that it is a direct purchase customer of Union Gas Limited ("Union"). As part of its contract with Union, NRG is required to rectify imbalances in its banked gas account prior to the Winter Checkpoint. NRG noted that, based on the Direct Purchase Status Report received from Union for the month ending January 31, 2014, it was notified that it was required to purchase 115,523 Gigajoules ("GJ") of gas in order to meet the Winter Checkpoint Quantity at the end of February 2014.

NRG wrote to Union on February 21, 2014 asking Union to waive any rights it may have to require NRG to purchase natural gas before February 28, 2014. Union refused to waive NRG's contractual requirement to purchase natural gas for its Winter Checkpoint Quantity. On this basis, NRG attempted to purchase the gas required to meet the Winter Checkpoint Quantity in late February 2014. NRG managed to purchase 90,027 GJ of natural gas prior to the winter checkpoint but was unable to purchase the remaining shortfall of 25,496 GJ in February. NRG submitted that there was no gas available to be purchased and delivered to Union's system prior to the Winter Checkpoint. Union bought the remaining shortfall quantity on NRG's behalf. As a result, Union applied the Surplus Sale over Consumer Premium charge to the 25,496 GJ of natural gas that NRG was short at the time of the Winter Checkpoint.

NRG requested that the Board approve the recovery of costs from its ratepayers in regard to the following:

- (1) The purchase of 90,027 GJ of natural gas at a total cost of \$2,455,576 (\$27.276 per GJ).
- (2) The Surplus Sale over Consumer Premium charge applied to NRG by Union of \$2,007,250 for the 25,496 GJ of natural gas that was short at the time of the Winter Checkpoint (\$78.728 per GJ).

NRG indicated that in regard to the Surplus Sale over Consumer Premium charge, it has served notice on Union that the \$78.728 per GJ cost is a penalty provision and unenforceable under its contract. Further, NRG has served notice on Union asking for arbitration to declare the Surplus Sale over Consumer Premium amount to be unenforceable.

Board staff submitted that the Board should make the following findings in its decision on NRG's April 1, 2014 QRAM:

1. Order that a full prudence review of NRG's incremental gas purchases be undertaken. Board staff submitted that NRG acted imprudently during the past winter because it did not take any preemptive action to mitigate the shortfall in its banked gas account. Board staff submitted that a prudent utility operator would have begun to mitigate the variance in its banked gas account early in the winter by making incremental gas purchases with a view to spread spot gas purchases over the winter and thereby diversify the risk associated with these incremental purchases. Board staff submitted that the timelines for the QRAM do not provide adequate time for parties and the Board to perform a comprehensive evaluation of NRG's purchasing decisions. As such, Board staff recommended that this review take place as a second phase to this proceeding.
2. With two exceptions, grant interim approval of the rates arising from NRG's April 1, 2014 QRAM application as filed. Board staff submitted that NRG's ratepayers should not be burdened, at this time, with the cost consequences of the Surplus Sale over Consumer Premium charge, considering the amounts arising from that penalty could be adjusted by the Board in the second phase of this proceeding (if Board staff's request for a prudence review is granted). Board staff submitted that, for the purposes of setting rates effective April 1, 2014, the price applied to the 25,496 GJ of gas, which is subject to the Surplus Sale over Consumer Premium charge, should be reduced to \$27.276 per GJ (which is the

average price NRG paid for the incremental gas that it was able to purchase in February). Board staff noted that this would reduce the total cost amount recoverable from ratepayers \$2,007,250 to \$695,429.

Secondly, Board staff submitted that, given the magnitude of the bill impacts arising from the application, the Board may want to consider rate mitigation by extending the prospective recovery period by an additional 6 or 12 months.

In its reply submission, NRG argued that a prudence inquiry would not lead to a result that NRG was imprudent. NRG submitted that the nature of its sophistication and the motivation of the public interest militate in favour of a finding of prudence. As a result, NRG submitted that the Board should approve one of the following options:

1. Reduce the penalty rate from \$78.72805 per GJ to Union's actual cost of gas fixed at \$12.31 per GJ, on a one time basis, and calculate NRG's actual cost of gas to be added to the commodity variance account as follows:  $\$12.31 \text{ per GJ} \times 25,496 \text{ GJ} = \$313,856$  plus  $\$27.276 \text{ per GJ} \times 90,027 \text{ GJ} = \$2,455,576$  for a total of \$2,769,432.
2. Calculate NRG's actual cost of gas to be added to the commodity variance account as follows:  $\$78.72805 \text{ per GJ} \times 25,496 \text{ GJ} = \$2,007,250$  plus  $\$27.276 \text{ per GJ} \times 90,027 \text{ GJ} = \$2,455,576$  for a total of \$4,462,826.

NRG submitted that the first solution is preferable as it avoids a prudence hearing before the Board, avoids a private arbitration between Union and NRG, and is based on sound public policy and the protection of the public interest.

NRG submitted that if the Board is not moved to amend the penalty rate, the Board should declare that NRG was prudent in its gas purchasing for the period in question and permit the actual cost of gas be added to NRG's commodity variance account for the calculation of rates.

## Board Findings

The Board has no concerns with NRG's calculation of the forecasted price of gas for the next 12-month period. The gas price forecast is approved for use in the calculation of the rate.

The Board notes that there is a substantial potential rate impact associated with the disposition of the Purchased Gas Commodity Variance Account (“PGCVA”), including the application of the Surplus Sale over Consumer Premium charge. This matter has not been sufficiently examined in the QRAM process to date. The Board is not yet able to determine the appropriate response to NRG’s requests based on the current record of this hearing. Therefore, the Board will establish a process to further consider this matter. Depending on the Board’s decision the process may also consider whether rate mitigation is necessary. The Board will issue procedural orders to facilitate the continuance of its review of the application.

At this time, the Board will approve, on an interim basis, a gas commodity charge that is in accordance with NRG’s application as filed with the following exception. In regard to the Surplus Sale over Consumer Premium charge of \$78.728 per GJ applied to the 25,496 GJ of natural gas that NRG was short at the time of the Winter Checkpoint, the Board will approve, on an interim basis, the recovery from NRG’s ratepayers of a reduced amount, as proposed by Board staff, of \$695,429 (\$27.276 per GJ).

The Board believes that adjusting NRG’s rates at this time is appropriate in order to avoid additional carrying charges being incurred and recovered from ratepayers. However, the Board notes that the amounts approved for recovery here are subject to change after the Board has completed its review of NRG’s application.

The Board orders NRG to file a Draft Rate Order with the Board which reflects its findings in this decision.

#### **THE BOARD ORDERS THAT:**

1. NRG shall file a Draft Rate Order reflecting the Board’s findings in this Decision on, or before, April 2, 2014.

All filings to the Board must quote file number **EB-2014-0053**, 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 clearly state the sender’s name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to the [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper

copies. If you have submitted through the Board's web portal an e-mail is not required.

**DATED** at Toronto, **April 1, 2014**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary