

Réponse d'Option consommateurs (OC) à la Demande de renseignements no 1 de Société en Commandite Gaz Métro (« Gaz Métro ») à OC

Dossier R-3809-2012 Phase I

1. Référence : (i) Pièce C-OC-0010, Mémoire d'OC, page 11

Préambule:

« Regarding the modifications proposed in the Conditions of Service to recognize GM's right to physically interrupt a customer and to specify the possibility of legal consequences for damage reparations resulting from the non-respect of the notification to interrupt (outlined above in Section 5.1, item 2), OC has no strong objections to these provisions, but remains unconvinced that they will have sufficient dissuasive effect, particularly on free-riding Interruptible customers. » (nos soulignés)

Demande :

1.1 OC a-t-elle connaissance de situations précises où des clients auraient agi comme resquilleurs (*free-riding Interruptible customers*)?

Réponse :

OC does not have data regarding specific instances of free-ridership among Gaz Métro's clients for reasons specified below. However, we do have a great deal of evidence that indicates that free-ridership is a concern for gas distributors in general. Moreover, our research has uncovered significant information on instances of free-ridership at gas distributors in other jurisdictions.

In the context of R-3809-2012, we define Interruptible free-riders as Interruptible customers, who benefit from discounted rates, but "who plan on responding to a notification to interrupt through gas overruns" (OC Evidence, C-OC-0010, p 13, lines 14-15). Free-ridership is highly problematic both for security of supply and for economic reasons (with respect to equity among customer classes and specifically unfair shifting of costs and thus higher rates for non-free-riding customers).

Although free ridership is a well-established economic concept, gas distributors do not typically use the term free-rider when describing this behaviour in Interruptible customers. Distributors do in fact use a term closely associated with free-ridership, which is non-compliance (with the Interruptible contract). We define free-ridership as planned non-compliance.¹ Unplanned non-compliance, which results from exceptional and unplanned circumstances (e.g. equipment failure despite routine maintenance and replacement), is not defined as free-ridership because there is no intent in this case to “game the system.”

Free-riding Interruptibles are only detected when they fail to interrupt; or if an inspection on the part of the gas distributor demonstrates that they are unable to accommodate the interruption of gas (through either a shutdown of operations or a demonstrated ability and readiness to switch to an alternative fuel source).

Gas distributors typically do not publicize specific instances of non-compliance because customer-specific information is treated as confidential (as is the case at Gaz Métro). However, the existence of penalties at Gaz Métro (and at all gas distributors) clearly indicates the potential for planned non-compliance (i.e. free-ridership) and the need to deter it. In the current proceeding, GM's proposal to address the dissuasiveness of the existing penalty is further indication that free-ridership is a relevant concern.

Moreover, in addition to penalties, other gas distributors and jurisdictions have provisions that specify that the gas distributor has the right to verify that the Interruptible customer can accommodate the interruption of gas (through either a shutdown of operations or a demonstrated ability and readiness to switch to an alternative fuel source). As discussed in OC's evidence, Enbridge Gas

¹ A variety of reasons can motivate planned non-compliance (or free-ridership) among Interruptibles. If penalties and other conditions of service are not sufficiently dissuasive, and there are not sufficient safeguards to ensure customers' capability to interrupt, some Interruptibles may plan substantially in advance to be non-compliant whenever it is economically advantageous to them. The decision for planned non-compliance may also be shorter-term and predicated on changes in the price of natural gas versus back-up fuels. If these price differentials are shifting, Interruptibles may plan their non-compliance based on the relative price on the day of the interruption. Smaller Interruptible customers, who are further down the ordering of clients who usually get interrupted, may gamble that they will rarely if ever be interrupted; so these customers may simply plan to be non-compliant, and may not even store sufficient back-up fuel in their tanks. As such, OC has recommended that it is important to deter non-compliance with a broader set of tools than the penalty modification set out in GM's proposal (C-OC-0010, Section 5.3 Recommendations, pp. 17-20).

Distribution (EGD), Canada's largest gas distributor has such provisions in place.²

Adequate resources were not available within the context of R-3809-2012 for OC to undertake an exhaustive survey of the Interruptible provisions at other distributors. However, an Internet search readily demonstrated numerous examples of more stringent requirements governing interruptibles. In 2000, both the New York State Public Service Commission and the New Jersey Board of Public Utilities imposed statewide regulations stipulating that Interruptible gas customers have an adequate supply of back-up fuel at the beginning of the heating season.³ Philadelphia Gas Works also has an Availability provision in its Interruptible Rate that stipulates that the Customer must demonstrate to the Company that it has the "capacity to take Gas Service on an interruptible basis for at least one year." Furthermore, "Customers electing service under this rate shall have and maintain complete and adequate standby non-Natural Gas energy (e.g., oil, propane, electric, steam [...]) and equipment for alternative operation in the event of interruption of Gas Service".⁴ Other examples of gas distributors that require Interruptible customers to maintain adequate reserves of back-up fuel include Xcel Energy (in Minnesota, North Dakota and Wisconsin); Yankee Gas (in Connecticut) and Washington Gas in DC and surrounding region.⁵

The fact that numerous distributors and jurisdictions have stipulations that the Interruptible customer must be able to accommodate interruption (and in some

² See C-OC-0010, The Case of Enbridge Gas Distribution in Ontario subsection, pp. 19 and 20 and Appendix 1.

³ In New York, Interruptible gas customers were required to have a 7-to-10-day supply of back-up fuel in storage. In New Jersey, Interruptible customers using a distillate fuel oil as a back-up fuel were required to have a 7-day supply, "or equivalent firm supply arrangements if the onsite storage capacity is less than 7 days." Energy Information Administration, "Impact of Interruptible Natural Gas Service on Northeast Heating Oil Demand," January 2001, pp. 19-20.
http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/interruptible_service_northeast/interrupt.pdf

⁴ Philadelphia Gas Works, Gas Service Tariff, Effective: September 1, 2012, pp. 93-95.
https://www.pgworks.com/documents/Tariffs/Gas%20Service%20Tariff%20Supplements/PGWGasServiceTariffRevisedCompliance_ThroughSupplement54.PDF

⁵ Xcel Energy:
http://www.xcelenergy.com/Save_Money_&_Energy/For_Your_Business/Interruptible_&_Time_of_Use/Interruptible_Gas_Rates_-_MN,_ND,_WI
<http://www.xcelenergy.com/staticfiles/xcel/Marketing/Files/NSP-Bus-IGR-Info-Sheet.pdf>

Yankee Gas:
<http://www.yankeegas.com/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4294985727&libID=4294985727> (see pp. 34, 36)

Washington Gas: <http://www.washgas.com/pages/INTCustomerProfile>

cases keep a specified number of days' worth of back-up fuel and maintain the dual-fuel equipment necessary to utilize the fuel) indicates that gas distributors and regulators are concerned with free-ridership.

Other punitive measures (such as forfeiting the right to be served under the Interruptible rate, forfeiting rate reductions and higher penalties for second-time non-compliance)⁶ are further indication that regulators and gas distributors are concerned about free-ridership. As discussed in OC's evidence, EGD uses a much broader and more punitive set of tools to discourage free-ridership including the removal of the non-compliant customer from the Interruptible rate, the withdrawal of rate reductions for the winter period and much higher penalties for second-time offenders.⁷ Con Ed in New York State also has a fine for Interruptible customers who fail to interrupt during an annual four-hour test. If a customer fails to interrupt twice in the same winter period, they are moved off the Interruptible rate and onto a much higher Firm Gas Service classification.⁸

As expected, we found no customer-specific data on free-ridership/planned non-compliance for reasons of confidentiality. However, in a recent case before the New York State Public Service Commission (PSC) (CASE 11-G-0543 – In the Matter of the Commission's Examination of the Criteria for Interruptible Gas Service), there are many very recent examples (2010, 2011 and 2012) of non-compliance/failure to interrupt among Interruptible customers at New York State gas distributors, including National Grid, Con Ed and Orange and Rockland (O&R). No specific customer names were provided, but aggregate information on the number of interruptions, the period of the interruption, the length of the interruption and the number of customers in violation was provided.⁹

⁶ As discussed in OC's evidence (C-OC-0010, pp. 18-20 and Appendix 1).

⁷ See C-OC-0010, The Case of Enbridge Gas Distribution in Ontario subsection, pp. 19-20; and EB-2011-0354, Exhibit H2, Tab 6, Schedule 1, Rate Handbook, Enbridge Gas Distribution, Handbook of Rates and Distribution Services, Applicability Sections for Interruptible Service Rates 145 and 170 respectively, Handbook 27 and 29. See also relevant excerpts from the same EGD Rate Handbook in Appendix 1 of C-OC-0010.

⁸ Luthin Associates, "Con Edison Gas Interruption Policies and Procedures, A Webinar conducted by Luthin Associates, Inc.," 2010, pp. 3, 7 ("Why Proper Compliance is Vital") and 8.

⁹ All the case documents are listed at:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=11-g-0543&submit=Search+by+Case+Number>

Details regarding non-compliance at National Grid are provided on p. B-5 (PDF p. 16):

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FC9180AB-A504-42B2-9FDF-BA4EA2E082A1}>

Our research also provided aggregate data for non-compliance on Long Island in the New York City area. According to a report prepared for the New York State Energy and Research and Development Authority (NYSERDA), in 2004, there were seven interruptible customers on Long Island with an average of 0.4 days of back-up fuel storage capacity.¹⁰ Assuming the data were correct, the report concluded that in a severe winter there might be a possibility of a crisis with Long Island, an area of particular concern.¹¹ And if the data were correct, there appears to be strong evidence of free-ridership among these Long Island Interruptible customers because they were neglecting to keep adequate reserves of back-up fuel in place at the beginning of the winter season.

We are pleased that GM is asking about the experience of other gas distributors with respect to Interruptibles. Indeed we hope that the Distributor will be inspired by the experience elsewhere and adopt stricter practices in penalizing Interruptible gas overruns as a way to dissuade free-ridership (as suggested in OC's evidence). Gas distributors have a long and strong history of working together in a variety of ways to address issues of concern to the gas industry.¹² Interruptible rates, and specifically the question of non-compliance, are areas on which it could be very beneficial for gas distributors to confer. In particular, customers can have operations in more than one service area, so harmonization of policies in regard to Interruptible rates could help to deter customers who might otherwise seek to take advantage of less stringent rules at some distributors. If GM wishes to benefit from additional information regarding specific instances of non-compliance and how to avoid them (as indicated by this question to OC), we suggest that GM is in a much better position than OC to confer with gas distributors in other jurisdictions.

and in National Grid's response to Notice Soliciting Comments (pp. 16-17)
<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={53C04BAD-D6EE-483E-AB04-FF1154293FF5}>

Numerous examples of non-compliance at Con Ed & Orange and Rockland (O&R) during recent interruptions can be found at p. B-2 (PDF p. 13) of:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FC9180AB-A504-42B2-9FDF-BA4EA2E082A1}>

¹⁰ Wesley, Charles, ICF Consulting LLC, "Petroleum Infrastructure Study Final Report," p. 84.

http://www.dps.ny.gov/00G0996_NYSERDA_Final_Report.pdf

¹¹ Op. cit., ES-11.

¹² For example, as discussed in R-3795-2012 and R-3796-2012, GM is currently working with the Ontario gas distributors (EGD and Union Gas) in regard to TCPL's Restructuring Proposal and Mainline Tolls (NEB RH-003-2011), and the three distributors have filed extensive joint testimony.

Demande :

1.2 Dans l'affirmative, indiquer lesquels et à quel(s) moment(s) ces clients auraient agi comme resquilleurs.

Réponse :

See Response to 1.1.

Demande :

1.3 En quoi les modifications proposées par Gaz Métro sont insuffisantes pour avoir un effet dissuasif à l'égard des resquilleurs, s'ils existent?

Réponse :

See OC's Evidence, C-OC-0010, Section 5.2.2 Areas for Improvement, pp. 12-17. This section discusses the failure (of GM's proposal) to adequately address the economic impacts of free-ridership (first sub-section, pp. 12-14); the insufficiency of proposed penalty for no. 2 heating oil customers (second sub-section, pp. 14-16); and finally questions whether the threat of physical interruption and legal action constitute sufficiently dissuasive modifications to the conditions of service, particularly in the absence of more dissuasive tools (third sub-section, pp. 16-17).

Our Recommendations Section (Section 5.3, pp. 17-20) and particularly the subsection dealing with provisions at Enbridge Gas Distribution (third subsection, pp. 19-20) further underline GM's failure to employ a broader set of tools "to discourage gas overruns and free-ridership, but not to discourage Interruptibles per se" (C-OC-0010, p 17, line 25 to p. 18, line 1). Our suggestions for this broader set of tools "were informed by the Applicability provisions and Unauthorized Overrun Gas Rate provisions in EGD's Handbook of Rates and Distribution Services for Interruptible Service Rates 145 and 170, respectively" (C-OC-0010, p 19, lines 14-16). It is clear from our discussion of the case of Enbridge Gas Distribution that Canada's largest gas distributor has a much broader set of tools to discourage free-ridership. These tools range from more varied and punitive measures for non-compliance to the Applicability requirement that EGD "reserves the right to satisfy itself that the customer can accommodate

the interruption of gas through either a shutdown of operations or a demonstrated ability and readiness to switch to an alternative fuel source.”¹³

Demande :

1.4¹⁴ Nonobstant la question de l'existence ou pas de clients resquilleurs, OC est-elle d'accord pour dire que les modifications proposées par Gaz Métro auront un plus grand effet dissuasif que les conditions de service actuelles?

Réponse :

Yes, it is confirmed, but we are of the view that Gaz Métro's proposed modifications are insufficient. As we indicated in OC's evidence:

Despite the fact that GM's proposal has some strengths and represents an improvement over the status quo, there are limits to GM's approach (penalties and threats of legal action and physical interruption) (C-OC-0010, p. 17, lines 21-23)

GM's proposal for the modification of Interruptible rates is an improvement on the status quo; however we believe that the proposal could be broadened and further improved, as will be discussed in the following sections. (C-OC-0010, p. 12, lines 1-3)

Section 5.2.2. (Areas of Improvement, pp. 12-17) discusses the proposal's failure to address free-ridership; and Section 5.3 (Recommendations, pp. 17-20) goes on to offer constructive suggestions on how the proposal could be broadened. So while we confirm that the proposed modifications are an improvement on the status quo in terms of their dissuasive effect on non-compliance, these modifications could be strengthened significantly by broadening the tools available to “to discourage gas overruns and free-ridership, but not to discourage Interruptibles per se” (C-OC-0010, p 17, line 25 to p. 18, line 1). These broader tools are used by other major gas distributors including EGD and Con Edison.

¹³ See C-OC-0010, The Case of Enbridge Gas Distribution in Ontario subsection, pp. 19-20; and EB-2011-0354, Exhibit H2, Tab 6, Schedule 1, Rate Handbook, Enbridge Gas Distribution, Handbook of Rates and Distribution Services, Applicability Sections for Interruptible Service Rates 145 and 170 respectively, Handbook 27 and 29. See also relevant excerpts from the same EGD Rate Handbook in Appendix 1 of C-OC-0010.

¹⁴ This question was mistakenly numbered 1.3 in Gaz Métro's IRs to OC. It should be 1.4 because Question 1.3 precedes it.