



**EB-2009-0052**

**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 amending or varying the rate  
or rates charged to customers as of July 1, 2009.

**BEFORE:** Gordon Kaiser  
Presiding Member

Paul Sommerville  
Member

Paul Vlahos  
Member

## **DECISION AND ORDER**

### **The Proceeding**

Union Gas Limited (“Union”) filed an application on March 31, 2009 with the Ontario Energy Board (the “Board”) seeking approval for final disposition and recovery of certain 2008 year-end deferral account balances including approval and disposition of the market transformation incentive. Union proposed that the resulting impacts from the disposition be implemented on July 1, 2009 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism (“QRAM”) process. The Board assigned docket number EB-2009-0052 to the application.

The Board issued its Notice of Written Hearing and Procedural Order No.1 on April 22, 2009, which was served on a list of intervenors involved in Union’s 2008 rates proceeding (EB-2008-0220). The Board received one intervention request from an

interested party not included on the previous intervention list. The Federation of Rental-housing Providers of Ontario ("FRPO") requested and was granted intervenor status.

Interrogatories were submitted by the London Property Management Association ("LPMA"), FRPO, The City of Kitchener ("Kitchener"), the School Energy Coalition ("SEC"), and Board staff.

LPMA, FRPO, Kitchener, SEC, the Canadian Manufacturers and Exporters ("CME"), the Vulnerable Energy Consumers Coalition ("VECC"), Energy Probe, and Board staff filed submissions. A number of these submissions supported LPMA's expressed concerns with the revenues and costs recorded in the Short-Term Storage and Balancing Services Deferral Account (Account 179-70) and the Long-term Peak Storage Services Deferral Account (Account 179-72) (the "Storage Revenue Issue").

On May 21, 2009, the Board issued Procedural Order No.2 allowing for further discovery and submissions on the Storage Revenue Issue. To expedite matters, intervenors were permitted to ask questions of the applicant at a technical conference on May 25, 2009. The Board maintained the date of May 22, 2009 for Union's filing of Reply Argument to provide further information that might help to clarify parties' concerns regarding the Storage Revenue Issue in advance of the technical conference.

After the technical conference, the Board received supplemental submissions on the Storage Revenue Issue from LPMA, FRPO, CME, Kitchener, and SEC. Union filed its supplemental reply submissions on June 1, 2009.

The Board has summarized the record of the proceeding only to the extent necessary to provide context to its findings.

### **Deferral Accounts**

Union has classified the deferral accounts into four groups:

- a) five Gas Supply accounts that are cleared through the QRAM process.
- b) one Gas Supply account that is not cleared through the QRAM process.
- c) two Storage and Transportation accounts.
- d) eleven other accounts.

The account balances, which are presented below, include interest at the applicable short-term interest rate approved by the Board in the EB-2006-0117 proceeding through December 31, 2008. The deferral accounts in category a) above are being cleared through the QRAM process.

The net balance of accounts in categories b), c), and d) above at December 31, 2008 is a \$23.028 million credit payable to Union's ratepayers. In addition, Union sought to reflect in rates a Market Transformation incentive of \$0.5 million. Therefore the total disposition amount requested was a \$22.528 million credit to customers.

Union provided specifics regarding the allocation of this amount to its rate classes.

(a) Gas Supply Accounts – Cleared in the QRAM process

Under the Board-approved QRAM process, Union establishes reference prices for prospective recovery, or refund, of the projected balances (with interest) over the following 12-month period. Variances between the forecast and actual prospective recovery amounts for these five accounts are tracked and included in the amounts prospectively recovered in future QRAM proceedings.

The net balance of the five accounts has been cleared through four QRAM decisions in 2008.

<b>Account No.</b>	<b>Name</b>	<b>Balance<sup>1</sup></b> (Dec. 31, 2008, \$ millions)
179-107	Spot Gas Variance Account	\$ 0.245
179-109	Inventory Revaluation Account	13.993
179-106	South Purchased Gas Variance Account	(14.919)
179-100	TCPL Tolls and Fuel – Northern and Eastern Area	2.713
179-105	North Purchased Gas Variance Account	(9.710)
<b>Total</b>		<b>\$ (7.678)</b>

In this proceeding, Union is seeking the Board's "final approval" with respect to these balances.

<sup>1</sup> Throughout the tables, positive amounts denote monies recoverable from ratepayers and amounts in brackets denote monies owed to ratepayers.

(b) Gas Supply Accounts – Not Cleared in the QRAM Process

The balance in the account below is not cleared in the QRAM process. Union is requesting disposition of the total credit balance of \$3.318 million.

<b>Account No.</b>	<b>Name</b>	<b>Balance</b> (Dec. 31, 2008, \$ millions)
179-108	Unabsorbed Demand Cost Deferral Account	\$ (3.318)
<b>Total</b>		<b>\$ (3.318)</b>

(c) Storage and Transportation Accounts

Union defers the difference between actual net revenues from storage and transportation services and forecast revenues included in Union's rates. The differences are currently shared on a 50/50 basis between ratepayers and Union. The net credit balance of \$28.101 million represents the ratepayer portion in these accounts.

<b>Account No.</b>	<b>Name</b>	<b>Balance</b> (Dec. 31, 2008, \$ millions)
179-70	Short-Term Storage and Balancing Services Deferral Account	\$ 0.360
179-72	Long-term Peak Storage Services Deferral Account	(28.461)
<b>Total</b>		<b>\$ (28.101)</b>

(d) Other Deferral Accounts

The eleven other accounts have a net balance recoverable from ratepayers of \$8.390 million.

<b>Account No.</b>	<b>Name</b>	<b>Balance</b> (Dec. 31, 2008, \$ millions)
179-26	Deferred Customer Rebates / Charges Account	\$ -
179-75	Lost Revenue Adjustment Mechanism Deferral Account	(0.421)
179-102	Intra-period WACOG Changes Deferral Account	0.005

179-103	Unbundled Services Unauthorized Storage Overrun Account	-
179-111	Demand Side Management Variance Account	1.559
179-112	Gas Distribution Access Rule Costs	-
179-113	Late Payment Litigation Deferral Account	0.593
179-115	Shared Savings Mechanism Variance Account	7.943
179-117	Carbon Dioxide Offset Credits	-
179-118	Average Use Per Customer Deferral Account	(5.390)
179-119	2008 Federal and Provincial Tax Changes Deferral Account	4.102
<b>Total</b>		<b>\$ 8.390</b>

### Market Transformation Incentive

In addition to the deferral accounts in categories b), c), and d), Union claimed a Market Transformation incentive of \$0.5 million for a drain water heater recovery program. The amount was linked to Union meeting or exceeding the performance goals as outlined by the Market Transformation “scorecard” filed and approved by the Board in Union’s 2007-2009 DSM Plan.

### Board Findings

With respect to category a) accounts, in the last proceeding dealing with the disposition of the 2007 account balances (EB-2008-0034), Union had made the same request for “final approval”. The Board had stated as follows:

The Board concludes it is not necessary to provide the “final approval” sought by Union with respect to the balances in the five gas supply deferral accounts listed in the first table on page 3. The Board issues decisions and orders on Union’s QRAM filings each quarter. Those orders, which include approval of the prospective disposition of deferral account balances, are issued as final orders (unless an interim status is required to accommodate other rate setting processes that are running in a parallel time frame). For example, the decision and order with respect to the period beginning October 1, 2007 (EB-2007-0720) stated: “The Board has

considered the evidence and finds that it is appropriate to adjust Union's rates effective October 1, 2007 to reflect the projected changes in gas costs and the prospective recovery of the projected twelve-month balances of the gas supply deferral accounts for the period ending September 30, 2008."

This Panel adopts the findings of the Panel in the EB-2008-0034 proceeding in that it is not necessary to provide "final approval". Future proceedings would be less cumbersome if Union discontinued from repeating the same request.

No objections were raised to Union's allocation proposals to the various rate classes. The Board accepts Union's allocation proposals.

Below the Board deals with the issues raised by parties that the Board felt needed to be specifically addressed. In the result, the Board concludes that Union's proposals are acceptable. However, given the timing of this decision, implementation cannot be July 1, 2009 to December 31, 2009 as originally proposed by Union. Implementation will be October 1, 2009 to April 30, 2010.

Intervenors and Board staff raised the following issues:

- Timing of Disposition with *Green Energy Act* ("GEA") assessments
- Forecast used to determine volumes for calculation of rate riders
- The Storage Revenue Issue

### ***Timing of Disposition with GEA assessments***

Board staff submitted that Union should consider aligning the disposition of any credit in this proceeding with assessments which will ultimately flow from the recently passed GEA. Board staff cited rate stability and minimization of rate shock as its main reasons for its submissions.

Union replied that there is no rationale for aligning the disposition of the deferral accounts with assessments contemplated in the GEA. Union submitted that the amount, timing, and cost allocation methodology for the GEA assessments are unknown at this time. Union argued that the deferral and variance account balances in this proceeding are known, and should be disposed of in a timely manner.

The Board agrees with Union. The panel sees no reason why this should delay the disposition of the credit to ratepayers as proposed by Union. The two matters are completely unrelated.

### ***Forecast used to determine volumes for calculation of rate riders***

Union and ratepayers would be exposed to over/under-recovery depending on the accuracy of the volume forecast used for the calculation of rate riders. LPMA requested that the Board direct Union to provide in the next proceeding the difference between the actual recovery/refund amounts and amounts approved by the Board to allow the Board to determine whether or not a true-up is necessary.

Union indicated in its reply that it over-refunded amounts to ratepayers in both 2007 and 2008, and did not seek a true-up in either year.

The Board sees no harm in Union addressing the merits of a true-up mechanism going forward. The Board expects Union to address this matter at the time it files for disposition of its 2009 accounts.

### ***The Storage Revenue Issue***

In the first phase of submissions intervenors indicated that the balances were reasonable in all accounts with the noted exceptions of:

- Account 179-70: Short-Term Storage and Balancing Services Deferral Account (the "ST" account)
- Account 179-72: Long-Term Peak Storage Services Deferral Account (the "LT" account)

On May 15, 2009, LPMA submitted that there were significant changes in the level of both revenues and costs used in the calculation of the net revenue figures shown in the ST and LT accounts (Attachments 1 & 2 of Exhibit B3.1).<sup>2</sup> FRPO, Kitchener, SEC, the CME, VECC, and Energy Probe generally reiterated the concerns expressed in LPMA's submissions.

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<sup>2</sup> Union had filed a supplemental response to Exhibit B3.1 on May 14, 2009.

In their original submissions, intervenors attempted to compare 2008 data to 2007 data, and expressed concerns with the year-to-year increases and the explanation provided by Union in its evidence and interrogatory responses. Intervenors focussed on several key issues where further explanation was required:

- The \$12 million of “imputed margin” in the ST account;
- Increased storage activity, and specifically the \$4.6 million commodity cost increase in the ST account;
- The significant increase in asset-related costs in the LT account;
- Lack of clarity surrounding the accounting differences between the estimate provided in the Audited Financial Statements (“AFS”) and Union’s proposed deferral disposition amounts; and
- Lack of clarity around issues of methodology, assumption and cost allocation applicable to Union’s deferral accounts.

Union’s Reply Argument expanded significantly on Union’s interrogatory responses, and on the issues above.

In supplemental submissions on the Storage Revenue Issue, intervenors did not raise further concerns regarding the first three points listed above. The Board views those issues as no longer being in dispute and accepts Union’s proposals.

Certain matters involving the Storage Revenue Issue remained unresolved through the expanded discovery process, and were raised in supplemental submissions.

LPMA accepted the further clarification provided by Union, and accepted the balances in all accounts as filed by Union. Other parties did not.

SEC submitted the Operations & Maintenance (“O&M”) costs charged to the LT account are too high. SEC alleged that the approximately \$1 million increase to O&M costs, due to the deregulation of ex-franchise long-term storage assets, is “exactly analogous” to the Board’s denial of an accounting tax liability in a previous disposition proceeding.<sup>3</sup> SEC submitted that costs should continue to be capitalized as if they were regulated assets until the phase out of the ratepayer share is completed. FRPO made similar submissions.

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<sup>3</sup> EB-2007-0598 – Decision - Union’s 2006 Deferral Account Disposition and Earnings Sharing Proceeding.

Union replied that the reduced capitalization of the O&M costs at issue here is an ongoing cost and is not at all comparable to the Board's decision on historical deferred taxes. Union submitted that the concerns of the parties regarding two prior deferral decisions<sup>4,5</sup> are completely misplaced. In EB-2008-0154 the Board clearly stated that, "Union can include ongoing costs associated with the unregulated storage business to calculate net revenues with the exception of deferred taxes."

The Board agrees with Union. The Board stated in EB-2008-0154 that Union is permitted to include ongoing costs associated with the unregulated storage business. Union has clearly shown that the reduced capitalization of the O&M costs is an ongoing cost associated with that line of business. The Board's denial of a deferred tax liability in the EB-2007-0598 proceeding concerned past liabilities, not ongoing costs. Accordingly, the Board does not accept SEC's argument that the two situations are somehow analogous.

CME, supported by FRPO and Kitchener, argued that the Board should approve for disposition the deferral balances as recorded in Union's 2008 Audited Financial Statements ("AFS"), as opposed to the adjusted balances presented by Union.

Union replied that no question has ever been raised about the practice of adjusting the deferral and variance accounts estimates in the AFS to reflect unaudited actuals.

The Board observes that there is no issue that either Union or ratepayers would benefit or be harmed in the long run from either method. The Board finds Union's approach reasonable as it is consistent with past practice and produces more recent data on account balances.

FRPO expressed concerns with the constrained time frame and process afforded in this proceeding in dealing with the disposition of account balances. FRPO submitted that the Board consider an expanded discovery phase for the 2009 account disposition.

The Board sees some validity to FRPO's concerns. The Board invites parties and Union to bring forward specific submissions on ways in which the hearing process might be improved, when Union files for its 2009 deferral and variance accounts disposition.

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<sup>4</sup> Ibid.

<sup>5</sup> EB-2008-0154 – Decision on Motion to Review - Union's 2006 and 2007 Deferral Account Disposition and Earnings Sharing.

## Order and Cost Awards

The Board orders that the amounts Union seeks to dispose of in this proceeding, as adjusted or otherwise directed by the Board, shall be recovered from or refunded to Union's ratepayers in accordance with the methodologies included in Union's application. The impacts which result from the adjustments shall be implemented on October 1, 2009 to align with other rate changes resulting from Union's next QRAM application.

A decision regarding cost awards will be issued at a later date. Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims by August 28, 2009. Union may file with the Board and forward these intervenors any objections to the claimed costs by September 4, 2009. Intervenors may respond to any objections by filing their responses with the Board and forwarding to Union by September 11, 2009. The cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*.

Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2009-0052, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca). Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to [BoardSec@oeb.gov.on.ca](mailto:BoardSec@oeb.gov.on.ca).

**DATED** at Toronto, August 6, 2009

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary