



EB-2010-0039

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 October 1, 2010.

BEFORE: Paul Sommerville
Presiding Member

Marika Hare
Member

DECISION AND ORDER

Union Gas Limited (“Union”) filed an application dated April 22, 2010 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2010 in connection with the sharing of 2009 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2009 year-end deferral accounts and other balances (the “Application”). Union also sought approval of a cost allocation methodology used to allocate costs between Union’s regulated and unregulated businesses.

On June 1, 2010, the Board issued Procedural Order No.1 setting out the schedule for the case. Interrogatories were filed on June 16, 2010 and responses to interrogatories were filed on June 28, 2010. On June 25, 2010, Union filed corrected evidence which primarily affected the International Financial Reporting Standards Conversion Costs,

and the GST in the Late Payment Penalty Litigation deferral account. A Technical Conference was held on July 9, 2010 and a Settlement Conference took place on July 26 and July 27, 2010.

Certain materials, such as responses to specified interrogatories and a specific undertaking made by Union at the Technical Conference were filed in confidence by the Applicant. For the purposes of this proceeding the Board shall consider these documents confidential and they will not be placed on the public record.

On July 30, 2010 Union filed a Settlement Agreement (the "Agreement") in this matter which is attached as Schedule "A". The following intervenors were party to this Agreement:

Canadian Manufacturers & Exporters
Consumers Council of Canada
City of Kitchener
Energy Probe Research Foundation
Federation of Rental-housing Providers of Ontario
Industrial Gas Users Association
London Property Management Association
Union Gas Limited
Vulnerable Energy Consumers Coalition

The Agreement indicated that a comprehensive settlement on all of the issues in relation to the EB-2010-0039 Application was reached.

The Board has considered the proposed Agreement and the quality and detail of the supporting evidence. The Board approves the Agreement which is appended to this Decision as Appendix "A".

The Board orders that the amounts Union seeks to dispose of in this proceeding, as revised and adjusted for the Agreement, shall be recovered from or refunded to Union's ratepayers in accordance with methodologies included Union's Application.

Union shall file a draft rate order giving effect to this Decision as soon as it is able. Also, as part of that filing Union is to clearly identify the rate riders resulting from this Decision that pertain to each rate classification. Parties who wish to comment on draft

rate order must do so within 7 calendar days from the date of the filing of the draft rate order. Union must reply to these comments within 10 calendar days of the filing of the draft rate order.

Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims within 10 calendar days from the date of this Decision and Order.

Union may file with the Board and forward these intervenors any objections to the claimed costs within 24 calendar days from the date of this Decision and Order. Intervenors, whose cost claims have been objected to, may file with the Board and forward to Union any responses to any objections for cost claims within 31 calendar days of the date of this Decision and Order. Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

ISSUED at Toronto, August 10, 2010.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

THE SETTLEMENT AGREEMENT

FOR

EB-2010-0039

**Union Gas 2009 Deferral Account and Earnings Sharing Disposition
Settlement Agreement**

DATED: JULY 30, 2010

EB-2010-0039

ONTARIO ENERGY BOARD

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 October 1, 2010.

SETTLEMENT AGREEMENT

July 30, 2010

This Settlement Agreement (“Agreement”) is for the consideration of the Ontario Energy Board (“the Board”) in its determination, under Docket No. EB-2010-0039, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2010 in connection with the sharing of 2009 earnings under the incentive regulation mechanism approved by the Board as well as final disposition of 2009 year-end deferral account and other balances (the “Application”). Union is also seeking approval of a cost allocation methodology used to allocate costs between Union’s regulated and unregulated storage operations. By Procedural Order No.1 dated June 1, 2010, the Board scheduled a Settlement Conference to commence July 26, 2010. The Settlement Conference was duly convened, in accordance with Procedural Order No. 1, with Mr. Kenneth Rosenberg as facilitator. The Settlement Conference proceeded until July 27, 2010.

The settlement presented in this Agreement is comprehensive in that the agreement that has been reached settles all issues in this proceeding.

The Agreement is supported by the evidence filed in the EB-2010-0039 proceeding.

The purpose of this proceeding was for:

- (a) approval of final balances for all 2009 deferral accounts and an order for final disposition of those balances;
- (b) approval of the market transformation incentive for 2009 and an order for final disposition of the balance;
- (c) approval of the impact of federal and provincial tax changes in 2009 and an order for final disposition of the balance;
- (d) approval of the customer portion of earnings sharing in 2009 and the proposed disposition of that amount; and,
- (e) approval of Union’s regulated and unregulated storage operations cost allocation methodology.

It is acknowledged and agreed that none of the provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2010-0039,

accept the Agreement in its entirety, there is no Agreement (unless the parties to the Agreement agree that any portion of the Agreement the Board does accept may continue as a valid agreement).

It is further acknowledged and agreed that parties to the Agreement will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Board's Rules of Practice and Procedure.

The participants in the Settlement Conference agree that all positions, negotiations and discussion of any kind whatsoever which took place during the Settlement Conference and all documents exchanged during the conference which were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Agreement.

The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. Although Board Staff is not a party to this Agreement, as noted in the Guidelines, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding".

The evidence supporting the Agreement is set out in the Agreement. Abbreviations will be used when identifying exhibit references. For example, Exhibit B1, Tab 4, Schedule 1, Page 1 will be referred to as B1/T4/S1/p1. Attached as an Appendix is A/T1/Schedule 1 "Per Settlement" which is a schedule showing the final agreed upon deferral account balances and earnings sharing amount. The structure and presentation of the settled issues is consistent with settlement agreements which have been accepted by the Board in prior cases. The parties agree that this Agreement and any Appendices form part of the record in the proceeding.

In Procedural Order No. 1 in this proceeding, the Board granted intervenor status to all intervenors of record in EB-2010-0039. The following entities participated in the Settlement Conference:

Canadian Manufacturers & Exporters (“CME”)
Consumers Council of Canada (“CCC”)
City of Kitchener (“Kitchener”)
Energy Probe Research Foundation (“Energy Probe”)
Federation of Rental-housing Providers of Ontario (“FRPO”)
Industrial Gas Users Association (“IGUA”)
London Property Management Association (“LPMA”)
Union Gas Limited (“Union”)
Vulnerable Energy Consumers Coalition (“VECC”)

The parties to this Agreement include all of the above noted entities (the “parties”). The parties to this Agreement represent major stakeholders and constituencies with an interest in Union’s rates.

The parties to this settlement encourage the Board to accept this Agreement in its entirety. The parties to this Agreement also support finalization of the rate order in these proceedings to enable implementation of this Agreement in Union’s October 1, 2010 QRAM.

1. Unabsorbed Demand Cost Variance Account (179-108)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B.01
3. JT1.10

2. Short-Term Storage and Other Balancing Services (179-70)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.01, B2.02, B5.02, B8.01, B9.02

3. Long-Term Peak Storage Services (179-72)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.02, B2.02, B4.02, B6.01, B7.02, B8.01, B9.02

4. Deferred Customer Rebates/Charges (179-26)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.03

5. Lost Revenue Adjustment Mechanism (179-75)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B3.03, B3.04, B8.01, B9.06, B9.11

6. Intra-Period Weighted Average Cost of Gas ("WACOG") Costs (179-102)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B4.04

7. Unbundled Services Unauthorized Storage Overrun (179-103)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1

8. Demand Side Management Variance Account (179-111)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B2.03, B5.03, B8.01, B8.02, B9.09, B9.10, B9.11
3. JT1.2

9. Gas Distribution Access Rule (“GDAR”) Costs (179-112)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1

10. Late Payment Penalty (“LPP”) Litigation (179-113)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.03, B1.04, B4.06, B5.07, B7.03, B8.01

11. Shared Savings Mechanism (“SSM”) Variance Account (179-115)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1
2. B1.05, B3.05, B8.01, B9.06, B9.11

12. Carbon Dioxide Offset Credits (179-117)

(Complete Settlement) Parties agree to Union’s proposed disposition of this account.

Evidence References:

1. A/T1

13. Average Use Per Customer (179-118)

(Complete Settlement) Parties agree to Union's proposed disposition of this account.

Evidence References:

1. A/T1
2. B8.03

14. International Financial Reporting Standards ("IFRS") Conversion Costs (179-120)

The parties agree that, upon approval of this Agreement by the Board, Union will remove from the deferral account the capital costs associated with upgrading Union's accounting system in order to report results under IFRS. These capital costs will be replaced by the annual revenue requirement related to those capital costs, increasing the amount recovered between 2010 and 2014 to \$1.747 million as illustrated in the table provided at JT1.11 (attached). For clarity, Union's 2009 deferral account balance will include \$2.577 million of O&M. Union will include the revenue requirements noted on JT1.11 for years 2010 through to 2014 inclusive in the respective future deferral account disposition proceedings.

Further, the parties agree that, upon approval of this Agreement by the Board, Union will make an adjustment of \$0.386 million to the deferral account to the credit of ratepayers. The adjustment is being made to reflect the difference between the inclusion of 2008 IFRS related costs of \$0.965 million in Union's 2008 earnings sharing calculation (with the result that, at the margin, ratepayers absorbed 90% of this cost) and the credit for reversal of these costs included in the 2009 earnings sharing calculation (with the result that, without the agreed adjustment, ratepayers would have been credited with only 50% of this cost). The parties agree that the adjustment to Union's 2008 IFRS expenses is without prejudice to the method for calculating utility earnings for the purposes of earnings sharing as approved by the Board in the EB-2009-0101 settlement agreement.

Evidence References:

1. A/T1
2. B1.06, B8.01, B9.08
3. JT1.11

15. Cumulative Under-recovery – St. Clair Transmission Line (179-121) and Impact of Removing St. Clair Transmission Line from Rates (179-122)

The parties agree to defer determination of disposal of balances in deferral Account No. 179-121 and Account No. 179-122 until after November 1, 2010. November 1, 2010 is the deadline by which Dawn Gateway Limited Partnership (“Dawn Gateway”) and its shippers will determine whether the Dawn Gateway Pipeline will proceed for in-service in November 2011.

The parties request that this matter come back on for hearing before the Board on a date or dates agreeable to the Board between November 29, 2010 and December 31, 2010. The parties further agree that in advance of that hearing Union shall be entitled to file further written evidence to address any changes in circumstances subsequent to the date of the Settlement Agreement and that parties have an opportunity to ask interrogatories in respect of that evidence and file responding evidence.

The agreement by the parties to defer any determination relating to the balances in Account No. 179-121 and Account No. 179-122 is without prejudice to the parties’ positions with respect to the proper determinations concerning the accounts or the appropriateness of any relief requested in the proposed application.

In accordance with the terms of the settlement of this issue, Union has produced, in confidence and without prejudice to, its position pertaining to relevance and admissibility, the following documents:

- (a) the Precedent Agreements between DGLP and its shippers filed confidentially in the EB-2008-0411 proceedings;
- (b) communications including emails between DGLP and its shippers pertaining to amendments to the precedent agreements aforesaid;
- (c) the Amended Precedent Agreements between DGLP and each of its shippers; and

- (d) the Agreement of Purchase and Sale pertaining to the St. Clair Line between DGLP and Union.

Until a determination by the Board with respect to the balances in Accounts No. 179-121 and 179-122, Union will continue to track the ratepayer credit in deferral account 179-122 based on a sale date of March 1, 2010 as outlined by Union in response to CME interrogatories B3.14 and B3.31. Union will use the Board's methodology as outlined in its EB-2008-0411 Decision to calculate the ratepayer credit.

Evidence References:

1. A/T1
2. B1.07, B3.12, B3.13, B3.14, B3.15, B3.16, B3.17, B3.18, B3.19, B3.20, B3.21, B3.26, 3.28, B3.29, B3.30, B3.31, B3.33, B4.05
3. JT1.1, JT1.4

16. Market Transformation Incentive

(Complete Settlement)

Evidence References:

1. A/T1
2. B8.01, B9.03, B9.04, B9.05, B9.06, B9.07

17. Federal and Provincial Tax Changes

(Complete Settlement)

Evidence References:

1. A/T1
2. B8.01

18. 2009 Earnings Sharing

The parties agree that, upon approval of this Agreement by the Board, Union will credit ratepayers in the amount of \$0.334 million, in addition to the \$7.063 million credit reflected at A/T2/Appendix B/S1 (Corrected), which additional credit represents the adjustment to 2008

utility earnings sharing that would have resulted if Union had calculated the future income tax expense in respect of its OEB approved deferral accounts for 2008. The \$0.334 million arises as a result of differences between 2008 and 2009 tax rates applicable to deferral accounts. This adjustment is consistent with Union's tax treatment of its deferral accounts in 2009, as outlined at A/T2/p9.

Evidence References:

1. A/T2
2. B1.08, B1.09, B1.10, B1.11, B5.05, B5.06, B6.02, B6.03, B6.04, B7.04, B7.05, B7.06, B7.07
B7.12, B8.04, B8.06
3. JT1.9

19. Allocation and Disposition of 2009 Deferral Account Balances, Market Transformation Incentive, and 2009 Federal & Provincial Tax Changes

(Complete Settlement) Parties agree to Union's proposed allocations.

Evidence References:

1. A/T3
2. B2.01, B7.01, B7.08, B8.07, B8.08, 9.12
3. JT1.3

20. Allocation of Costs Between Union's Regulated and Unregulated Storage Operations

The parties agree that, upon approval of this Agreement by the Board, Union will commission an independent study ("the Study") of its cost allocation methodology for allocation of costs between its regulated and unregulated storage operations. The Study will also examine the attribution of revenues to deferral accounts 179-70 and 179-72 and provide a volumetric reconciliation between physical space and space sold "short term" and "long term". Union will solicit a person, group or organization to conduct the study ("Study Staff") by way of a request for proposals ("RFP"). Union will provide an opportunity to the other parties to comment on a draft version of the RFP and to suggest changes. Final drafting of the RFP and selection of Study Staff will be at the sole discretion of Union.

Union will take steps to ensure that, at or near the outset of the Study, the other parties will be provided an opportunity to present Study Staff with their concerns, questions, and/or opinions on the subject matters of the Study.

The Study will be filed by Union in connection with its application to dispose of 2010 deferral account balances with sufficient time to permit full discovery and review of the Study as part of the application.

Any changes that Study Staff may recommend to Union's cost allocation methodology will not be implemented until after receiving approval from the Board. Any findings or recommendations made by Study Staff will be adopted, if at all, on a prospective basis, and will have no impact on balances disposed of prior to 2010.

This Agreement is without prejudice to any party's right to disagree with, or challenge any of the findings of Study Staff.

Evidence References:

1. A/T4
2. B1.13, B1.14, B1.15, B1.16, B1.17, B1.18, B1.19, B2.05, B2.06, B3.34, B3.35, B3.37, B3.38, B3.39, B3.40, B3.41, B3.42, B4.07, B4.08, B4.09, B4.10, B4.11, B4.12, B4.13, B4.14, B4.15, B4.16, B4.17, B4.18, B5.08, B5.09, B5.10, B6.05, B6.06, B6.07, B6.08, B7.09, B7.10, B7.11, B7.13, B7.14, B8.09, B9.14
3. JT1.5, JT1.6, JT1.7, JT1.8, JT1.12

UNION GAS LIMITED
Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes
Year Ending December 31, 2009

Line No.	Account Number	Account Name	Balance (\$000's)	(1)
<u>Gas Supply Accounts:</u>				
1	179-108	Unabsorbed Demand Costs Variance Account	(1,285)	(2)
<u>Storage Accounts:</u>				
2	179-70	Short-Term Storage and Other Balancing Services	(4,949)	
3	179-72	Long-Term Peak Storage Services	(14,787)	
4	Total Storage Accounts (Lines 2 + 3)		(19,736)	
<u>Other:</u>				
5	179-26	Deferred Customer Rebates/Charges	-	
6	179-75	Lost Revenue Adjustment Mechanism	2,394	
7	179-102	Intra-period WACOG Changes	(7,615)	
8	179-103	Unbundled Services Unauthorized Storage Overrun	-	
9	179-111	Demand Side Management Variance Account	1,468	
10	179-112	Gas Distribution Access Rule (GDAR) Costs	-	
11	179-113	Late Payment Penalty Litigation	5,651	
12	179-115	Shared Savings Mechanism	8,922	
13	179-117	Carbon Dioxide Offset Credits	-	
14	179-118	Average Use Per Customer	(2,144)	
15	179-120	IFRS Conversion Cost	2,191	
16	179-121	Cumulative Under-recovery – St. Clair Transmission Line	-	
17	Total Other Accounts (Lines 5 through 16)		10,866	
18	Total Deferral Account Balances (Lines 1 + 4 + 17)		(10,155)	
19	Market Transformation Incentive		500	
20	Federal and Provincial Tax Changes		(1,500)	
21	Total Deferral Account Balances, Market Transformation Incentive and Federal and Provincial Tax Changes (Lines 18 + 19 + 20)		(11,154)	
22	Earnings Sharing per Settlement Agreement		(7,397)	

Notes:

(1) Account balances include interest to December 31, 2009.

(2) With the exception of UDC (No. 179-108), all gas supply-related deferral account balances are disposed through the QRAM process.

UNION GAS LIMITEDUndertaking of Union Gas
To Board Staff

Please provide a table that excludes capital expenditures, but includes any other expenditures, like depreciation.

Union has proposed recovery of \$1.412 million of the capital costs related to upgrading Union's accounting system in order to report results under IFRS.

Removing the capital costs from the deferral account as proposed and replacing them with the annual revenue requirement related to the capital cost will increase the amount to be recovered over time to \$1.747 million as illustrated in the table below. The increase in costs to be recovered relates to the interest, return and income taxes.

Impact of the Removal of Capital Costs

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>Total</u>
Proposed by Union	1.918	2.071						3.989
Less capital expenditures	0.953	0.459						1.412
O&M	0.965	1.612						2.577
Revenue requirement	-	-	0.124	0.335	0.538	0.505	0.244	1.747
	<u>0.965</u>	<u>1.612</u>	<u>0.124</u>	<u>0.335</u>	<u>0.538</u>	<u>0.505</u>	<u>0.244</u>	<u>4.324</u>