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By electronic filing and by e-mail

May 30, 2012

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Union Gas Limited
Motion to Review EB-2011-0038 Decision and Rate Order
Board File No.: EB-2012-0206
Our File No.: 339583-000104

We are writing to reply to three (3) points contained in the submission of Union Gas Limited ("Union") dated May 18, 2012 (the "Submission").

Under Rule 43.01, the Board's Review Power is Very Broad

In paragraphs 6 and 7 of its Submission, Union fails to distinguish between the Board's powers under Rule 43.01 of its *Rules of Practice and Procedure* (the *"Rules"*) when it initiates a review of an Order or Decision on its own Motion, and a Motion for Review initiated by a party to a proceeding pursuant to Rule 44.01 of the *Rules*.

There is no language in Rule 43.01 that constrains the Board's power to review to factors listed in Rule 44.01. The language under Rule 43.01 is very broad. All that is required is that the Board formulate "… at any time … an intention to review all or part of any order or decision …" and it "may confirm, vary, suspend or cancel the Order or Decision by serving a letter on all parties to the proceeding."

We submit that the Rule clearly authorizes the Board to vary the February 29, 2012 Decision and Order (the "Decision") and the subsequent Rate Order to reflect what it intended when it rendered its Decision.

The Board's Intention in Rendering the Decision is Relevant and Determinative

We strongly disagree with the contention that Union makes in paragraph 8(a) of its Submission to the effect that the subjective intentions of the Board are irrelevant in evaluating whether the

Decision and subsequent Rate Order should be varied. We submit that "intention" by its very nature is subjective.

We reiterate our submission supported by others to the effect that what the Board intended when it rendered its Decision is reflected in the last sentence on page 5 thereof where the Board stated:

> ***"The Board's findings in this proceeding result in the sharing with ratepayers of all net revenues (minus a 10% incentive payment as set out in the NGEIR Decision) in the Short-term Storage Account as it is a utility asset which is supporting these transactions."*** (emphasis added)

If we and others are correct, then the Board is fully empowered under Rule 43.01 to review and vary the Decision and subsequent Rate Order. It will be a sad day for utility regulation in Ontario if the Board is powerless to vary a decision and subsequent rate order to reflect what was intended.

The $11.254M Credit Underpinning 2010 In-franchise Rates remains Unchanged

Contrary to the assertion in paragraph 25 of the Submission, what is being sought is not an increase in the credit to ratepayers underpinning 2010 in-franchise rates. The $11.254M credit embedded in those rates remains unchanged.

After deducting the 10% incentive payment payable to Union's shareholder, what is being sought is that all 2010 net revenues in excess of the $11.254M credit embedded in 2010 rates be paid to ratepayers in order to implement the intent of the Decision.

Deferral accounts necessarily involve "retroactivity" because their purpose is to adjust revenues and/or expenses to reflect actual rather than forecast operating conditions. Union is attempting to prevent a clearance of 2010 net short-term storage revenues that reflects the actual operating conditions that prevailed in that year. We respectfully urge the Board to reject Union's efforts to achieve such an outcome.

Yours very truly,

Peter C.P. Thompson, Q.C.

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Crawford Smith (Torys)
Intervenors in EB-2011-0038
Paul Clipsham (CME)

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