

EB-2009-0101

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 July 1, 2009 in connection with the sharing of 2008 earnings under the incentive rate mechanism approved by the Ontario Energy Board on January 17, 2008

Union Gas Limited
Compendium of Material
Re: Presentation of June 4, 2009
Settlement Agreement

EB-2009-0101

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 July 1, 2009 in connection with the sharing of 2008 earnings under the incentive rate mechanism approved by the Ontario Energy Board on January 17, 2008

SETTLEMENT AGREEMENT

June 4, 2009

This Settlement Agreement ("Agreement") is for the consideration of the Ontario Energy Board ("the Board") in its determination, under Docket No. EB-2009-0101, of the disposition of Calendar 2008 earnings sharing under a settlement agreement approved by the Board on January 17, 2008 in EB-2007-0606 (the "IR Settlement Agreement") for Union Gas Limited ("Union"). By Procedural Order No.1 dated April 28, 2009, the Board scheduled a Settlement Conference to commence May 27, 2009. The Settlement Conference was duly convened, in accordance with Procedural Order No. 1, with Mr. George Dominy as facilitator. The Settlement Conference proceeded until May 28, 2009.

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-2009-0101 proceeding.

The purpose of this proceeding was:

- (a) to provide Union's calculation of its 2008 utility earnings for the purposes of earnings sharing pursuant to Section 10.1 of the IR Settlement Agreement. Section 10.1 of the IR Settlement Agreement provides:

"If in any calendar year Union's actual utility return on equity is more than 200 basis points over the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, then such excess earnings will be shared 50/50 between Union and its customers. For the purposes of the earnings sharing mechanism, Union shall calculate its earnings using the regulatory rules prescribed by the Board from time to time, and shall not make any material changes in accounting practices that have the effect of reducing utility earnings. All revenues that would be included in revenues in a cost of service application shall be included in the earnings calculation and only those expenses (whether operating or capital) that would be allowable as deductions from earnings in a cost of service application shall be included in the earnings calculation.

Parties acknowledge that the DSM related Shared Savings Mechanism (SSM) and Lost Revenue Adjustment Mechanism (LRAM) and storage related deferral accounts are outside of the earnings sharing mechanism identified above."

- (b) to consider Union's application pursuant to section 9.1 of the IR Settlement Agreement. Section 9.1 provides:

"The parties agree that if there is a 300 basis point or greater variance in weather normalized utility earnings above or below the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, Union will file an application to the Board, with appropriate supporting evidence, for a review of the price cap mechanism. During the course of that review, the Board may be asked to determine whether it is appropriate to continue the price cap mechanism for future years and, if so, with or without modifications. All parties including Union will be free to take such positions as they consider appropriate with respect to that application, including without limitation; a) proposing that a component of the IR Plan, including the X factor, be adjusted, b) proposing that IR plan be terminated, and c) taking any other positions as the party may consider relevant and the Board agrees to hear. Union shall file such application as soon as reasonably possible in the year following the year in which the over earnings threshold is met, unless all parties to this Agreement agree otherwise at that time."

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-2009-0101, 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. There are Appendices to the Agreement which provide further evidentiary support. 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 the 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-2007-0606 and EB-2008-0220. The following entities participated in the Settlement Conference:

- Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
- Canadian Manufacturers & Exporters ("CME")
- Consumers Council of Canada ("CCC")
- Industrial Gas Users Association ("IGUA")
- City of Kitchener ("Kitchener")
- London Property Management Association ("LPMA")
- School Energy Coalition ("SEC")
- The City of Timmins ("Timmins")
- Union Gas Limited ("Union")
- Vulnerable Energy Consumers Coalition ("VECC")
- Wholesale Gas Services Purchasers Group ("WGSPG")
- Energy Probe ("EP")
- Federation of Rental-housing Providers of Ontario ("FRPO")

The parties to this Agreement include all of the above noted entities except IGUA (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 July 1 QRAM.

1. Earnings Sharing Calculation and Off Ramp Amendments

(Complete Settlement)

The parties agree that, upon approval of this Agreement by the Board, the IR Settlement Agreement shall, for the entire IR term, 2008 to 2012, be amended as follows (for the assistance of parties and the Board, the agreed upon amendments to the IR Settlement Agreement are blacklined below):

9.1 [Section 9.1 of the IR Settlement Agreement shall be deleted in its entirety.]

10.1 The parties agree that there will be an earnings sharing mechanism, based on actual utility earnings. If in any calendar year Union's actual utility return on equity is more than 200 basis points but not more than 300 basis points over the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, then such excess earnings will be shared 50/50 between Union and its customers. In addition to the above, if in any calendar year Union's actual utility return on equity is more than 300 basis points over the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, then such earnings in excess of 300 basis points will be shared 90/10 between customers and Union (i.e., customers will be credited 90% and Union will be credited 10%). For the purposes of the earnings sharing mechanism, Union shall calculate its earnings using the regulatory rules prescribed by the Board from time to time, and shall not make any material

changes in accounting practices that have the effect of reducing utility earnings. All revenues that would be included in revenues in a cost of service application shall be included in the earnings calculation and only those expenses (whether operating or capital) that would be allowable as deductions from earnings in a cost of service application shall be included in the earnings calculation. For greater clarity, Union's one time accounting adjustment in 2008 to true up an unbilled revenue accrual to reflect Union's current rate structure and billing cycles, in the amount of \$3.6 million, is an adjustment that is excluded from the calculation of actual utility earnings, whereas the use of actual unaccounted for gas volume is an expense that would be recorded in the calculation of actual utility earnings.

The parties believe that these amendments to the Board-approved IR Settlement Agreement are in the public interest. The amendments are intended to modify the IR formula so as to produce rates which are just and reasonable during the IR term. The Agreement:

1. clarifies possible ambiguities in the calculation of earning sharing in section 10.1 of the IR Settlement Agreement arising from the relationship between the use of actual utility earnings and the *proviso* in section 10.1 restricting any adjustments in the calculation of actual utility earnings to those adjustments to actual earnings that would be made in a cost of service filing. Intervenors took the position, for example, that none of the adjustments proposed by Union in the calculation of 2008 actual utility earnings were appropriate. Union took the position that all of its proposed adjustments were in accordance with the IR Settlement Agreement. This Agreement avoids the cost and uncertainty of litigation over these disputes, now and in the future, by resolving which adjustments to the calculation of actual utility earnings, for the purposes of earnings sharing, are appropriate;
2. provides additional potential benefits to customers during the term of the IR plan, 2008 to 2012, in circumstances where Union's actual utility income exceeds the amount

calculated by the application of the Board's ROE formula in any year of the IR plan by over 300 basis points, by crediting 90% of such earnings to customers.¹ The consumer protection afforded by the "off ramp" provision for review in section 9.1 of the IR Settlement Agreement has been replaced with crediting 90% of earnings over the 300 basis point threshold to customers, i.e., Union will have a modest incentive to pursue even greater productivity initiatives and customer bills will go down, all else equal, to the extent Union delivers earnings in excess of the 300 basis point threshold. The parties acknowledge that the elimination of the "off ramp" review in section 9.1 is without prejudice to all rights afforded under section 6.1 (Z Factors) of the IR Settlement Agreement;

3. provides greater certainty and incentive for Union to explore and make investments in productivity improvements during the term of the 2008 to 2012 IR plan;
4. continues to provide for annual reviews during the term of the IR plan during which intervenors will be able to carefully review the reasons and calculation of sharing for all earnings in excess of 200 basis points over the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan.
5. avoids complex, lengthy and highly controversial and contested disputes over the potential for termination of the IR plan and the need for a new full cost of service proceeding. In this case, intervenors took the position, for example, that the proper calculation of weather normalized utility earnings in 2008 was materially in excess of the 300 basis point threshold which gave intervenors the right to seek a review of the IR plan, the consideration of adjustments to the components of the IR plan, including base rates, and the termination of the IR plan and a return to cost of service rates, just as Union would have had the right to take the same position had the company under-earned by an equivalent amount. Union took the position that the IR plan was working as contemplated and producing significant benefits for customers and that the termination of

¹ Union does not currently forecast exceeding the 300 basis point threshold in 2009 or 2010.

incentive regulation after the first year of the five year plan was premature and inappropriate. Union will be applying in 2012 for 2013 cost of service rebasing in any event; and

6. avoids complex, lengthy and highly controversial and contested disputes over 2007 base rates and the potential for further adjustments to those base rates during the IR plan. For example, intervenors took the position that Union's 2007 normalized utility earnings were materially higher than the forecast available during the period in which the IR Settlement Agreement was negotiated and that adjustments to the IR plan, such as altering the size of the earnings sharing deadband, altering the level of earnings sharing, and adjustments to 2008 earnings sharing and/or to base rates during the IR term could be made to take account of this positive variance. Union took the position that such variances were not relevant to 2008 earnings sharing and that no adjustments to the IR plan or to base rates during the IR term, except those, such as Z factors, expressly contemplated by the IR Settlement Agreement, should be made. This issue involved a number of potentially controversial disputes, including disputes over the appropriate calculation methodology, the extent to which the likelihood of favourable variances, and the extent of those variances, was, or ought to have been, known to all parties when the IR Settlement Agreement was negotiated and whether base rate adjustments of this kind are appropriate during the IR term.

The financial consequences of this Agreement for the calculation of 2008 earnings sharing under the IR Settlement Agreement are set out in Appendix A attached to this Agreement. The adjustments in the Agreement to Union's original proposal are the result of compromise by the agreeing parties of their respective positions on the matters listed above. In all of the circumstances, the parties have agreed to increase the customer share of Union's 2008 earnings from the proposed \$15.2 million to \$34.2 million, as outlined in Appendix A.

Consistent with past practice, the customer portion of the amount calculated in Appendix A shall be allocated to rate classes in proportion to Board approved return on equity as set out in the allocation schedule in Appendix B attached to this Agreement. Of the \$34.2 million customer

share of earnings for 2008, approximately \$19.6 million will be allocated to small volume general service customers and approximately \$3.2 million will be allocated to large volume general service customers. Approximately \$4.7 million will be allocated to the large volume contract customers and approximately \$6.7 million to M12 shippers such as Enbridge Gas Distribution Inc. ("EGD"), Gaz Métropolitain inc. ("GMi"), and TransCanada PipeLines Limited ("TCPL"). Approving the settlement reflected in the Agreement, therefore, will benefit all customers but, in particular, will provide benefits to small volume general service customers.

Evidence References:

1. A/p.9-20, A/p.27-29, A/App. B/S.1, A/App. B/S.2, A/App. B/S.3, A/App. D/S.1, A/App. D/S.2
2. Technical Conference, pp. 19-28, 33-34
3. B/T1/S6, B/T2/S1, B/T2/S3, B/T4/S7, B/T4/S8, B/T5/S3
4. J1.1

UNION GAS LIMITED
Earnings Sharing Calculation
Year Ended December 31, 2008

Line No.	Particulars (\$000's)	2008 (a)	Non-Utility Storage (b)	Adjustments (c)	2008 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Operating revenue	\$ 1,869,283	\$ -	\$ (3,654) i	1,865,629
2	Storage & Transportation	243,317	78,230	-	165,087
3	Other	33,818	-	(7,530) ii	26,288
4		<u>2,146,418</u>	<u>78,230</u>	<u>(11,184)</u>	<u>2,057,004</u>
Operating Expenses:					
5	Cost of gas	1,171,320	8,082	-	1,163,238
6	Operating and maintenance expenses	335,115	12,028	(516) iii	322,571
7	Depreciation	185,219	4,966	-	180,253
8	Other financing	-	-	535 iv	535
9	Property and capital taxes	65,895	953	-	64,942
10		<u>1,757,549</u>	<u>26,029</u>	<u>19</u>	<u>1,731,539</u>
11	Earning Before Interest and Taxes	\$ <u>388,869</u>	\$ <u>52,201</u>	\$ <u>(11,203)</u>	\$ <u>325,466</u>
Financial Expenses:					
12	Long-term debt				143,546
13	Unfunded short-term debt				2,805
14					<u>146,351</u>
15	Utility income before income taxes				179,114
16	Income taxes				31,300
17	Preferred dividend requirements				5,088
18	Utility earnings				<u>142,726</u>
19	Long term storage premium subsidy (after tax)				10,878
20	Short term storage premium subsidy (after tax)				7,484
21					<u>18,160</u>
22	Earnings subject to sharing				\$ <u>160,886</u>
23	Common equity				1,208,198
24	Return on equity (line 22 / line 23)				13.35%
25	Benchmark return on equity				10.81%
26	50% Earnings sharing %				1.00%
27	90% Earnings sharing to ratepayer % (line 24 - line 25 - line 26)				1.54%
28	50% Earnings sharing \$ (line 26 x line 23 x 50%)				6,026
29	90% Earnings sharing to ratepayer \$ (line 27 x line 23 x 90%)				16,697
30	Total earnings sharing \$ (line 28 + line 29)				<u>22,723</u>
31	Pre-tax earnings sharing (line 30 / (1 minus tax rate))				\$ <u>34,170</u>

Notes:

i) Accounting adjustment

ii) Shared Savings Mechanism

iii) Donations (394)
EB-2008-0304 costs (122)
(516)

iv) Customer deposit interest

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UNION GAS LIMITED
Allocation of 2008 Earning Sharing to Rate Classes

Line No.	Particulars	Rate Class	C2007 Return on Equity Allocation (1) (\$000's) (a)	2008 Earning Sharing (\$000's) (b)
<u>Northern & Eastern Operations Area</u>				
1	Small Volume General Firm Service	01	44,549	(5,867)
2	Large Volume General Firm Service	10	8,234	(1,084)
3	Medium Volume Firm Service	20	4,283	(561)
4	Large Volume High Load Factor Firm Service	100	5,641	(743)
5	Large Volume Interruptible Service	25	1,913	(252)
6	Wholesale Transportation Service	77	8	(1)
7	Total Northern & Eastern Operations Area		<u>64,608</u>	<u>(8,509)</u>
<u>Southern Operations Area</u>				
8	Small Volume General Service Rate	M1	104,130	(13,715)
9	Large Volume General Service Rate	M2	15,828	(2,085)
10	Firm Industrial and Commercial Contract Rate	M4	4,220	(556)
11	Interruptible Industrial & Commercial Contract Rate	M5A	2,587	(341)
12	Special Large Volume Industrial & Commercial Contract Rate	M7	2,617	(345)
13	Large Wholesale Service Rate	M9	219	(29)
14	Small Wholesale Service Rate	M10	10	(1)
15	S & T Rates for Contract Carriage Customers	T1	12,835	(1,691)
16	S & T Rates for Contract Carriage Customers	T3	1,546	(204)
<u>Storage and Transportation</u>				
17	Cross Franchise Transportation Rates	C1	188	(24)
18	Storage & Transportation Rates	M12	50,557	(6,659)
19	Transportation of Locally Produced Gas	M13	39	(5)
20	Storage & Transportation Services - Transportation Charges	M16	55	(7)
21	Total Southern Operations Area		<u>194,830</u>	<u>(25,661)</u>
22	Total		<u>259,438</u>	<u>(34,170)</u> (2)

Notes:

(1) Allocated costs per 2007 Decision in EB-2005-0520

(2) Earning Sharing balance for Disposition as per EB-2009-0101, Settlement Agreement, Appendix A

11*

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2007-0606

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 approving or fixing a multi-
year incentive rate mechanism to determine rates for the
regulated distribution, transmission and storage of natural
gas, effective January 1, 2008;

DECISION

Union Gas Limited ("Union") filed an Application on May 11, 2007 under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Ontario Energy Board approving or fixing a multi-year incentive rate mechanism to determine rates for the regulated distribution, transmission and storage of natural gas, effective January 1, 2008.

On January 3, 2008 Union filed a Settlement Agreement in this matter which is attached as Schedule "A". On January 8, 2008 the Board heard submissions on the Union Settlement Agreement. The parties who participated in the Settlement Agreement are set out in Schedule "B".

The Settlement Agreement is comprehensive although there are three unresolved matters that will proceed to a hearing. They are: (1) the commodity risk management program (written argument only) (2) the treatment of customer additions under incentive regulation and (3) whether tax changes resulting from changes to federal and/or provincial legislation and/or regulations qualify as a 2007 base rate adjustment and as a Z factor in years 2008 and beyond. The parties to the Settlement Agreement accepted that the Settlement Agreement is not contingent on the outcome of any of these contested matters.

The Board heard submissions on the Settlement Agreement on January 8, 2008. At that time the parties agreed to the process regarding the resolution of the outstanding three issues. These are set out in the Addendum of January 14, 2008 attached as Schedule "C" to this Decision.

Union indicated that acceptance of the Settlement Agreement by parties was contingent on Union providing a rate impact schedule with the understanding that the rates would be reasonably similar to the rate impact discussed during the settlement conference. The parties agreed that any concerns of the rate impact schedule would be filed by January 11, 2008, and, absent any objections, the Board could approve the Settlement Agreement. The Board did not receive any submissions identifying concerns related to the rate impact schedules that Union provided on January 7, 2008.

The Incentive Regulation Plan described in this Settlement Agreement is a five year plan under which any rate increase will be limited by a price index after deducting the amount of the productivity or X factor. The parties to the Plan agree that the Plan is expected to put downward pressure on Union's rates by encouraging new levels of efficiency and providing the regulatory stability needed for Union's anticipated investment in Ontario assets. The parties also agree that the Plan ensures that the benefits of this efficiency will be shared with customers during the term of the IR Plan.

The parties agreeing to the Plan represent the major stakeholders and constituents with an interest in Union's rates. They are experienced intervenors in these proceedings. This Plan has been given careful consideration over many days of negotiation with interested parties. It is anticipated that the annual rate increase from the implementation of this Plan will be less than 2 per cent per year for residential customers.

In the Natural Gas Forum the Board set out the relevant criteria for an acceptable incentive rate plan. The Report stated that an acceptable plan must:

1. establish incentives for sustainable efficiency improvements that benefit customers and shareholders;
2. ensure appropriate quality of service for customers;
3. create an environment that is conducive to investment, to the benefit of customers and shareholders.

- 3 -

The panel accepts the criteria. We find that this Plan meets these criteria and is in the public interest. It is an important step forward in establishing long term rates stability in a manner that will promote maximum efficiencies for the benefit of both ratepayers and shareholders.

Board accepts the Settlement Agreement dated January 3, 2008, including the Addendum dated January 14, 2008.

The Board will issue a further decision on outstanding issues in due course.

DATED at Toronto, January 17, 2008.

Original signed by

Gordon Kaiser
Presiding Member and Vice Chair

Original signed by

Paul Sommerville
Member

Original signed by

Cynthia Chaplin
Member

SCHEDULE A TO
DECISION
BOARD FILE NO. EB-2007-0606
Settlement Agreement
DATED JANUARY 17, 2008

EB-2007-0606

UNION GAS LIMITED

SETTLEMENT AGREEMENT

January 3, 2008

TABLE OF CONTENTS

OVERVIEW	5
1 MULTI-YEAR INCENTIVE RATEMAKING FRAMEWORK	8
1.1 What are the implications associated with a revenue cap, a price cap and other alternative multi-year incentive ratemaking frameworks?	8
1.2 What is the method for incentive regulation that the Board should approve for each utility?	8
1.3 Should weather risk continue to be borne by the shareholders, and if so, what other adjustments should be made?	9
2 INFLATION FACTOR	10
2.1 What type of index should be used as the inflation factor (industry specific index or macroeconomic index)?	10
2.1.1 Which macroeconomic or industry specific index should be used?	10
2.1.2 Should the inflation factor be based on an actual or forecast?	11
2.2 How often should the Board update the inflation factor?	11
2.3 Should the gas utilities ROE be adjusted in each year of the incentive regulation (IR) plan using the Board's approved ROE guidelines?	11
3 X FACTOR	12
3.1 How should the X factor be determined?	12
3.2 What are the appropriate components of an X factor?	12

3.3	What are the expected cost and revenue changes during the IR plan that should be taken into account in determining an appropriate X factor?	13
4	AVERAGE USE FACTOR	13
4.1	Is it appropriate to include the impact of changes in average use in the annual adjustment?	13
4.2	How should the impact of changes in average use be calculated?	14
4.3	If so, how should the impact of changes in average use be applied (e.g., to all customer rate classes equally, should it be differentiated by customer rate classes or some other manner)?	15
5	Y FACTOR	15
5.1	What are the Y factors that should be included in the IR plan?.....	15
5.2	What are the criteria for disposition?	17
6	Z FACTOR	17
6.1	What are the criteria for establishing Z factors that should be included in the IR plan?	17
6.2	Should there be materiality tests, and if so, what should they be?	19
7	NATURAL GAS ELECTRICITY INTERFACE REVIEW (NGEIR) DECISIONS	20
7.1	How should the impacts of the NGEIR decisions, if any, be reflected in rates during the IR plan?.....	20
8	TERM OF THE PLAN	20
8.1	What is the appropriate plan term for each utility?	20
9	OFF-RAMPS	21
9.1	Should an off-ramp be included in the IR plan?	21
9.2	If so, what should be the parameters?.....	22

10 EARNING SHARING MECHANISM (ESM)..... 22

10.1 Should an ESM be included in the IR plan?..... 22

10.2 If so, what should be the parameters?..... 23

11 REPORTING REQUIREMENTS..... 23

11.1 What information should the Board consider and stakeholders be provided with during the IR plan?. 23

11.2 What should be the frequency of the reporting requirements during the IR plan (e.g., quarterly, semi-annual or annually)? 25

11.3 What should be the process and the role of the Board and stakeholders?..... 26

12 RATE-SETTING PROCESS..... 26

12.1 Annual Adjustment..... 26

12.1.1 What should be the information requirements? 26

12.1.2 What should be the process, the timing, and the role of the stakeholders? 27

12.2 New Energy Services 27

12.2.1 What should be the criteria to implement a new energy service? 27

12.2.2 What should be the information requirements for a new energy service? 28

12.3 Changes in Rate Design 28

12.3.1 What should be the criteria for changes in rate design?..... 28

12.3.2 How should the change in the rate design be implemented? 30

12.3.3 What should be the information requirements for a change in rate design? 30

12.4 Non-Energy Services..... 30

12.4.1 Should the charges for these services be included in the IR mechanism? 30

12.4.2 If not, what should be the criteria for adjusting these charges?..... 31

12.4.3 What should be the criteria to implement new non-energy services? 31

12.4.4 What should be the information requirements for new non-energy services?..... 31

13 REBASING 32

13.1 What information should the Board consider and stakeholders be provided with at the time of rebasing? 32

14 ADJUSTMENTS TO BASE YEAR REVENUE REQUIREMENTS AND/OR RATES..... 33

14.1 Are there adjustments that should be made to base year revenue requirements and/or rates? 33

14.2 If so, how should these adjustments be made? 35

List of Appendices:

Appendix A – Issues List

Appendix B – List of Deferral Accounts Continuing During IR Term

Appendix C – Example of 2008 Rate Adjustments Excluding Base Rate Adjustments and Y Factors

Appendix D – GDAR Notice of Amendment

EB-2007-0606

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is for the consideration of the Ontario Energy Board ("the Board") in its determination, under Docket No. EB-2007-0606, of Calendar 2008 rates and the 2009-2012 rate-setting methodology for Union Gas Limited ("Union"). By Procedural Order No. 5 dated August 31, 2007, the Board scheduled a Settlement Conference to commence December 6, 2007. The Settlement Conference was duly convened, in accordance with Procedural Order No. 5, with Mr. Ken Rosenberg as facilitator. The Settlement Conference proceeded until December 17, 2007.

Attached as Appendix A to the Agreement is the Board's Issues List which was issued through Procedural Order No. 4 dated August 13, 2007. The Agreement identifies the issues on the Board's list for which agreement has been reached. The Agreement is supported by the evidence filed in the EB-2007-0606 proceeding.

Each of the issues (or, in some cases, parts of issues) identified below falls within one of the following three categories:

1. an issue for which there is complete settlement, because Union and all of the other parties who discussed the issue either agree with the settlement or take no position,
2. an issue for which there is partial settlement, agreed to by Union and a majority of parties but one or more parties do not agree with the settlement,
3. an issue for which there is no settlement.

For the purposes of this Agreement, the term "no position" may include both parties who were involved in negotiations on an issue but who ultimately took no position on that issue and parties who were not involved in negotiations on that issue at all.

It is acknowledged and agreed that none of the completely settled provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2007-0606, accept the completely settled provisions of the Agreement in their entirety, there is no Agreement (unless the parties 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 will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Ontario Energy Board's Rules of Practice and Procedure.

For greater certainty, the parties further acknowledge and agree that these conditions apply to settled issues in respect of which they are shown as taking no position.

The parties 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 on each issue is set out in each section of 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. There are Appendices to the Agreement which provide further evidentiary support. 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 the Appendices form part of the record in the proceeding.

The following parties participated in the Settlement Conference:

Association of Power Producers of Ontario ("APPrO")

Building Owners and Managers Association of the Greater Toronto Area ("BOMA")

Consumers Council of Canada ("CCC")

Coral Energy Canada Inc. ("Coral")

Enbridge Gas Distribution Inc. ("EGD")

Energy Probe Research Foundation ("Energy Probe")

Green Energy Coalition ("GEC")

Industrial Gas Users Association ("IGUA")

Jason Stacey ("Jason Stacey")

City of Kitchener ("Kitchener")

London Property Management Association ("LPMA")

Ontario Association of Physical Plant Administrators ("OAPPA")

Pollution Probe ("PP")

Power Workers Union ("PWU")

School Energy Coalition ("SEC")

Sithe Global Power Gateway ("Sithe")

The City of Timmins ("Timmins")

TransAlta Cogeneration L.P. and TransAlta Energy Corp. ("TransAlta")

TransCanada PipeLines Limited ("TCPL")

Union Gas Limited ("Union")

Vulnerable Energy Consumers Coalition ("VECC")

Wholesale Gas Services Purchasers Group ("WGSPG")

OVERVIEW

The parties who participated in the settlement conference which lead to this Agreement are pleased to present the result of their efforts to the Board. The Agreement is comprehensive although there are three matters that must proceed to a hearing. They are: 1) the commodity risk management (written argument only) component of Issue 14.1; 2) the treatment of customer additions under incentive regulation ("IR"), a component of Issues 5.1; and 3) whether tax changes resulting from changes to federal and/or provincial legislation and/or regulations thereunder qualify as a 2007 base rate adjustment and as a Z factor in years 2008 and beyond being a component of Issues 6.1 and 14.1. The parties to this Agreement accept that the Agreement is not contingent on the outcome of any of those contested matters.

The Board stated in the Natural Gas Forum ("NGF") Report that rate regulation should meet three objectives:

1. establish incentives for sustainable efficiency improvements that benefit customers and shareholders;
2. ensure appropriate quality of service for customers; and
3. create an environment that is conducive to investment, to the benefit of customers and shareholders.

Those parties shown as being in agreement with the resolution of the various issues in this proceeding accept that the 5 year incentive regulation plan established in this Agreement meets those objectives.

Those parties shown as being in agreement with the resolution of the various issues in this proceeding agree that this IR plan is expected to put downward pressure on Union's rates by encouraging new levels of efficiency and provide the regulatory stability needed for Union's anticipated investment in Ontario. The IR plan agreed to is intended by the parties to ensure that the benefits of new efficiencies will be shared with customers during the term of the IR plan. Further, under this agreed to IR plan, the number of deferral accounts has been reduced and the parties have agreed to minimize reliance on Y and Z factors and off ramps.

Those parties shown as being in agreement with the resolution of the various issues in this proceeding represent the major stakeholders and constituencies with an interest in Union's rates. These parties represent a wide range of sometimes competing interests who hold a wide range of sometimes competing objectives.

The evidence in this proceeding dealt with a number of complex issues, including the productivity, or X, factor. Evidence was filed by five experts on this issue, most of whom did not share the views or conclusions of the others. In this context, the totality of the evidence indicates that the components of the price cap approach likely fall within a range of reasonable results and as a consequence are probably incapable of precise determination. Different parties had different approaches to the ultimate resolution of the X factor issue. Some took no position at all. The parties who took a position, however, agree that the X factor and, indeed, the IR plan described in this Agreement, including any adjustments to base rates, are reasonable and fall within a reasonable range available on the evidence. (The derivation of the specific X factor agreed to for Union is set forth in more detail under Issue 3.1 below.)

It is for this reason that the parties agreeing with this settlement encourage the Board to accept this Agreement, in its entirety, as the basis for setting Union's rates from 2008 to 2012, subject to the resolution of the three contested items.

RESULTING RATES AND BILL IMPACTS

Union agrees to file with the Board, as soon as possible but no later than January 8, 2008, a schedule of Union's proposed rates and resulting bill impact (using the assumptions that the Board approves this Agreement and that each of the contested issues is decided in accordance with Union's proposals). The parties' acceptance of this Agreement is conditional on being satisfied, prior to the presentation of this Agreement to the Board, that the rates and resulting bill impacts are reasonably consistent with the preliminary overview of such rates and bill impacts presented during the settlement conference.

1 MULTI-YEAR INCENTIVE RATEMAKING FRAMEWORK

1.1 WHAT ARE THE IMPLICATIONS ASSOCIATED WITH A REVENUE CAP, A PRICE CAP AND OTHER ALTERNATIVE MULTI-YEAR INCENTIVE RATEMAKING FRAMEWORKS?

(Complete Settlement)

Subject to the agreement on Issue 9.1, the parties agree that a multi-year price cap framework is appropriate for Union. In light of this Agreement, the parties agree that it is unnecessary to pursue this issue further in this proceeding.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1p.18-20.
2. C1.1, C1.2, C3.1, C3.7, C3.14, C4.1, C4.2, C4.3, C4.4, C4.5, C4.6, C10.1, C11.1, C11.2, C11.3, C13.3, C13.8, C13.20, C15.1, C15.2, C15.5, C15.6, C17.1, C17.2, C22.1, C22.2, C22.3, C22.4, C22.6, C23.1, C23.2, C27.1, C32.12.
3. JTA.4, JTA.9, JTA.40.
4. L/T1/S2, L/T4.
5. EB-2007-0615 – B/T3/S6.

1.2 WHAT IS THE METHOD FOR INCENTIVE REGULATION THAT THE BOARD SHOULD APPROVE FOR EACH UTILITY?

(Complete Settlement)

The parties agree that a price cap framework as further delineated in this Agreement is appropriate for Union. The parties agree that the structure of the price cap index is $PCI = I - X + Z + Y + AU$, where I is the inflation factor, X is the productivity factor, Z represents certain non-routine adjustments, Y represents certain predetermined pass-throughs and AU is the average use factor, all as further set out in this Agreement.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.18.
2. C13.1, C13.3, C13.8, C13.21, C13.22, C13.30, C13.31, C23.3, C23.4, C32.6, C32.12.

1.3 SHOULD WEATHER RISK CONTINUE TO BE BORNE BY THE SHAREHOLDERS, AND IF SO, WHAT OTHER ADJUSTMENTS SHOULD BE MADE?

(Complete Settlement)

Except as otherwise provided in this Agreement, the parties agree that no change needs to be made to the attribution of weather risk in this proceeding. Further, the parties have agreed that the weather methodology used to determine the degree day forecast in Union's 2007 rates will continue during the IR period. In the event that, prior to the end of the IR period, the Board institutes a rule of general application relating to degree day forecasting that produces a different degree day result, Union shall be allowed to implement such change upon rebasing, unless otherwise directed by the Board. Union agrees that it will not make any application that seeks such an order during the IR period.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p. 12-16, B/T2.
2. C1.3, C13.10, C22.5, C23.5, C23.6, C23.7, C23.8, C23.9, C23.10, C23.11, C23.12, C23.13, C23.14, C23.15.

3. L/T2.

2 INFLATION FACTOR

2.1 **WHAT TYPE OF INDEX SHOULD BE USED AS THE INFLATION FACTOR (INDUSTRY SPECIFIC INDEX OR MACROECONOMIC INDEX)?**

2.1.1 **Which macroeconomic or industry specific index should be used?**

(Complete Settlement)

The parties agree that the inflation factor to be used in Union's price cap index is the actual year over year change in the annualized average of 4 quarters (using Q2 to Q2) of Statistics Canada's Gross Domestic Product Implicit Price Index Final Domestic Demand (GDP IPI FDD). For 2008, the inflation factor calculated in this manner is 2.04%. The inflation factor will be adjusted annually on this basis, as set forth under Issue 12.1 below, with no true ups.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, EGD, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.21-22, D/T1/App A.
2. C32.7.
3. L/T1/S2, L/T4/S1.

2.1.2 Should the inflation factor be based on an actual or forecast?

(Complete Settlement)

See 2.1 above.

Evidence References:

1. B/T1 p.22-23.

2.2 HOW OFTEN SHOULD THE BOARD UPDATE THE INFLATION FACTOR?

(Complete Settlement)

See 2.1 above.

Evidence References:

1. B/T1 p.23.
2. C3.10, C23.16.

2.3 SHOULD THE GAS UTILITIES ROE BE ADJUSTED IN EACH YEAR OF THE INCENTIVE REGULATION (IR) PLAN USING THE BOARD'S APPROVED ROE GUIDELINES?

(Complete Settlement)

The parties agree that, except as otherwise provided in this Agreement, the percentage return on equity already included in Union's rates of 8.54% for 2007 will not be adjusted under the Board's formula for setting ROE during the term of the incentive regulation (IR) mechanism.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.40
2. C13.28

3 X FACTOR

3.1 HOW SHOULD THE X FACTOR BE DETERMINED?

(Complete Settlement)

The parties agree that the X factor (inclusive of any stretch factor) that will be used in Union's price cap index is fixed at 1.82% for the IR term. This is exclusive of the impact of changes in average use per customer in the general service rate classes, which is dealt with below in section

4. This X factor falls within a range of X factor values presented by various expert witnesses in these proceedings.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence Reference:

1. B/T1 p.23-37.
2. C1.4, C1.5, C4.7, C4.8, C4.9, C13.2, C13.4, C13.7, C13.10, C13.23, C13.24, C13.25, C13.26, C13.27, C22.10, C23.17, C23.18, C23.19, C23.20, C32.8, C32.9.
3. L/T1/S2, L/T3, L/T4/S1.
4. EB-2007-0615 – B/T3/S3, B/T3/S6.

3.2 WHAT ARE THE APPROPRIATE COMPONENTS OF AN X FACTOR?

(Complete Settlement)

See 3.1 above.

Evidence Reference:

1. B/T1 p.23-24.
2. C3.13, C3.15, C4.10, C13.7, C22.9, C32.15.
3. L/T1/S2, L/T3, L/T4/S1.
4. EB-2007-0615 – B/T3/S6.

3.3 WHAT ARE THE EXPECTED COST AND REVENUE CHANGES DURING THE IR PLAN THAT SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING AN APPROPRIATE X FACTOR?

(Complete Settlement)

See 3.1 above.

Evidence Reference:

1. C3.16, C22.11, C23.21, C23.22, C23.23, C23.52, C23.53, C28.1.
2. L/T1/S2, L/T4S1.

4 AVERAGE USE FACTOR

4.1 IS IT APPROPRIATE TO INCLUDE THE IMPACT OF CHANGES IN AVERAGE USE IN THE ANNUAL ADJUSTMENT?

(Complete Settlement)

The parties agree that it is appropriate during the IR term to adjust rates to reflect the impact of changes in average use per general service customer on a class by class basis. This average use adjustment is, for the term of the IR plan, only applicable to rate classes M1, M2, 01 and 10.

Further, the parties agree that the way to accomplish this is to reduce the volume used to determine rates by the average of the most recent three years' actual weather normalized volume loss (using the 55/45 blended weather method, updated annually) per general service customer within each rate class. This methodology is similar to how the volume losses associated with DSM are handled when rates are determined.

Further, parties agree to establish a new deferral account to capture the variance between forecast use per customer declines (based on the three year historical average) and what is observed on an actual basis.

For 2008, the parties agree that the use per customer declines to be incorporated into rates (subject to later true-up through the application of the deferral account) are as follows:

M1/M2 – 1.7%
 R01 – 2.4%
 R10 – 1.8%

An illustrative example of the M1 rate class has been provided in Appendix C.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence Reference:

1. B/T1 p.26.
2. C13.5, C23.24, C23.25, C23.26, C23.27, C23.28, C23.29, C23.30, C23.31, C32.10.
3. JTA.14.
4. L/T1/S2, L/T3, L/T4/S1.

4.2 HOW SHOULD THE IMPACT OF CHANGES IN AVERAGE USE BE CALCULATED?

(Complete Settlement)

See 4.1 above.

Evidence Reference:

1. B/T1 p.32.
2. C1.6, C1.7, C3.11, C3.12, C3.17, C3.18, C4.11, C13.5, C32.11.
3. JTA.7, JTA.43, JTA.44, JTA.45.
4. L/T1/S2.

4.3 IF SO, HOW SHOULD THE IMPACT OF CHANGES IN AVERAGE USE BE APPLIED (E.G., TO ALL CUSTOMER RATE CLASSES EQUALLY, SHOULD IT BE DIFFERENTIATED BY CUSTOMER RATE CLASSES OR SOME OTHER MANNER)?

(Complete Settlement)

See 4.1 above and 12.3.1 below.

Evidence Reference:

1. B/T1, p. 36-37.
2. C1.8, C1.9, C13.5, C32.13, C32.14, C32.17.
3. L/T1/S2.

5 Y FACTOR

5.1 WHAT ARE THE Y FACTORS THAT SHOULD BE INCLUDED IN THE IR PLAN?

(Partial Settlement on the treatment of any temporary revenue deficiencies associated with customer additions; Complete Settlement on the remainder of the issue.)

The parties agree that identified Y factors will not be adjusted by the price cap index but will be passed through to rates.

Items that will be treated as Y factors are:

- Upstream gas costs
- Upstream transportation costs
- Incremental DSM costs (as determined in EB-2006-0021 and in any subsequent DSM proceeding) and volume reductions
- Storage margin sharing changes (as determined in EB-2005-0551)

The parties agree that the deferral accounts listed in Appendix B (including LRAM and SSM) will continue during the IR plan.

The parties further agree to the elimination of the following four deferral accounts:

Transportation Exchange Services Account (179-69)

Other S&T Services Account (179-73)

Other Direct Purchase Services Account (179-74)

Heating Value Account (179-89)

The parties agree that the disposition of Y factor amounts will be in accordance with existing Board approved allocation methods and allocators.

The following parties agree with the settlement of this part of the issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this part of the issue: Coral, EGD, GEC, PP, PWU, TCPL.

All parties except GEC and PP agree that there should not be a Y factor relating to customer additions during the term of the IR plan.

The following parties agree with the settlement of this part of the issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties do not agree with the settlement of this part of the issue: GEC and PP.

The following parties take no position on this part of the issue: Coral, EGD, PWU, TCPL.

Evidence References:

1. B/T1 p.37-39.
2. C1.10, C3.19, C3.22, C4.12, C20.1, C20.2.
3. L/T1/S2, L/T3.

5.2 WHAT ARE THE CRITERIA FOR DISPOSITION?

(Complete Settlement)

See 5.1 above.

Evidence References:

1. C3.20, C3.21, C11.04.

6 Z FACTOR

6.1 WHAT ARE THE CRITERIA FOR ESTABLISHING Z FACTORS THAT SHOULD BE INCLUDED IN THE IR PLAN?

(No Settlement on whether tax changes resulting from changes to federal and/or provincial legislation and/or regulations thereunder qualify as a Z factor in years 2008 and beyond; Complete Settlement on all other aspects of the issue.)

The parties agree that Z factors generally, have to meet the criteria established in Union's evidence, i.e.,

1. the event must be causally related to an increase/decrease in cost;
2. the cost must be beyond the control of the utility's management, and not a risk for which a prudent utility would take risk mitigation steps;
3. the cost increase/decrease must not otherwise be reflected in the price cap index;
4. any cost increase must be prudently incurred; and
5. the cost increase/decrease must meet the materiality threshold of \$1.5 million annually per Z factor event (i.e., the sum of all individual items underlying the Z factor event).

If a proceeding is instituted before the Board, before the term of this IR plan expires, in which changes to the methodology for determining return on equity is requested, then all parties

including Union will be free to take such positions as they consider appropriate with respect to that proceeding. Union may apply to the Board to institute such a proceeding should a change in the methodology for determining return on equity be approved or adopted by the Board. If the Board determines that a change in methodology is appropriate, then Union or any other intervenor in this proceeding may apply for determination of whether that change should be applied to Union during the term of this Agreement. All parties including Union would be free to take any position on that application, including without limitation; a) opposing the application of the change to Union during the IR period, b) proposing offsetting or complementary adjustments to Union's IR plan, revenue requirement or rates that the party considers appropriate to the circumstances, and c) taking any other positions as the party may consider relevant and the Board agrees to hear. If the Board determines after hearing such application that such ROE methodology change should be treated as a Z factor, it will operate on a prospective basis only.

The parties also agree that rate impacts specifically identified in any order of the Board related to certain intervenors' petitions to the Lieutenant Governor in Council in connection with the NGEIR Decision (EB-2006-0551) or the Board's disposition of Union's pending storage allocation proceeding (EB-2007-0725) will be treated as Z factors, subject to the materiality threshold.

Further examples of potential Z factor adjustments may include the outcome of LPP litigation, including either damages or settlement, and the incurrence of municipal permit fees. The prudence of any proposed Z factor adjustment must be determined by the Board at the time of Union's application therefor.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Certain parties maintain that changes in the amounts of taxes payable by Union resulting from federal and/or provincial legislation and/or regulations thereunder qualify as Z factors including changes in federal tax rates and calculation rules announced in March and October of 2007.

Union maintains that such tax changes are not Z factors.

All parties agree that this issue will proceed to hearing before the Board for a determination but that this Agreement will remain in full force and effect regardless of the Board's disposition of this issue.

Evidence References:

1. B/T1 p.39-41, Technical Conference, October 3, 2007, pp. 25 – 26.
2. C1.11, C1.12, C1.13, C1.14, C3.23, C3.24, C3.26, C4.13, C4.14, C4.15, C4.16, C13.28, C23.32.
3. L/T3.

6.2 SHOULD THERE BE MATERIALITY TESTS, AND IF SO, WHAT SHOULD THEY BE?

(Complete Settlement)

See 6.1 above.

Evidence References:

1. B/T1 p.40.
2. C3/C16/C33.25, C13.28, C32.20, C32.22.

7 NATURAL GAS ELECTRICITY INTERFACE REVIEW (NGEIR) DECISIONS

7.1 HOW SHOULD THE IMPACTS OF THE NGEIR DECISIONS, IF ANY, BE REFLECTED IN RATES DURING THE IR PLAN?

(Complete Settlement)

The parties agree, subject to the reservation of rights described in paragraph 6.1 of this Agreement, to Union's proposed implementation of the impacts of the NGEIR Decision.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 pp.11-12 and 39, D/T1, pp.3-5.
2. C2.2, C2.3, C2.4, C9.1, C9.2, C13.16, C17.3, C22.7, C23.33, C27.2, C27.3, C27.4.
3. JTA.15, JTA.21, JTA.24, JTA.28, JTA.29, JTA.31, JTA.52.

8 TERM OF THE PLAN

8.1 WHAT IS THE APPROPRIATE PLAN TERM FOR EACH UTILITY?

(Complete Settlement)

Subject to the agreement on Issue 9.1, the parties agree that the term of the IR plan shall be 5 years, being the calendar years 2008 to 2012 inclusive.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, EGD, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.16.
2. C4.17, C22.8, C23.34, C23.35, C32.4.
3. L/T3.

9 OFF-RAMPS

9.1 SHOULD AN OFF-RAMP BE INCLUDED IN THE IR PLAN?

(Complete Settlement)

The parties agree that if there is a 300 basis point or greater variance in weather normalized utility earnings above or below the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, Union will file an application to the Board, with appropriate supporting evidence, for a review of the price cap mechanism. During the course of that review, the Board may be asked to determine whether it is appropriate to continue the price cap mechanism for future years and, if so, with or without modifications. All parties including Union will be free to take such positions as they consider appropriate with respect to that application, including without limitation; a) proposing that a component of the IR Plan, including the X factor, be adjusted, b) proposing that IR plan be terminated, and c) taking any other positions as the party may consider relevant and the Board agrees to hear. Union shall file such application as soon as reasonably possible in the year following the year in which the over earnings threshold is met, unless all parties to this Agreement agree otherwise at that time.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1, p.42.
2. C4.18, C32.21.

9.2 IF SO, WHAT SHOULD BE THE PARAMETERS?

(Complete Settlement)

See 9.1 above.

10 EARNING SHARING MECHANISM (ESM)

10.1 SHOULD AN ESM BE INCLUDED IN THE IR PLAN?

(Complete Settlement)

The parties agree that there will be an earnings sharing mechanism, based on actual, utility earnings. If in any calendar year Union's actual utility return on equity is more than 200 basis points over the amount calculated annually by the application of the Board's ROE formula in any year of the IR plan, then such excess earnings will be shared 50/50 between Union and its customers. For the purposes of the earnings sharing mechanism, Union shall calculate its earnings using the regulatory rules prescribed by the Board from time to time, and shall not make any material changes in accounting practices that have the effect of reducing utility earnings. All revenues that would be included in revenues in a cost of service application shall be included in the earnings calculation and only those expenses (whether operating or capital) that would be allowable as deductions from earnings in a cost of service application shall be included in the earnings calculation.

Parties acknowledge that the DSM related Shared Savings Mechanism (SSM) and Lost Revenue Adjustment Mechanism (LRAM) and storage related deferral accounts are outside of the earnings sharing mechanism identified above.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, GEC, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, PP, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, PWU, TCPL.

Evidence References:

1. B/T1 p.2, 11, 46.
2. C1.15, C13.6, C15.3, C15.4, C23.36, C32.15, C32.16.
3. L/T3, L/T4/S1.

10.2 IF SO, WHAT SHOULD BE THE PARAMETERS?

(Complete Settlement)

See 10.1 above.

Evidence References:

1. C13.6.

11 REPORTING REQUIREMENTS

11.1 WHAT INFORMATION SHOULD THE BOARD CONSIDER AND STAKEHOLDERS BE PROVIDED WITH DURING THE IR PLAN?

(Complete Settlement)

Union agrees to support making its RRR filings with the Board available to intervenors. Union also agrees to prepare the following utility information annually for the most recent historical year (the exhibit numbers noted below are from Union's 2007 Rate Case (EB-2005-0520) and provide an example of the "actuals" to be filed;

1. Calculation of revenue deficiency / (sufficiency) - Exhibit F6/T1/S1;
2. Statement of utility income – Exhibit F6/T2/S1;
3. Statement of earnings before interest and taxes;

4. Summary of cost of capital – Exhibit E6/T1/S1;
5. Total weather normalized throughput volume by service type and rate class – Exhibit C6/T2/S4;
6. Total actual (non-weather normalized) throughput volumes by service type and rate class;
7. Total weather normalized gas sales revenue by service type and rate class;
8. Total actual (non-weather normalized) gas sales revenue by service type and rate class;
9. Delivery revenue by service type and rate class and service class – Exhibit C6/T2/S6;
10. Total customers by service type and rate class – Exhibit C6/T2/S3;
11. Summary revenue from regulated storage and transportation – Exhibit C6/T4/S1;
12. Other revenue – Exhibit C6/T3/S1;
13. Operating and maintenance expense by cost type – Exhibit D6/T3/S2/pl – actuals only;
14. Calculation of utility income taxes – Exhibit D6/T6/S1/pl.2;
15. Calculation of capital cost allowance – Exhibit D6/T6/S2;
16. Provision for depreciation, amortization and depletion – Exhibit D6/T4/S1/pl.2.3;
17. Capital budget analysis by function – Exhibit B1/SS2; and
18. Statement of utility rate base – Exhibit B1/SS1- actuals only.

In addition, Union agrees to prepare an earnings sharing calculation following release of its audited financial statements for the prior year. Union will file this calculation (and an application for disposition of earnings meeting the threshold, if any) as soon as reasonably possible after year

end financial results have been made public, with the intention that any rate impact be implemented no later than the time of Union's July 1 QRAM. The parties agree that stakeholders, including all parties to this proceeding, should have a reasonable opportunity to review the application and calculations, including the ability to make reasonable requests for additional information with respect thereto from Union, and to make submissions or provide comments thereon.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.42-45.
2. C1.16, C3.30, C13.29, C15.10, C23.37, C23.38, C28.1.

11.2 WHAT SHOULD BE THE FREQUENCY OF THE REPORTING REQUIREMENTS DURING THE IR PLAN (E.G., QUARTERLY, SEMI-ANNUAL OR ANNUALLY)?

(Complete Settlement)

See 11.1 above.

Evidence References:

1. B/T1 p.42-45.

11.3 WHAT SHOULD BE THE PROCESS AND THE ROLE OF THE BOARD AND STAKEHOLDERS?

(Complete Settlement)

See 11.1 above.

Evidence References:

1. B/T1 pp. 42-45

12 RATE-SETTING PROCESS**12.1 ANNUAL ADJUSTMENT****12.1.1 What should be the information requirements?**

(Complete Settlement)

The parties agree that annual rate adjustments will be made in accordance with the following process:

1. Union will make application for Z factor adjustments, any structural rate design changes or the pricing of new regulated services in a time frame that will enable these issues to be resolved in sufficient time to be reflected prospectively in the next year's rates;
2. Union will file a draft rate order with supporting documentation by October 31 which reflects the impact of the PCI pricing formula, Y factors, Z factors, fixed monthly charge changes, and AU factor;
3. A final rate order will be issued by December 15 for implementation by January 1; and
4. As soon as reasonably possible following the public release of Union's annual audited financial statements, Union will make application (as it does now) for disposition of actual year end deferral account balances. (This would coincide with the filing of an annual earnings sharing calculation as described in section 11.1). It would be Union's intent to

implement all rate adjustments associated with deferral account disposition at the time of its July 1 QRAM.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence Reference:

1. D/T1, D/T2, D/T3.
2. C1.17, C17.5, C28.2.
3. JTA.20, JTA.30, JTA.33, JTA.34.

12.1.2 What should be the process, the timing, and the role of the stakeholders?

(Complete Settlement)

See 12.1.1 above.

Evidence References:

1. B/T1 p.44.
2. C17.8.

12.2 NEW ENERGY SERVICES

12.2.1 What should be the criteria to implement a new energy service?

(Complete Settlement)

Union agrees that all new regulated energy services will require Board approval. Accordingly,

Union will make application, on notice with supporting material, for all new regulated energy services.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Coral, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. C2.1, C5.1, C13.9.

12.2.2 What should be the information requirements for a new energy service?

(Complete Settlement)

See 12.2.1 above.

12.3 CHANGES IN RATE DESIGN

12.3.1 What should be the criteria for changes in rate design?

(Complete Settlement)

Union proposed that it have certain flexibility to adjust rate design, including in particular adjustments to the fixed/variable rate structure in some rate classes during the IR period. In place of that proposal the parties have agreed that after rates (fixed monthly/demand, volumetric and fuel ratios) are adjusted to reflect the impact of the PCI pricing formula, Y factors and Z factors as otherwise set out in this Agreement, no other adjustments will be made except for the following further adjustments to be made on a revenue neutral basis as follows:

- a) The fixed monthly charge in the Rate 01 and M1 rate classes shall increase by a total of \$1.00 per month in each year of the 5 year term irrespective of the impacts of the other adjustments referenced elsewhere in this Agreement. The fixed monthly charge in the Rate 01 and M1 rate classes will be \$17.00 in 2008, \$18.00 in 2009, \$19.00 in 2010, \$20.00 in 2011, and \$21.00 in 2012.

- b) The fixed monthly charge in the Rate 10 and M2 rate classes shall not increase during the 5 year term.

The parties acknowledge that the offset to fixed monthly/demand charge changes is the volumetric charges in Rates M1, M2, 01 and 10. The parties agree that changes made to volumetric charges should generally be done proportionately to the revenue recovered through each block, unless that produces inappropriate block relationships. In making adjustments to volumetric charges, Union will be mindful of the resulting rate impact on low volume consumers.

Rates M1, M2, 01 and 10 will then be adjusted by the AU factor as explained in 4.1 above.

An illustrative example of the M1 rate class has been provided as Appendix C.

All other rate design changes that Union wishes to implement shall be the subject of a specific application to the Board, with supporting evidence justifying the change, and shall not be implemented until the Board has approved the changes.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, PWU, TCPL.

GEC and PP do not support the proposed increases to the fixed monthly customer charges but will not pursue this issue in the proceeding.

Evidence Reference:

1. B/T1 p.17.
2. C3.4, C3.5, C3.6, C4.19, C4.20, C11.5, C13.9, C13.17, C17.6, C32.5.
3. JTA.11, JTA.48, JTA.49.

12.3.2 How should the change in the rate design be implemented?**(Complete Settlement)**

See 12.3.1 above.

Evidence References:

1. C1.21, C1.22, C17.7.

12.3.3 What should be the information requirements for a change in rate design?**(Complete Settlement)**

See 12.3.1 above.

Evidence References:

1. C13.15, C13.19, C17.4, C23.39, C23.40, C23.41, C23.42.

12.4 NON-ENERGY SERVICES**12.4.1 Should the charges for these services be included in the IR mechanism?****(Complete Settlement)**

Parties agree that miscellaneous non-energy service charges shall be outside of the price cap formula. If Union requires any changes to its miscellaneous non-energy service charges during the IR term, Union will provide the Board with evidence that supports the change. The parties agree to the principle that non-energy service charges should not generate incremental revenue in excess of any related incremental costs.

Union agrees that all new regulated non-energy services will require Board approval.

Accordingly, Union will make application on notice with supporting material, for all new regulated non-energy services.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Coral, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. C3.8, C5.1.

12.4.2 If not, what should be the criteria for adjusting these charges?

(Complete Settlement)

See 12.4.1 above.

Evidence References:

1. C3.29, C5.1.

12.4.3 What should be the criteria to implement new non-energy services?

(Complete Settlement)

See 12.4.1 above.

Evidence References:

1. C5.1.

12.4.4 What should be the information requirements for new non-energy services?

(Complete Settlement)

See 12.4.1 above.

Evidence Reference:

1. C4.21, C23.43.

13 REBASING

13.1 WHAT INFORMATION SHOULD THE BOARD CONSIDER AND STAKEHOLDERS BE PROVIDED WITH AT THE TIME OF REBASING?

(Complete Settlement)

Union agrees (subject to any subsequent agreement of all parties to the contrary) to provide a full cost of service filing (Phase I & II) at the time of rebasing, regardless of whether Union applies to set rates for 2013 on a cost of service basis or not.

Parties agree that the Board's minimum filing guidelines provide sufficient information to rebase.

At the time of rebasing, Union will provide 2011 actual, 2012 bridge and 2013 forecast information. In addition, Union will provide historical plant continuity information for 2006, 2007, 2008, 2009 and 2010 similar to the information provided in the EB-2005-0520 proceeding at B6/T1 & T2/S 1 – 5.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.45.
2. C1.18, C3.31, C32.23.

14 ADJUSTMENTS TO BASE YEAR REVENUE REQUIREMENTS AND/OR RATES

14.1 ARE THERE ADJUSTMENTS THAT SHOULD BE MADE TO BASE YEAR REVENUE REQUIREMENTS AND/OR RATES?

(No Settlement on the risk management component of this issue or the amount of taxes payable by Union as a result of tax changes resulting from changes to federal and/or provincial legislation and/or regulations thereunder; Complete Settlement on all other aspects of the issue.)

All parties agree that only the following additional adjustments (other than those adjustments otherwise set out in this Agreement) should be made to reduce the 2008 base revenue requirement and/or 2008 rates prior to the application of the price cap index:

- | | |
|--|------------------|
| 1. Increase to S&T revenues/margin | \$4.3 million* |
| 2. Deferred tax drawdown | \$1.9 million |
| 3. Reduction to regulatory cost budget | \$1.0 million |
| 4. Phase II GDAR costs that will not be incurred | \$1.6 million ** |

* This adjustment has been made to reflect the elimination of certain S&T revenue deferral accounts, described in 5.1 above. The parties agree that 100% of this amount will be allocated to in-franchise customers, as described in Exhibit D/T1, p. 7 of Union's evidence.

** This adjustment to base rates is being made as a result of the Board's decision to amend the GDAR to treat bill ready distributor-consolidated billing in the same manner as split billing and gas vendor-consolidated billing as described in the Board's December 11, 2007 letter, attached as Appendix D. Union notes that these costs were incorporated into the 2008 interim

rates approved by the Board. They will be eliminated from rates when final 2008 rates are implemented.

When implementing final 2008 rates, Union will calculate what the final 2008 rates need to be to reflect all of the adjustments referenced in this Agreement and the Board's findings on those issues that are proceeding to hearing had they been implemented prospectively January 1, 2008. Differences between what was charged to customers during the period interim 2008 rates were in place and what should have been charged had final 2008 rates been in place will be recovered/rebated either as a one-time charge/credit or over the remainder of 2008 in rates.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. B/T1 p.10, B/T2, B/T3, B/T4.
2. C1.19, C1.20, C3.2, C3.3, C3.9, C3.27, C3.28, C10.2, C10.3, C10.4, C10.5, C10.6, C10.7, C10.8, C15.7, C15.8, C15.9, C15.10, C13.11, C13.12, C13.13, C13.14, C23.44, C23.45, C23.46, C23.52, C23.53, C28.1, C32.1, C32.3, C32.18, C32.19, C32.24.
3. JTA.6, JTA.8, JTA.10, JTA.12, JTA.13, JTA.16, JTA.17, JTA.18, JTA.19, JTA.22, JTA.23, JTA.25, JTA.26, JTA.27, JTA.32, JTA.37, JTA.38, JTA.39, JTA.41, JTA.42, JTA.46, JTA.47, JTA.50.

There is no settlement of the commodity risk management component of this issue but all parties have agreed that the Board should deal with commodity risk management by way of written submission and that no oral evidence is required.

There is no settlement of the base rate adjustments that flow from the amount of taxes payable by Union as a result of tax changes resulting from changes to federal and/or provincial legislation and/or regulations thereunder.

14.2 IF SO, HOW SHOULD THESE ADJUSTMENTS BE MADE?

(Complete Settlement)

The parties agree that the base rate adjustments in 14.1 will be implemented effective January 1, 2008. These adjustments will be allocated as follows:

1. increases to S&T revenues / margin (\$4.3 million) will be allocated in proportion to the allocation of 2007 approved in-franchise revenue less DSM, upstream transportation, compressor fuel, unaccounted for gas and storage (as identified in Exhibit D/T3/Schedule 2);
2. deferred tax drawdown (\$1.9 million) will be allocated in proportion to the allocation of 2007 deferred tax drawdown;
3. reduction to regulatory cost budget (\$1.0 million) will be allocated in proportion to the allocation of 2007 administrative and general expenses; and
4. reduction to GDAR implementation cost (\$1.6 million) was to be an increase so that this increase will simply not be implemented.

The following parties agree with the settlement of this issue: APPrO, BOMA, CCC, Energy Probe, IGUA, Jason Stacey, Kitchener, LPMA, OAPPA, SEC, Sithe, Timmins, TransAlta, Union, VECC, WGSPG.

The following parties take no position on this issue: Coral, EGD, GEC, PP, PWU, TCPL.

Evidence References:

1. C3.32, C3.33, C3.34, C13.11, C13.12, C13.13, C13.14, C23.47, C32.2.
2. D/T1 p.7.
3. JTA.5.

1 forecast revenue excess generated from long-term and short-term market priced storage
2 services.

3
4 In 2008, as a result of the Board's decision in the Natural Gas Electric Interface Review
5 ("NGEIR"), the amount of the storage margin included in rates was reduced to \$27.3
6 million (EB-2007-0606, Rate Order Working Papers, Schedule 16). This represents 75%
7 of the forecast revenue excess generated from long-term storage services and 71% of the
8 forecast revenue excess on short-term storage services. (EB-2005-0551 – NGEIR
9 decision, p. 107)

10
11 **2008 EARNING SHARING CALCULATION**

12
13 As indicated above, Union's financial results from utility operations for 2008 after the
14 storage premium adjustment generated an ROE 368 basis points above the 8.81%
15 calculated for 2008 by the application of the Board's ROE formula. This results in an
16 amount for earnings sharing of \$15.2 million (Appendix B, Schedule 1, Column (d), line
17 28). Normalizing for weather reduces the excess ROE to 330 basis points above the
18 8.81%, 30 basis points above the 300 basis point trigger for review of the price cap
19 mechanism.

20
21 The calculation of earnings sharing under Union's current incentive regulation
22 framework is based on actual, utility earnings. The calculation for the IR review

1 threshold provision is based on actual utility earnings normalized for weather. Prior to the
2 NGEIR decision, the calculation of earnings subject to sharing was based on total
3 corporate earnings adjusted for Shared Savings Mechanism ("SSM") and Union's share
4 of storage and transportation margin. The Board found in the NGEIR decision that
5 exfranchise storage in Ontario is competitive and that storage margin, subject to any
6 phase out or continued sharing provisions, should accrue to the company. Accordingly,
7 revenues and costs for unregulated storage services are excluded from the earnings
8 sharing calculation.

9
10 The calculation of earnings sharing for 2008 is found at Appendix B, Schedule 1. To
11 calculate actual utility earnings Union starts in column (a) with Union's total corporate
12 revenues and operating expenses as reported in the annual financial statements; column
13 (b) removes revenues and costs associated with Union's unregulated storage operations;
14 column (c) makes adjustments that would normally be made under cost of service to
15 arrive at utility earnings before interest and income taxes. To arrive at utility earnings for
16 the purposes of earnings sharing, deemed interest, income taxes and preferred dividends
17 are calculated and deducted from utility earnings before interest and income taxes. The
18 adjustments are discussed in more detail below.

19
20 **UNREGULATED STORAGE OPERATIONS**

21 As a result of the NGEIR decision, it is necessary for Union to separate the revenues and
22 costs associated with its unregulated storage operations from the revenues and costs of its

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CALCULATION OF THE INCENTIVE REGULATION REVIEW THRESHOLD PROVISION

Union's 2008 weather normalized utility earnings for the purposes of the IR review threshold calculation include all the adjustments made to arrive at utility earnings for sharing purposes as well as an adjustment to reduce revenues by \$6.9 million as a result of colder than normal weather. The calculation of earnings for the purposes of the IR review threshold is provided at Appendix B, Schedule 2.

The 2008 ROE related to the IR review threshold is 12.11% (Appendix B, Schedule 2, column (d), line 24). This compares to the benchmark ROE of 8.81% resulting in earnings that are 330 basis points above the Board's benchmark ROE.

NEED FOR REVIEW OF THE INCENTIVE REGULATION MECHANISM

As indicated above, Union's 2008 normalized earnings exceed the 300 basis point review threshold, triggering the requirement to file an application with the Board for review of the IR mechanism. It is Union's view that the existing IR parameters agreed to as part of the EB-2007-0606, Settlement Agreement remain appropriate and should not be adjusted as a result of this application. Specifically, Union does not believe that the base upon which rates are set or the pricing formula, including the approved X factor of 1.82 %, should be adjusted based on 2008 actual results.



Filed: 2009-04-02
 EB-2008-0101
 Exhibit A
 Appendix B
 Schedule 1
 Page 1 of 1

UNION GAS LIMITED
 Earnings Sharing Calculation
 Year Ended December 31, 2008

Line No.	Particulars (\$000's)	2008 (a)	Non-Utility Storage (b)	Adjustments (c)	2008 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Operating revenue	\$ 1,869,283	\$ -	\$ (3,654)	i 1,865,629
2	Storage & Transportation	243,317	78,230	-	165,087
3	Other	33,818	-	(7,530)	ii 26,288
4		<u>2,146,418</u>	<u>78,230</u>	<u>(11,184)</u>	<u>2,057,004</u>
Operating Expenses:					
5	Cost of gas	1,171,320	8,082	15,616	iii 1,178,854
6	Operating and maintenance expenses	335,115	12,028	(518)	iv 322,571
7	Depreciation	185,219	4,988	-	180,283
8	Other financing	-	-	536	v 536
9	Property and capital taxes	65,895	953	-	64,942
10		<u>1,757,549</u>	<u>26,029</u>	<u>15,635</u>	<u>1,747,156</u>
11	Earning Before Interest and Taxes	\$ 388,869	\$ 52,201	\$ (26,819)	\$ 309,849
Financial Expenses:					
12	Long-term debt				143,548
13	Unfunded short-term debt				2,806
14					<u>146,354</u>
15	Utility income before income taxes				163,498
16	Income taxes				26,089
17	Preferred dividend requirements				5,088
18	Utility earnings				<u>132,341</u>
19	Long term storage premium subsidy (after tax)				10,876
20	Short term storage premium subsidy (after tax)				7,484
21					<u>18,180</u>
22	Earnings subject to sharing				\$ <u>150,501</u>
23	Common equity				1,206,196
24	Return on equity (line 22 / line 23)				12.49%
25	Benchmark return on equity				10.81%
26	Earnings sharing % (line 24 minus line 25)				1.68%
27	Earnings sharing \$ (line 26 X line 23 X 50%)				<u>10,110</u>
28	Pre-tax earnings sharing (line 27 / (1 minus tax rate))				\$ <u>15,203</u>

Notes:

- i) Accounting adjustment
- ii) Shared Savings Mechanism
- iii) Unaccounted for Gas normalization adjustment
- iv)
- | | |
|--------------------|--------------|
| Donations | (394) |
| EB-2008-0304 costs | (122) |
| | <u>(516)</u> |
- v) Customer deposit interest

Filed: 2008-04-02
 EB-2008-0101
 Exhibit A
 Appendix B
 Schedule 2
 Page 1 of 1

UNION GAS LIMITED
 Off-Ramp Calculation
 Year Ended December 31, 2008

Line No.	Particulars (\$000's)	2008 (a)	Non-Utility Storage (b)	Adjustments (c)	2008 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Operating revenue	\$ 1,869,283	\$ -	\$ (10,535) i	1,858,748
2	Storage & Transportation	243,317	78,230	-	165,087
3	Other	33,816	-	(7,530) ii	26,286
4		<u>2,146,416</u>	<u>78,230</u>	<u>(18,065)</u>	<u>2,050,123</u>
Operating Expenses:					
5	Cost of gas	1,171,320	8,082	15,616 iii	1,178,854
6	Operating and maintenance expenses	335,115	12,028	(516) iv	322,571
7	Depreciation	185,219	4,968	-	180,233
8	Other financing	-	-	536 v	536
9	Property and capital taxes	65,896	953	-	64,942
10		<u>1,757,540</u>	<u>26,029</u>	<u>15,636</u>	<u>1,747,156</u>
11	Earning Before Interest and Taxes	\$ <u>388,869</u>	\$ <u>52,201</u>	\$ <u>(33,700)</u>	\$ <u>302,968</u>
Financial Expenses:					
12	Long-term debt				143,546
13	Unfunded short-term debt				2,805
14					<u>146,351</u>
15	Utility income before income taxes				156,617
16	Income taxes				23,764
17	Preferred dividend requirements				5,088
18	Utility earnings				<u>127,765</u>
19	Long term storage premium subsidy (after tax)				10,678
20	Short term storage premium subsidy (after tax)				7,484
21					<u>18,160</u>
22	Net earnings				\$ <u>145,925</u>
23	Common equity				1,205,196
24	Return on equity (line 22 / line 23)				12.11%
25	Benchmark return on equity				11.81%
26	Sufficiency / (Deficiency) % (line 24 minus line 25)				0.30%
27	Sufficiency / (Deficiency) \$ (line 26 X line 23)				<u>3,581</u>
28	Pre-tax sufficiency / (deficiency) (line 27 / (1 minus tax rate))				\$ <u>5,401</u>

Notes:

i)	Weather normalization adjustment	(6,881)
	Accounting adjustment	(3,654)
		<u>(10,535)</u>
ii)	Shared Savings Mechanism	
iii)	Unaccounted for Gas normalization adjustment	
iv)	Donations	(394)
	EB-2008-0304 costs	(122)
		<u>(516)</u>
v)	Customer deposit interest	

Filed: 2009-04-02
 EB-2009-0101
 Exhibit A
 Appendix B
 Schedule 3
 Page 1 of 1

UNION GAS LIMITED
 Unaccounted for Gas Volume
 For the Year Ending December 31, 2008

Line No.	Particulars	(a)	(b)	(c)
Determination of normalized UFG volume for 2008				
3 year average of actual UFG (10 ³ m ³):				
		<u>Volume</u>	<u>Weighting</u>	<u>Volume Weighted</u>
1	2007	203,713	50%	101,857
2	2006	154,015	33%	51,338
3	2005	174,342	17%	29,057
4		Average actual UFG volume		<u>182,252</u>
3 year average of actual throughput (10 ⁶ m ³):				
5	2007	33,446	50%	16,723
6	2006	29,843	33%	9,948
7	2005	33,455	17%	5,576
8		Average actual UFG throughput		<u>32,247</u>
9	UFG ratio for 2008 (1)			0.565%
10	2008 actual throughput (10 ⁶ m ³)			<u>34,978</u>
11	Normalized UFG volume for 2008 (10 ³ m ³) (2)			197,687
12	Unregulated allocation			<u>27,874</u>
13	Normal Utility UFG volume			169,813

	Monthly	Throughput	Ratio	UFG	Non Utility	Utility UFG	WACOG	UFG \$
14	Jan	5,133	0.565%	29,010	4,090	24,920	307,435	7,861
15	Feb	3,658	0.565%	20,674	2,915	17,759	307,435	5,460
16	Mar	4,068	0.565%	22,991	3,242	19,750	307,435	6,072
17	Apr	2,265	0.565%	12,801	1,805	10,996	343,057	3,772
18	May	2,010	0.565%	11,360	1,602	9,758	343,057	3,348
19	Jun	1,868	0.565%	10,557	1,489	9,069	343,057	3,111
20	Jul	1,942	0.565%	10,976	1,548	9,428	427,814	4,033
21	Aug	1,917	0.565%	10,834	1,528	9,307	427,814	3,982
22	Sep	1,945	0.565%	10,993	1,550	9,443	427,814	4,040
23	Oct	2,365	0.565%	13,366	1,885	11,482	384,627	4,416
24	Nov	3,357	0.565%	18,973	2,675	16,298	384,627	6,269
25	Dec	4,450	0.565%	25,150	3,546	21,604	384,627	8,310
26		<u>34,978</u>		<u>197,687</u>	<u>27,874</u>	<u>169,813</u>		\$ 60,473
27							Actual Utility UFG	<u>44,857</u>
28							Normalization Adjustment	<u>\$ 15,616</u>

UNION GAS LIMITED
Allocation of 2008 Earning Sharing to Rate Classes

Line No.	Particulars	Rate Class	C2007 Return on Equity Allocation (1) (\$000's) (a)	2008 Earning Sharing (\$000's) (b)
<u>Northern & Eastern Operations Area</u>				
1	Small Volume General Firm Service	01	44,549	(2,811)
2	Large Volume General Firm Service	10	8,234	(482)
3	Medium Volume Firm Service	20	4,263	(250)
4	Large Volume High Load Factor Firm Service	100	5,641	(331)
5	Large Volume Interruptible Service	25	1,913	(112)
6	Wholesale Transportation Service	77	8	(0)
7	Total Northern & Eastern Operations Area		<u>64,608</u>	<u>(3,788)</u>
<u>Southern Operations Area</u>				
8	Small Volume General Service Rate	M1	104,130	(6,102)
9	Large Volume General Service Rate	M2	15,828	(928)
10	Firm Industrial and Commercial Contract Rate	M4	4,220	(247)
11	Interruptible Industrial & Commercial Contract Rate	M5A	2,587	(152)
12	Special Large Volume Industrial & Commercial Contract Rate	M7	2,817	(153)
13	Large Wholesale Service Rate	M9	219	(13)
14	Small Wholesale Service Rate	M10	10	(1)
15	S & T Rates for Contract Carriage Customers	T1	12,835	(752)
16	S & T Rates for Contract Carriage Customers	T3	1,546	(91)
17	Cross Franchise Transportation Rates	C1	186	(11)
18	Storage & Transportation Rates	M12	50,557	(2,963)
19	Transportation of Locally Produced Gas	M13	39	(2)
20	Storage & Transportation Services - Transportation Charges	M16	55	(3)
21	Total Southern Operations Area		<u>194,830</u>	<u>(11,417)</u>
22	Total		<u>259,438</u>	<u>(15,203) (2)</u>

Notes:

(1) Allocated costs per 2007 Decision in EB-2005-0520

(2) Earning Sharing balance for Disposition as per EB-2009-0101, Exhibit A, Appendix B, Schedule 1

UNION GAS LIMITED
General Service Bill Impacts

Line No.	Particulars	2008	Jul-Dec 2009	Unit Rate for	Volume (2)	Delivery
		Earning Sharing (1)	Forecast Delivery Volumes	Prospective Recovery		Bill Impact
		(\$000's)	(10 ³ m ³)	(cents/m ³)	(m ³)	(\$)
		(a)	(b)	(c) = (a / b) x 100	(d)	(e) = (c x d) / 100
1	Rate 01	(2,611)	325,165	(0.8028)	1,013	(8.13)
2	Rate 10	(482)	162,395	(0.2971)	38,833	(115.38)
3	Rate M1	(8,102)	1,072,157	(0.5691)	829	(4.72)
4	Rate M2	(928)	418,954	(0.2214)	23,871	(52.85)

Notes:

(1) EB-2009-0101, Exhibit A, Appendix D, Schedule 1

(2) Average consumption, per customer, for the period July 1 to December 31, 2009

THE ONTARIO ENERGY BOARD

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 Union Gas Ltd. for an order or orders amending or varying the rate or rates charged to customers as of July 1, 2009 in connection with the sharing of 2008 earnings under the incentive rate mechanism approved by the Ontario Energy Board on January 17, 2008.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Monday, May 25th, 2009,
commencing at 9:28 a.m.

TECHNICAL CONFERENCE

1 don't you try your question and we'll see if there is
2 anybody available that can answer it.

3 MR. THOMPSON: Let's just take the first adjustment,
4 the accounting adjustment. Can you just explain what that
5 is for?

6 MR. FERGUSON: Yes. This is a one-time accounting
7 accrual adjustment related to the unbilled calculation.

8 MR. THOMPSON: Now, do you know if, in prior years,
9 that was an item of adjustment for the purposes of
10 presenting actual utility income?

11 MR. FERGUSON: I don't know the answer to that.

12 MR. THOMPSON: Could we have an undertaking on that,
13 Mr. Penny?

14 MR. KITCHEN: Mr. Thompson, this would have been the
15 first time the unbilled accrual would have appeared in the
16 earnings calculation.

17 MR. KITCHEN: This would have been the first time that
18 the unbilled accrual appeared. It was an adjustment that
19 was made -- it was an adjustment that was made in 2008 for
20 -- to correct revenue essentially from as far back as 2006,
21 so it would not be in the other earnings sharing
22 calculations.

23 MR. THOMPSON: Or in the actual utility presentations
24 in prior cases? It's something new for this case; do I
25 understand that correctly?

26 MR. KITCHEN: The accrual was made in 2008, so it is
27 part of the 2008 reported earnings.

28 MR. THOMPSON: All right, thank you. Now, the next

1 one is for shared savings mechanism. Could you just
2 describe that briefly, what that is all about?

3 MR. FERGUSON: Yes. It was acknowledged in the
4 settlement agreement at section 10.1 that the shared
5 savings mechanism was not to be included in the earnings
6 sharing calculation.

7 MR. THOMPSON: So that is the revenue attributable to
8 shared savings?

9 MR. FERGUSON: That's correct.

10 MR. THOMPSON: Before 2008. Now, the third one at
11 line 5 is cost of gas, and this is some sort of
12 normalization adjustment; am I right?

13 MR. FERGUSON: That's correct.

14 MR. THOMPSON: Now -- and the actual unaccounted-for -
15 - sorry, if these utility numbers reflected actual
16 unaccounted-for gas use in 2008, that number would be zero
17 in that column?

18 MR. FERGUSON: The adjustment would have been zero.

19 MR. THOMPSON: Now, in prior presentations of actual
20 results, prior presentations of actual results before the
21 Board, can you tell me if this type of adjustment was
22 reflected in the numbers or not reflected in the numbers?

23 MR. FERGUSON: I don't have the background to answer
24 that.

25 MR. THOMPSON: Could we have an undertaking on that,
26 please?

27 MR. BATTISTA: That will be undertaking --

28 MR. KITCHEN: Hang on.

66

1 MR. PENNY: Well, we're just trying to figure out if
2 we can deal with it now.

3 MR. KITCHEN: The unbilled adjustment would not have
4 been part of prior earnings sharing calculations, because,
5 again, as Mr. Penny said, that was under a different
6 earnings sharing mechanism than we currently have.

7 This earnings sharing mechanism recognizes that the
8 only revenues and costs that should be included in the
9 calculation are those consistent with a cost-of-service
10 proceeding.

11 MR. THOMPSON: I appreciate that answer, but my
12 question was: In the actual -- the presentations of actual
13 amounts in prior years, am I correct that unaccounted-for
14 is shown as actual, not the adjusted amount that you've
15 shown here?

16 So for 2004, for example, if we look at the actual
17 utility income, we see unaccounted-for at its actual level.
18 Do we understand that correctly?

19 MR. PENNY: We're pretty sure that we know what the
20 answer is, but why don't we make sure? So we'll give the
21 undertaking to check 2004 as an example to determine
22 whether the actual presentation for the 2004 calculation
23 included any -- included actual UFG or formula UFG.

24 MR. THOMPSON: Thank you.

25 MR. BATTISTA: That will be undertaking J1.1.

26 **UNDERTAKING NO. J1.1: TO PROVIDE ANSWER AS TO WHETHER**
27 **ACTUAL PRESENTATION FOR THE 2004 CALCULATION INCLUDED**
28 **ACTUAL UFG OR FORMULA UFG.**

UNION GAS LIMITED

Undertaking of Mr. Thompson
To Mr. Ferguson

To provide answer as to whether actual presentation for the 2004 calculation included actual UFG or formula UFG.

When reporting actual results in 2005 and 2006 for earning sharing purposes, UFG was not normalized. However, the UFG deducted as an expense to perform an earnings calculation in a cost of service application is always the formula UFG.

1 MR. THOMPSON: Then just finally, the last two
2 adjustments, one is the operating and maintenance expenses,
3 adjustments for donations and EB-2008-0304 costs. What is
4 EB-2008-0304 costs? What do they relate to? What's that
5 case all about?

6 MR. PACKER: That was the restructuring procedure that
7 we went through earlier this year.

8 MR. PENNY: The point being was that we undertook, and
9 I think the Board directed, that those costs would not be
10 borne in any way or come into the calculation of earnings
11 sharings --

12 MR. PENNY: I'm sorry. I'll speak up. I was just
13 making the point that those -- there was, I think, an
14 agreement by Union and I think a direction by the Board
15 that those costs should not be part of any earnings
16 sharing. That was at the request of the intervenors.

17 MR. THOMPSON: Thank you. Now, the donations in prior
18 presentations of actual utility income for Union, are the
19 donations adjusted out? Can you tell us the answer to
20 that?

21 MR. PACKER: Mr. Thompson, I'm struggling a bit with
22 your characterization or your question around "in prior
23 presentations". When we file a cost-of-service proceeding,
24 the evidence that underpins that proceeding would have had
25 this as a non-utility adjustment.

26 MR. THOMPSON: Well, when you file a cost-of-service
27 proceeding, you have a historic year actual presentation?

28 MR. PACKER: Typically, we do.

1 MR. THOMPSON: I guess my question is: In those
2 historic year actual presentations, are donations excluded
3 by way of an adjustment?

4 MR. PACKER: In the historic year, I think they are.
5 I can take that subject to check.

6 MR. THOMPSON: Well, let's leave it subject to check,
7 and, if it needs to be revised, you can do that in response
8 to the same undertaking number. Would that be
9 satisfactory?

10 MR. PENNY: We'll take it as, yes, it is taken out,
11 but if we, upon checking it, find that it's different,
12 we'll let you know.

13 MR. THOMPSON: All right. Now, if we could just then
14 move to the CME question, this is Exhibit B, tab 2,
15 schedule 1, and what we asked you to do was to recalculate
16 earnings sharings on the assumption that the only
17 appropriate adjustment is this SSM adjustment.

18 Is that the way you understood the question?

19 MR. PACKER: Yes, it is.

20 MR. THOMPSON: Now -- and so if we just walk through
21 this quickly, if we can, we see that at line 11 the earning
22 before interest and taxes increases from about 309,849,000
23 to 329,138,000; is that right?

24 MR. PACKER: That's correct.

25 MR. THOMPSON: And there is a comparable increase in
26 utility income before income taxes, at line 15, from
27 163 million to 498 -- sorry, 163,498,000 to 182,787,000; is
28 that right?

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters

Ref: Exhibit A, Appendix B, Schedule 1 - "Earnings Sharing Calculation"
Exhibit A, Appendix B, Schedule 2 - "Off-Ramp Calculation"

Question:

Please provide an "Earnings Sharing Calculation" in the format of Exhibit A, Appendix B, Schedule 1, and an "Off-Ramp Calculation" in the format of Exhibit A, Appendix B, Schedule 2 using the following assumptions:

- a) Each of the "Adjustments" in Column C, in Lines 1, 5, 6 and 8, consisting of the "Accounting adjustment", the "Unaccounted for Gas normalization adjustment", the "Donations", "EB-2008-0304 costs", and "Customer deposit interest" amounts in each Schedule are removed;
- b) The Ratepayers' share of earnings, producing 100 basis points of ROE above the benchmark ROE of 10.81 %, is 50%; and
- c) The Ratepayers' share of earnings, producing an ROE in excess of 11.81%, is 100%.

Response:

- a) b) c) As outlined at Exhibit A, pages 12 - 14, Union's position is that these adjustments are appropriate.

Please see Attachments 1 and 2.

Filed: 2009-04-21
 EB-2009-0101
 Exhibit B
 Tab 2
 Schedule I
 Attachment I

UNION GAS LIMITED
 Modified Earnings Sharing Calculation as per CME Question #1
 Year Ended December 31, 2008

Line No.	Particulars (\$000's)	2008 (a)	Non-Utility Storage (b)	Adjustments (c)	2008 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Operating revenue	\$ 1,889,283	\$ -	\$ -	i 1,889,283
2	Storage & Transportation	243,317	78,230	-	165,087
3	Other	33,818	-	(7,530)	ii 26,288
4		<u>2,146,418</u>	<u>78,230</u>	<u>(7,530)</u>	<u>2,060,658</u>
Operating Expenses:					
5	Cost of gas	1,171,320	8,082	-	iii 1,163,238
6	Operating and maintenance expenses	336,115	12,028	-	iv 323,087
7	Depreciation	185,219	4,968	-	180,253
8	Other financing	-	-	-	v -
9	Property and capital taxes	65,895	953	-	64,942
10		<u>1,767,549</u>	<u>26,029</u>	<u>-</u>	<u>1,731,520</u>
11	Earning Before Interest and Taxes	\$ <u>388,869</u>	\$ <u>52,201</u>	\$ <u>(7,530)</u>	\$ <u>329,138</u>
Financial Expenses:					
12	Long-term debt				143,546
13	Unfunded short-term debt				2,805
14					<u>146,351</u>
15	Utility income before income taxes				162,787
16	Income taxes				32,531
17	Preferred dividend requirements				<u>5,068</u>
18	Utility earnings				<u>145,168</u>
19	Long term storage premium subsidy (after tax)				10,678
20	Short term storage premium subsidy (after tax)				7,484
21					<u>18,160</u>
22	Earnings subject to sharing				\$ <u>163,328</u>
23	Common equity				1,205,196
24	Return on equity (line 22 / line 23)				13.55%
25	Benchmark return on equity				10.81%
26	50% Earnings sharing %				1.00%
27	100% Earnings to ratepayer % (line 24 - line 25 - line 26)				1.74%
28	50% Earnings sharing \$ (line 26 x line 23 x 50%)				6,028
29	100% Earnings to ratepayer \$ (line 27 x line 23)				<u>20,996</u>
30	Total earnings sharing \$ (line 28 + line 29)				<u>27,021</u>
31	Pre-tax earnings sharing (line 30 / (1 minus tax rate))				\$ <u>40,632</u>

Notes:

- i) Accounting adjustment
- ii) Shared Savings Mechanism
- iii) Unaccounted for Gas normalization adjustment
- iv) Donations -
 EB-2008-0304 costs -
 -
- v) Customer deposit interest

Filed: 2009-04-21
 EB-2009-0101
 Exhibit B
 Tab 2
 Schedule 1
 Attachment 2

UNION GAS LIMITED
 Modified Off-Ramp Calculation as per CME Question #1
 Year Ended December 31, 2008

Line No.	Particulars (\$000's)	2008 (a)	Non-Utility Storage (b)	Adjustments (c)	2008 Utility (d)=(a)-(b)+(c)
Operating Revenues:					
1	Operating revenue	\$ 1,868,283	\$ -	\$ (6,881)	i 1,862,402
2	Storage & Transportation	243,317	78,230	-	165,087
3	Other	33,818	-	(7,530)	ii 26,288
4		<u>2,146,418</u>	<u>78,230</u>	<u>(14,411)</u>	<u>2,063,777</u>
Operating Expenses:					
5	Cost of gas	1,171,320	8,082	-	iii 1,163,238
6	Operating and maintenance expenses	338,115	12,028	-	iv 323,087
7	Depreciation	185,219	4,968	-	180,283
8	Other financing	-	-	-	v -
9	Property and capital taxes	65,895	953	-	64,942
10		<u>1,757,549</u>	<u>26,029</u>	<u>-</u>	<u>1,731,520</u>
11	Earning Before Interest and Taxes	\$ <u>388,869</u>	\$ <u>52,201</u>	\$ <u>(14,411)</u>	\$ <u>322,257</u>
Financial Expenses:					
12	Long-term debt				143,546
13	Unfunded short-term debt				2,805
14					<u>146,351</u>
15	Utility income before income taxes				175,906
16	Income taxes				30,225
17	Preferred dividend requirements				5,088
18	Utility earnings				<u>140,593</u>
19	Long term storage premium subsidy (after tax)				10,676
20	Short term storage premium subsidy (after tax)				7,484
21					<u>18,160</u>
22	Net earnings				\$ <u>158,752</u>
23	Common equity				1,205,196
24	Return on equity (line 22 / line 23)				13.17%
25	Benchmark return on equity				11.81%
26	Sufficiency / (Deficiency) % (line 24 minus line 25)				1.36%
27	Sufficiency / (Deficiency) \$ (line 26 X line 23)				<u>16,419</u>
28	Pre-tax sufficiency / (deficiency) (line 27 / (1 minus tax rate))				\$ <u>24,600</u>

Notes:

i)	Weather normalization adjustment	(6,881)
	Accounting adjustment	-
		<u>(6,881)</u>
ii)	Shared Savings Mechaniam	
iii)	Unaccounted for Gas normalization adjustment	
iv)	Donations	-
	EB-2008-0304 costs	-
		<u>-</u>
v)	Customer deposit interest	



Natural Gas Regulation in Ontario: A Renewed Policy Framework

**Report on the Ontario Energy Board
Natural Gas Forum**

March 30, 2005

MESSAGE FROM THE CHAIR

I am pleased to present the Ontario Energy Board's report from the Natural Gas Forum (NGF). This report outlines our vision for a regulatory framework for the sector and lays the groundwork for improved efficiency and effectiveness in the regulation of natural gas.

The Board has regulated the natural gas sector for many years and has overseen the development of the competitive market. Although the gas market is functioning well in Ontario, there are improvements to the regulatory framework that are in the public interest.

First, we believe that all stakeholders will benefit from a more predictable and longer-term treatment of rates. Utilities will benefit because they can make longer-term decisions and customers will benefit through downward pressure on rates. The Board's report identifies the specific components of the incentive regulation plan that the Board believes will lead to these results.

Second, we believe that Ontario's transportation and storage infrastructure is important to our energy future. The province benefits from having a natural gas hub, with a number of interconnecting pipelines and an abundance of natural gas storage. The Board will ensure that the regulatory treatment of Ontario's storage and transmission assets optimizes the value of the opportunities that accompany having a hub. Most immediately, the Board will commence a process to review the infrastructure needs of natural gas-fired generation. More generally, the Board will review the appropriate pricing and access entitlements for storage and transportation assets and services.

Third, the role of the utility in natural gas supply and transportation goes to the core of two intersecting principles. On the one hand, it is important to ensure the strength of retail and wholesale competition as a way to ensure optimal commodity supply. On the other hand, the Board recognizes that there may be the need for regulated utilities to participate in ensuring the adequacy of pipeline infrastructure to serve the province.

With respect to commodity, the Board has concluded that natural gas utilities should continue to provide a regulated gas supply option for consumers. The Board has also determined that the costs of regulated natural gas supply need to be reviewed in order to make it easier for consumers to compare their options in the marketplace.

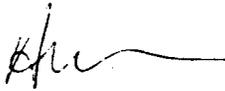
The Board is not currently in favour of utilities entering into long-term supply contracts, but it may be appropriate for utilities to enter into long-term transportation contracts to support security of supply. The Board will provide a process whereby utilities can apply for pre-approval for either type of contract.

The plan laid out in this report is substantive and thorough. Its implementation over the next several years will lead to improved regulation in the province. The Board is committed to its timely and effective implementation.

The Natural Gas Forum has been an open and transparent initiative that, over a year, fostered a dialogue in the sector among utilities, marketers, sector associations, storage developers, municipalities, and consumer and other public interest groups. Their contributions were immeasurable. On behalf of the Board, I want to thank them.

The Board looks forward to implementing the report's conclusions over the next several years through public processes where stakeholder participation will continue to play a vital role.

Sincerely,



Howard I. Wetston, Q.C.
Chair
Ontario Energy Board

March 30, 2005

EXECUTIVE SUMMARY

The natural gas market is changing. On the supply side, conventional supply sources are expected to experience flat to declining production. The anticipated increased reliance on non-conventional supply sources has raised questions about the need for infrastructure within Ontario to meet changing flow patterns and about the adequacy of the current regulatory treatment of utilities' acquisition of upstream gas supply and their transportation arrangements. On the demand side, the anticipated expansion of gas-fired power generation will affect the extent and type of investment required in gas infrastructure in Ontario and will drive the convergence (financial and operational) of the gas and electricity markets.

In light of these developments, the Board believed that it was time for a deliberate analysis and review of the policy underlying the key structural components of the natural gas regulatory system: rate regulation, storage and transportation, and regulated gas supply. The Board initiated the Natural Gas Forum as a means of investigating these issues, to get the input of stakeholders and to help the Board develop its policies in these areas. In the Board's view, important incremental changes can and must be made to the structure of natural gas regulation in Ontario. These changes are needed to address the emerging trends in the industry and to fulfil the Board's legislated objectives.

Summary of Conclusions

Rate Regulation

To fulfil its statutory objectives related to consumer protection, infrastructure development and the financial viability of the industry, the Board has determined that the gas rate regulation framework must meet the following criteria:

- establish incentives for sustainable efficiency improvements that benefit customers and shareholders
- ensure appropriate quality of service for customers

- create an environment that is conducive to investment, to the benefit of customers and shareholders

The Board believes that a multi-year incentive regulation (IR) plan can be developed that will meet these criteria. A properly designed plan will ensure downward pressure on rates by encouraging new levels of efficiency in Ontario's gas utilities. By implementing a multi-year IR framework, the Board also intends to provide the regulatory stability needed for investment in Ontario.

The following are the Board's conclusions on the key parameters:

In a multi-year IR plan, the **annual adjustment mechanism** embodies the combined assessment of cost changes and productivity improvements. The Board concludes that making an appropriate determination of this component will ensure that the benefits of efficiencies are shared with customers during the term of the plan. The Board will determine the methodology for the annual adjustment mechanism through a generic hearing.

The Board's view is that a thorough **cost-of-service rebasing** must occur at the end of each IR plan's term before a new plan is put in place. Rebasing is an important consumer protection feature. Through robust rebasing, efficiency improvements will be revealed and the benefits passed on to customers through base rates for the next period. The Board will determine the base rates through a hearing for each utility.

The Board does not intend for **earnings sharing mechanisms** to form part of IR plans. The Board views the retention of earnings by a utility within the term of an IR plan to be a strong incentive for the utility to achieve sustainable efficiencies. The Board will ensure that the benefits of efficiencies are shared with customers through the annual adjustment mechanism and thorough rebasing.

The Board expects that the **term** of IR plans will be between three and five years.

In the Board's view, an appropriate balance of risk and reward in an IR framework will result in reduced reliance on **deferral or variance accounts**, and reliance on **off-ramps or z-factors** in limited, well-defined and well-justified cases only.

The Board will develop the **service quality framework** and will undertake a consultation to finalize the measures, standards and reporting mechanism.

The Board will consult with stakeholders and modify the Gas Reporting and Record Keeping Requirements (RRRs) as necessary to meet the requirements for **financial reporting** in the new ratemaking framework. While the Board intends to conduct this consultation and modify the RRRs before the development of the first IR plan, it expects that these RRRs may be further refined in the context of specific IR plan development.

The Board will undertake a review of the **gas utility data filing guidelines** for the rate hearing process, and then develop a set of draft filing guidelines, which it will distribute for consultation.

The Board will not decide at this time the precise structure of the **alternative dispute resolution (ADR) process** for the IR framework. The Board has already undertaken a review of the ADR process, and it will consider the submissions made through the Natural Gas Forum before releasing its conclusions in the ADR review.

Storage and Transportation

The Board believes that it is necessary to ensure that Ontario has adequate gas infrastructure and the appropriate rate design to facilitate the anticipated increased reliance on gas-fired power generation. The Board will hold a review to determine the impact of increased gas-fired power generation on storage and transportation infrastructure and services in order to ensure a reliable supply of electricity and gas. This review may lead to a formal proceeding resulting in orders setting rates, granting leave to construct or other remedies.

articulated ratemaking framework. The Board will establish a firm framework to ensure that consistent expectations are held by both utilities and customers.

As a first step, the Board must take account of its legislated objectives, and in particular, the following:

- to protect the interests of consumers with respect to prices and the reliability and quality of gas service
- to facilitate rational expansion of transmission and distribution systems and rational development and safe operation of gas storage
- to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas

To fulfil these statutory objectives, the Board must determine the most effective ratemaking framework. Accordingly, it has determined that the gas rate regulation framework must meet the following criteria:

- establish incentives for sustainable efficiency improvements that benefit both customers and shareholders
- ensure appropriate quality of service for customers
- create an environment that is conducive to investment, to the benefit of both customers and shareholders

The Board believes that a ratemaking framework that meets these criteria will ensure that the statutory objectives of consumer protection, infrastructure development and financial viability will be met, and that rates will be just and reasonable. Each of the above criteria is discussed further below.

Sustainable efficiency improvements: It is important that the rate regulation framework creates incentives for the implementation of sustainable efficiency improvements and that it is structured to ensure that ratepayers share the benefits of these efficiencies.

Traditional COSR plans generally provide only limited incentives for efficiencies. A PBR framework, on the other hand, is generally recognized to provide efficiency incentives.

The challenge is to ensure that the efficiencies do not result just in short-term shareholder benefits, but rather sustainable improvements that benefit ratepayers through lower utility costs and lower rates. A properly designed ratemaking framework will provide incentives for utilities to find cost efficiencies, and thereby to increase their earnings over the course of the plan. A properly designed plan will also ensure that customers benefit from efficiency gains both during the plan's period, through an appropriate adjustment or earnings sharing mechanism, and upon rebasing for the next plan period. The Board recognizes the importance of ensuring that customers achieve benefits from the beginning of the plan's term.

Appropriate quality of service: Appropriate quality of service is at the core of consumer protection. It is generally believed that the gas utilities provide good customer service. There is a risk that the introduction of strong incentives to implement efficiencies could result in reduced quality of service. To meet its objective to protect consumer interests, the Board must address this issue. At the same time, the Board recognizes that some efficiencies may involve finding more effective ways to deal with customer issues. Further, the Board must be open to arguments that it may be reasonable to reduce some service levels if they are not cost effective to maintain.

An environment conducive to investment: The Board is committed to creating a predictable and stable regulatory environment that encourages continued investment in the sector. A strong, financially viable sector will help to sustain a robust gas market in Ontario, which will benefit consumers in terms of price and security of supply. In the Board's view, while Ontario's natural gas sector does not now suffer from an overall lack of investment, it is important to examine the incentives for investment to ensure they create a stable financial base for the utilities.

In particular, the Board is concerned about the infrastructure needs associated with the expected increase in gas-fired power generation, the changing flow patterns that may result with market developments (for example, if there were a liquefied natural gas

terminal in eastern Canada) and the need to maintain Ontario as a location with a strategically important natural gas hub. Infrastructure is addressed in detail in the section of this report called "Storage and Transportation," but infrastructure needs are an underlying element that must also be considered in developing the overall rate regulation framework.

Given the criteria set out and explained above, a fundamental issue for the Board is whether COSR or some form of PBR should be implemented to regulate the rates of the gas utilities, or whether the Board should consider the range of options available on the continuum that runs between the COSR and PBR frameworks. COSR, as it has been applied in Ontario, presents fewer risks in some respects, but it also lacks strong incentives to increase operating efficiencies and to reduce costs. The regulatory burden of annual or bi-annual rate cases associated with COSR is also high. In contrast, PBR can be designed to create strong performance incentives and to reduce regulatory costs, by extending the term of the plan to three years or more. However, PBR involves issues related to the ongoing transparency of costs and the need to ensure that customers share the benefits of the efficiencies implemented. These issues, and the six factors (discussed earlier) that were identified as a result of the experience with the Union and Enbridge trial PBR plans, need to be addressed for PBR to be successful.

In North America, PBR plans have been encouraged and implemented in several jurisdictions, including Ontario. Outside North America, many regulators addressing market restructuring have chosen PBR instead of COSR, so that PBR is now a widely used form of energy utility regulation in the world. PBR is also employed in other regulated industries, most notably telecommunications.⁵

In the Board's view, it is the parameters of the framework that will determine whether the framework meets the criteria. For example, the COSR framework could be refined to

⁵ Further information on the experience with PBR in other jurisdictions is available in the discussion paper "Rate Regulation in Ontario," prepared for the Natural Gas Forum and available on the OEB Web site under "Natural Gas Forum."

enhance the efficiency incentives by extending the term of the plan and to reduce regulatory costs by introducing process reforms. However, COSR requires a utility to forecast its costs and revenues. It is unlikely that a utility could make this forecast with an acceptable level of precision beyond two years, and a two-year term provides a limited efficiency incentive. Setting rates for any longer period would require the Board to consider external measures of cost inflation. As well, to ensure that customers share in the benefits when a utility outperforms its forecasts, some form of earnings sharing would be required.

If external measures of cost and some mechanism for benefit sharing were both added to the framework, the multi-year COSR plan would take on the characteristics of PBR. However, if this quasi-PBR framework were structured with an inadequate consideration of inflation and productivity potential, with z-factors (for non-routine rate adjustments intended to safeguard customers and the utility against unexpected events that are beyond management's control) and with an earnings sharing mechanism within the term of the plan, then the efficiency incentive would be reduced. Likewise, if onerous annual reviews were required, the regulatory costs could remain high. The resulting framework may be less satisfactory than that of a traditional COSR.

On the other hand, some forms of PBR may involve a de-linking of rates and costs, as well as a loss of transparent cost data and cost analysis. The Board does not support a complete de-linking of rates and costs, and it is not prepared to forgo the benefits of a transparent review of costs.

A rigorous multi-year framework can ensure that there is downward pressure on rates and that customers and shareholders benefit from efficiency improvements. The key determinant of success, though, is the particular parameters of the plan. The Board intends to adopt the best aspects of both the COSR and PBR approach. It will therefore focus on specifying its expectations for the specific parameters of the rate regulation framework.

The Board believes that a multi-year incentive regulation (IR) plan can be developed that will meet its criteria for an effective ratemaking framework: sustainable gains in efficiency, appropriate quality of service and an attractive investment environment. A properly designed plan will ensure downward pressure on rates by encouraging new levels of efficiency in Ontario's gas utilities – to the benefit of customers and shareholders. By implementing a multi-year IR framework, the Board also intends to provide the regulatory stability needed for investment in Ontario. The Board will establish the key parameters that will underpin the IR framework to ensure that its criteria are met and that all stakeholders have the same expectations of the plan.

A related matter is whether the IR framework should be comprehensive or targeted – in other words, whether the plan should apply to all costs or only some costs. The targeted approach was tried with the Enbridge plan. The comprehensive approach was used for Union and for Ontario's local electricity distribution companies, and it is the more common approach in other jurisdictions. The Board's view is that the targeted approach did not work effectively because it diluted and distorted the incentives, and that a comprehensive model is preferable. Although a comprehensive approach may involve greater regulatory costs to implement and may be considered by some to involve greater risks, it offers more balanced incentive properties and may be expected to reduce the overall regulatory burden.

Similarly, the Board concludes that the utilities should not alternate between a COSR and an IR framework. Switching between rate frameworks could make robust benefit sharing harder to achieve and introduce confusion and mistrust.

With respect to concerns that incentive regulation should not be used until a stable environment exists, we acknowledge that the industry continues to experience change, but we do not believe that this situation is inconsistent with an IR framework. Rather, the Board is of the view that a properly constructed IR framework should address expected changes and establish a balance of risks and rewards for the utilities.

The Board is of the view that a plan should not be reopened during its term except for the most compelling reasons. Off-ramps are addressed below.

Off-Ramps, Z-Factors and Deferral or Variance Accounts

Various mechanisms can be established as part of the overall ratemaking framework, but designed to operate outside the plan itself. An *off-ramp* is a pre-defined set of conditions under which the plan would be terminated before its end date, usually because of some unforeseen event. A *z-factor* provides for a non-routine rate adjustment intended to safeguard customers and the utility against unexpected events outside of management control. *Deferral accounts* are formalized accounts that track an amount that cannot be forecast. *Variance accounts* are formalized accounts that track a variance around a forecast. These mechanisms are often called risk-mitigation tools, as they create a regulatory “buffer” against unforeseen circumstances.

Stakeholders’ Views

Most stakeholders advocated limits on the use of off-ramps, z-factors and deferral or variance accounts. In their view, these mechanisms inappropriately mitigate the utility’s risk in an incentive-based system. In general, customer groups would like to see utilities assume more risk by consenting to PBR agreements that eliminate deferral or variance accounts, as well as any side agreements that shelter the utility from unforeseen events. It is recognized that a balance exists between eliminating these mechanisms and allowing shareholders to reap the benefits of good performance. Striking this balance was viewed as more in keeping with the objectives of incentive-based ratemaking.

Union, on the other hand, argued that off-ramps are designed to protect both customers and the utility, and that customers benefit from being served by a financially viable utility. In Union’s trial PBR, off-ramps were restricted to a serious decline or significant improvement in Union’s financial position. Enbridge’s view was that deferral or variance accounts and z-factors provide justifiable regulatory relief from cost elements beyond the control of management.

The Board's Conclusions

The Board's view of off-ramps, z-factors and deferral or variable accounts is guided by the need for an appropriate balance of risks and rewards in the incentive regulation model. As stated earlier, the Board believes that it is appropriate for the utility's shareholders to retain all earnings during the plan's period. The Board believes that this is a very strong incentive. The Board also believes that, as a balancing factor, the utility should assume an appropriate level of business and financial risk.

In the Board's view, an appropriate balance of risk and reward in an IR framework will result in reduced reliance on deferral or variance accounts, and reliance on off-ramps or z-factors in limited, well-defined and well-justified cases only.

Service Quality Monitoring

When a regulated utility seeks cost-saving (efficiency) initiatives under an incentive plan, there is a danger that the quality of service experienced by its customers will suffer. The Board has identified appropriate quality of service as one of its criteria for the ratemaking framework. Service quality indicators (SQIs) have been used in Ontario, but they have been limited to measures such as telephone response time, emergency response and pipeline corrosion surveys. The issue before the Board is how a service quality framework should be developed and regulated.

Stakeholders' Views

Stakeholders generally agreed that quality of service is an important matter. Union suggested that SQIs should relate to those aspects of the utility's service that are important to customers, and that SQI targets should be derived from the historical performance levels of the utility. Enbridge also generally supported SQIs, noting that they provide assurance that operating efficiencies are not achieved at the expense of either customer service or the safe operation of the distribution system.

Union maintained that performance rewards and penalties would be inappropriate. In its view, SQIs are intended to ensure that minimum standards are maintained in an



**ONTARIO ENERGY
BOARD**

**SETTLEMENT CONFERENCE
GUIDELINES**

Introduction

The Ontario Energy Board is committed to the settlement conference process as part of its objective of achieving greater regulatory efficiency and effectiveness. A successful settlement conference process will result in Board decisions that are in the public interest and are accepted by the parties while at the same time achieving savings in time and money to all participants.

Purpose of these Guidelines

The purpose of these Guidelines is to provide guidance on the Board's settlement conference process, including the rights and obligations of all participants, the role of the facilitator and the role of Board staff. These Guidelines also set out how the Board will deal with a settlement proposal that is filed with the Board.

This Guideline describes and supplements Rules 38 to 41 of the Board's *Rules of Practice and Procedure*. Rules 38 to 41 are attached for convenience.

Overview of Settlement Conference Process

The purpose of a settlement conference is to settle all the issues referred to the settlement conference in a proceeding or, at least, to settle as many issues as possible. The Board may exclude certain issues from a settlement conference where it is of the view that those issues should be heard in full.

Board members will not participate in a settlement conference and they will not be advised of the admissions, concessions, offers to settle and related discussions that take place in the settlement conference.

A facilitator will be appointed by the Board to chair the settlement conference and the

facilitator will attempt to achieve a settlement of all issues or a settlement of as many issues as possible.

All parties to a proceeding and their representatives are entitled to participate in a settlement conference. Settlement conferences are not open to the public unless the Board directs otherwise. In addition, settlement conferences are not transcribed and do not form part of the record of the proceeding.

Where a settlement is reached, the parties, with the assistance of the facilitator, will prepare and file with the Board a settlement proposal describing the agreement.

Applicability

The Board may direct a settlement conference to be held in any proceeding. Parties to a proceeding may also request that the Board direct the holding of a settlement conference in the proceeding and the Board will give consideration to the request.

Timing

To help ensure that there is an adequate information base for the settlement of issues, the settlement conference will usually take place only after all the evidence of the applicant and intervenors is filed and the interrogatory process has been completed. Where an issues list for a proceeding is fixed by the Board, the settlement conference will be held after the issues to be considered have been determined by the Board and the issues list has been provided to all parties.

The Board may require parties to submit a position paper prior to the holding of the settlement conference. Position papers will not form part of the public record and will, therefore, not be provided to Board members.

Issues for Settlement and Hearing

In fixing an issues list, the Board may indicate those issues which the Board considers are issues for the settlement conference and those issues which the Board regards as issues which must be heard in full in order to develop a complete evidentiary record on which the Board can base its findings.

Participants in a settlement conference should bear in mind that where an issue that may be affected by external factors remains on the list of issues for settlement, they must consider whether, in the settlement proposal filed with the Board, an appropriate adjustment mechanism should be included in relation to the settlement of that issue.

Material Changes in Prefiled Evidence

Where a participant in a settlement conference becomes aware of a material change in its prefiled evidence prior to or during a settlement conference, that participant must disclose that material change as soon as possible.

Authority To Enter Into a Settlement Proposal

A party's representative at a settlement conference must have authority to settle issues on behalf of the party at the settlement conference and must have authority to enter into a settlement proposal. If there are any limitations on the representative's authority, they must be disclosed at the outset of the settlement conference.

Role of the Facilitator

The facilitator at a settlement conference has the authority to bring about a settlement of issues by any reasonable means and, in particular:

- by clarifying and assessing a party's position;
- by clarifying differences in the positions taken by the respective parties;
- by encouraging a party to evaluate its own position in relation to other parties by introducing objective standards; and
- by identifying settlement options or approaches that have not yet been considered.

In carrying out his or her responsibilities, the facilitator will:

- help to foster an environment of cooperation and trust among participants;
- ensure that all participants have an opportunity to present their views on each issue;
- facilitate the preparation of a settlement proposal which contains all the required components; and
- facilitate the preparation of a list of outstanding issues.

The facilitator is responsible only for the settlement conference process. Parties making the settlement proposal are responsible for the appropriateness of the agreement and the adequacy of the evidence and rationale to support it. Parties are likewise responsible for the appropriateness and completeness of the list of outstanding issues referred to the settlement conference but not dealt with in the settlement proposal.

Confidentiality

Everyone who attends a settlement conference must treat admissions, concessions, offers to settle and related discussions as confidential and must not reveal any such information outside the conference. In addition, admissions, concessions, offers to settle and related discussions will not be admitted in any Board proceeding without the

consent of parties who are affected. Where necessary to support a settlement proposal, factual information and evidence should be disclosed to the Board.

Role of Board Staff

Board staff will attend the settlement conference to ensure that all relevant information is brought forward and considered in negotiations. They will present options for the consideration of the parties and will offer advice on the strengths and weaknesses of the parties' proposals. Staff will endeavour to help the parties to reach a settlement but will not sign the settlement proposal.

Board staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding. Staff will accordingly only be available to the Board panel hearing the case to provide factual information and to analyze certain components of the settlement proposal but will not disclose any positions, admissions, concessions or offers made during the settlement conference or any related discussions.

Board staff may, at the direction of the Board, examine on a settled issue at the hearing to provide information necessary to complete the public record.

In proceedings in which there are no or very few intervenors, the holding of a settlement conference may not be appropriate. However, in such circumstances Board staff may negotiate with the applicant on the issues.

Rights of Parties Who Disagree with the Settlement of an Issue

A party who has been identified in the settlement proposal as a party who does not agree with the settlement of an issue is entitled to offer evidence in opposition to the settlement proposal and to cross-examine the applicant on that issue at the hearing.

Where the hearing is a written hearing, the Board may give directions as to how the right of such cross-examination is to be exercised.

Withdrawal from a Settlement Proposal

If evidence is introduced at the hearing which affects the settlement proposal or the settlement of one or more issues in it, a party may, with permission of the Board, withdraw from the proposal or from its agreement to the settlement of specified issues. The withdrawing party must give notice to the Board and to the other parties of its intention to withdraw and the reasons for withdrawing. Once a party has withdrawn from a settlement proposal or from its agreement to the settlement of specified issues, it is entitled to offer evidence in opposition to the settlement proposal and to cross-examine on an issue where it does not agree with the settlement of that issue.

Filing of the Settlement Proposal

Where agreement is reached at the settlement conference on all or some of the issues, a settlement proposal describing the agreement shall be filed with the Board Secretary. The settlement proposal must identify those participants who disagree with the settlement of a particular issue and those participants who have taken no position on an issue.

It is the responsibility of the participants to ensure that the settlement proposal contains sufficient evidence to support the proposal and that the quality and detail of the

evidence and the rationale for the settlement of issues will allow the Board to make findings on the issues. To assist the Board, parties are expected to prepare a proposal that:

- presents the settled issues in an organized, concise and understandable manner;
- demonstrates a well-referenced, direct and transparent link between each settled issue and the evidence; and
- provides clear reasons to support the acceptance of each settled issue.

Parties to the settlement proposal should make it clear in the proposal whether or not they expect the Board to accept the proposal as a package, and should outline the rationale for the position taken.

Once a settlement proposal is filed, it is binding on all the parties who have agreed to it (subject to the right to withdraw described above).

Following the filing of a settlement proposal, the Board may, at the request of the parties, modify the issues list for the proceeding.

Acceptance of a Settlement Proposal

After considering the settlement proposal, the Board may, in some cases, determine that the rationale for the settlement of issues in the proposal is inadequate or that the quality and detail of the evidence in the proposal will not allow the Board to make findings on the issues. In these cases, the Board may direct the parties to make reasonable efforts to revise the settlement proposal. Where the Board gives this direction, the settlement conference will be reconvened in order to address the Board's concerns. All the provisions of a settlement conference apply to such a reconvened conference.

Where, despite any efforts to revise the settlement proposal, the Board is of the view that the quality and detail of the evidence in the proposal or the rationale for the settlement of issues will not allow the Board to make findings on one or more settled issues, or where the Board is of the view that the public interest requires a hearing of certain issues, the Board will hear evidence on those issues even if they were dealt with in the settlement proposal as well as on any issues excluded from the settlement conference. The Board may give directions as to the issues on which it requires evidence at the hearing.

Where the Board does not accept a settlement agreement that the parties have specifically requested be accepted as a package, the Board will reject the settlement proposal as a whole and will proceed to a hearing of all the issues on the issues list.

Where the Board accepts a settlement proposal, it may adopt as its findings the settlement of issues in the settlement proposal. The Board may accept a settlement proposal as a package provided that the Board is satisfied that the evidence supports the settlement proposal, the settlement proposal is in the public interest, and all evidence relevant to the issues in the proceeding is available to all parties and to the Board both in the settlement proposal itself and as part of the public record.

Parties will be informed of the Board's acceptance or partial acceptance of a settlement proposal prior to the hearing.

Acceptance of a settlement proposal by the Board is subject to reconsideration where significant new evidence or information emerges in the hearing or where the effect of external factors has not been sufficiently accounted for in the settlement proposal.

June 5, 2009

Ms. Kirsten Walli, Board Secretary
ONTARIO ENERGY BOARD
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2009-0101: Union Gas Limited 2008 Earning Sharing and Incentive Regulation Review.

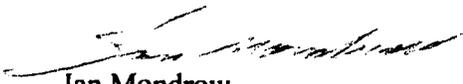
IGUA's Position on the Settlement Agreement.

The Board will be aware from review of the Settlement Agreement filed by Union herein that IGUA does not agree with the settlement reached by the balance of the parties who participated in the settlement conference. This letter is submitted to advise the Hearing Panel that IGUA does not intend to litigate the matter, and will be offering no further submissions.

The Union IRM settlement, as endorsed by the Board, provides that in the event that Union's return on equity surpasses 300 basis points above the ROE resulting from application of the Board's cost of capital formula, Union is required to bring application for review of the IRM. The settlement reached by the other parties in this case removes this review trigger mechanism for the balance of the IRM term. IGUA recognizes that the settlement proposes a greater share for ratepayers of any over earnings above 300 basis, which affords ratepayers some protection. However, IGUA remains concerned that removal of the trigger mechanism in effect provides Union with a "licence" to continue to over earn in excess of 300 basis points under the IRM plan without review of the reasons therefore and the reasonableness of continuing with the plan as set.

We would appreciate it if you could put this letter before the Hearing Panel in this application, for their information.

Yours truly,
MACLEOD DIXON LLP


Ian Mondrow

c. Murray Newton, IGUA
Michael Penney, TORYS, Counsel for Union Gas
Donna Campbell, Board Staff Counsel
Intervenors of Record

144187.v2

Sparling v. Southam Inc. et al.; Kerrigan et al., Intervenors
Indexed as: Sparling v. Southam Inc.
(H.C.J.)

66 O.R. (2d) 225

[1988] O.J. No. 1745

Action No. 23031/87

ONTARIO
High Court of Justice

Callaghan A.C.J.H.C.

October 27, 1988.

Corporations -- Shareholders -- Action by director under Act for declaration that certain transactions oppressive -- Settlement -- Approval -- Presumption in favour of settlement -- Objectors failing to dislodge presumption -- Canada Business Corporations Act, S.C. 1974-75-76, c. 33, ss. 234, 235(2), 253.

The plaintiff, the director appointed under s. 253, brought an action pursuant to s. 234 of the Canada Business Corporations Act, S.C. 1974-75-76, c. 33, for a declaration that the actions of the defendants in respect of a share exchange agreement between the two corporate defendants, an S. family voting trust, arrangements between the two corporate defendants and the S. family concerning support for S.'s slate of directors, a "standstill" agreement preventing acquisition of further shares by the defendant T. Corp. and an agreement by T. Corp. to sell shares acquired by it to the family trust, all arranged without approval by a shareholders' meeting, were oppressive or unfairly prejudicial to the shareholders' interests. The defendants alleged that the arrangements were intended to forestall a "predatory" take-over. Following examinations for discovery, a settlement was reached involving termination of the agreement concerning voting of shares subject to any arrangement approved at a shareholders' meeting, and payment of a sum of money by the family to S. Inc. The plaintiff then applied for approval of the settlement pursuant to s. 235(2). It was agreed that the order would not derogate from the rights of other potential claimants under s. 234. Five shareholders of S. Inc. objected.

Held, the settlement should be approved.

There is a public interest in the settlement of lawsuits. It is not the function of the court to substitute its judgment for that of the parties, nor litigate the merits of the action. Neither should it function simply as a rubber stamp. It must be satisfied that the settlement is fair and reasonable. The director acts as a public officer, as *parens patriae* under the Act and settlements proposed by the director run with a strong initial presumption that they are reasonable and fair. He acted on the advice of competent counsel and negotiations were *bona fide* and at arm's length. The court should conduct a limited evaluation as to whether the potential rewards of the litigation with its attendant risk and costs are outweighed by the benefits of the settlement. The proceedings were apt to last several years and involved substantial expense and considerable risk, and the objectors were a small percentage of the shareholders. The presumption had not been displaced.

Cases referred to

Young v. Katz, 447 F. 2d 431 (1971); Greenspun v. Bogan, 492 F. 2d 375 (1974); Howard Smith Ltd. v. Ampol Petroleum Ltd., [1974] A.C. 821

Statutes referred to

Canada Business Corporations Act, S.C. 1974-75-76, c. 33, ss. 234 (am. 1978, c. 9, s. 74), 235(2), 253

MOTION for an order pursuant to s. 235(2) of the Canada Business Corporations Act approving the settlement of an action.

D.R. O'Connor, Q.C., and C.D. Bredt, for plaintiff.

J.F. Howard, Q.C., and N. Finkelstein, for defendant, Southam Inc.

D.J.M. Brown, Q.C., and J. O'Donnell, for defendant, Torstar Corp.

H.L. Morphy, Q.C., and S. Block, for defendant directors, George L. Crawford et al.

K.C. Cancellara, for intervenors, Philip Kerrigan et al.

P. Anisman, for objectors.

R.N. Robertson, Q.C., for objector, Imperial Life Assurance Company of Canada.

CALLAGHAN A.C.J.H.C. (orally):-- This is a motion brought by the plaintiff, Frederick H. Sparling, the director appointed under s. 253 of the Canada Business Corporations Act, S.C. 1974-75-76, c. 33 (the "Act"), for an order pursuant to s. 235(2) of the Act, approving the settlement of this action.

This action was brought by the plaintiff pursuant to s. 234 of the Act, for a declaration that the actions of the defendants in entering into a share exchange agreement, a Southam family agreement and a Southam shareholders' agreement without seeking the approval of the Southam shareholders were oppressive or unfairly prejudicial to, or unfairly disregarded the interests of the Southam shareholders.

The plaintiff's action was based upon a series of transactions that took place in 1985 which the individual directors believed to be a good business deal for Southam Inc. and which were taken to prevent a "predatory" take-over they were advised was likely imminent.

These transactions included:

- (i) A Share Exchange Agreement between Southam Inc. and Torstar Corporation ("Torstar") implemented on August 26th, 1985;
- (ii) A Voting Trust Agreement among members of the Southam Family Group put in place later in 1985; and
- (iii) Certain related arrangements among the two corporations and the Southam Family Group including: a Torstar commitment to support the Southam slate of nominees for election to the Southam Board, and a "Standstill" Agreement prohibiting Torstar from acquiring additional Southam shares. These arrangements, like the Southam Family Agreement, would expire (unless extended by agreement) on August 26th, 1995.

As an exception to the standstill agreement, Torstar was permitted to acquire (and did acquire) an additional 5% of the outstanding shares of Southam Inc. on the market, but Torstar agreed, however, that if the voting trust among members of the Southam family group was put in place, then the Southam family group would be entitled to purchase one-half of the shares that Torstar acquired on the market from Torstar at Torstar's cost of acquisition plus carrying costs. After the Southam family agreement was put in place, the Southam family group did purchase 2 1/2% of the shares of Southam Inc. from Torstar.

The plaintiff requested a number of remedies including, inter alia, the following:

- (i) a shareholders' meeting to consider ratification of the Share Exchange Agreement, and in the event that the shareholders chose not to ratify the Agreement, an order that the share exchange transaction be unwound; alternatively, the plaintiff asked that the defendant directors of Southam Inc. who approved the share exchange be required to make a payment to

shareholders of Southam Inc. on the basis that the shareholders suffered a loss of value in their shares because of the share exchange and related transactions;

- (ii) that Torstar be prohibited from accepting instructions to vote for the Southam slate of Southam Inc. directors;
- (iii) that the defendant directors who approved the Share Exchange Agreement be required to account to Southam Inc. for the value of the option given by Torstar to the Southam Family Group with respect to one-half of the 5 percent interest in Southam Inc. acquired by Torstar in the market as permitted under the Standstill Agreement.

Seven persons on behalf of the defence and two on behalf of the plaintiff were examined in the course of pre-trial proceedings, and the trial was scheduled to begin on Tuesday, September 20, 1988. From the affidavit of the plaintiff filed, it appears that the plaintiff recognized the expense and the attendant uncertainties in the financial markets that would result from a trial and potential appeals, and that any remedy, given court processes and potential appeals, might not be achieved for some years. Accordingly, the plaintiff entered into a settlement with the defendants, which settlement is subject to court approval. The defendants throughout the pre-trial proceedings and presently take the position that they have a good defence to all the plaintiff's claims and that the share exchange agreement was entered into in good faith and on reasonable grounds and was in the best interest of the corporation and all of its shareholders.

The terms of the proposed settlement can be summarized as follows:

- (i) subject to any ongoing arrangement that may be approved at a Southam Inc. shareholders meeting, at which meeting Torstar would not vote its shares of Southam and parties to the Southam Family Agreement would not vote in accordance with the procedure in that Agreement, the Share Exchange Agreement, the Southam Family Agreement and the Southam Shareholders Agreement will terminate on June 30, 1990 (rather than August 26, 1995 being the date when they would otherwise terminate unless extended);
- (ii) the obligation of Torstar to vote its shares of Southam Inc. in favour of the candidates for election to the Southam Board of Directors designated by the Board of Directors will terminate immediately;
- (iii) certain rights of Torstar to purchase shares of Southam Inc. being sold by parties to the Southam Family Agreement and not purchased by other parties to that Agreement will be modified, effective immediately;
- (iv) parties to the Southam Family Agreement will pay \$1,250,000.00 to Southam Inc. within 60 days, without claiming any consideration or compensation therefor; and
- (v) Southam Inc. and Torstar will pay \$125,000.00 to defray the plaintiff's

costs.

Further, it is agreed that the order approving the settlement, if issued, will state that it does not derogate from the rights of other potential claimants under s. 234 of the Act, or otherwise, with respect to the matters complained of in the statement of claim other than the corporate reorganization (rectification) and share option remedies. Further, as to any potential claimant who does not attend at the hearing to consider the settlement, there will be no derogation even with respect to the corporate reorganization (rectification) and share option remedies, if that claimant did not receive notice or if the notice was inadequate.

The plaintiff, the director appointed under the Act, believes the settlement to be fair and reasonable.

The objectors on this application are appearing pursuant to notices of intention to appear and are five existing shareholders of the defendant Southam Inc., four of whom held shares on August 26, 1985, and acquired further shares thereafter, and one of whom only acquired shares after that date.

The objectors, apart from the objector Imperial, ask the court to withhold approval of the proposed settlement. The main thrust of their submission, as I understand it, is that the plaintiff had a reasonable likelihood of success on the merits of this action in relation to the share exchange agreement. The objectors claim that the allegations in the plaintiff's statement of claim are supported by the examination for discovery of the defendants and that the share exchange agreement at trial would be set aside as not adequately protecting the interests of the Southam Inc. public shareholders.

I think I should note that at the outset of this motion I declined the invitation of counsel on behalf of the objectors to review the voluminous discoveries with him. I was satisfied that the concession of the objectors that the directors were acting bona fide and believed that the share exchange agreement in issue made good business sense rendered such a review unnecessary.

The concession, in my view, made it clear that the issue as to "primary purpose", would have been a live issue between the parties on the trial of this matter.

The objectors further claim that the proposed settlement would deprive the Southam Inc. shareholders of personal rights of action, in that it precludes them from attacking the reorganization attendant upon the share exchange, and furthermore, it precludes any action with respect to the share option remedy which had been sought by the director in the main action.

There were subsidiary and collateral objections made with reference to the funds payable to the company by the defendants and in particular with reference to the benefits accruing to the shareholders from those funds as a result of proportional shareholdings. I note these objections and weigh them in the result.

Section 235(2) provides as follows:

235(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

In approaching this matter, I believe it should be observed at the outset that the courts consistently favour the settlement of lawsuits in general. To put it another way, there is an overriding public interest in favour of settlement. This policy promotes the interests of litigants generally by saving them the expense of trial of disputed issues, and it reduces the strain upon an already overburdened provincial court system.

In deciding whether or not to approve a proposed settlement under s. 235(2) of the Act, the court must be satisfied that the proposal is fair and reasonable to all shareholders. In considering these matters, the court must recognize that settlements are by their very nature compromises, which need not and usually do not satisfy every single concern of all parties affected. Acceptable settlements may fall within a broad range of upper and lower limits.

In cases such as this, it is not the court's function to substitute its judgment for that of the parties who negotiate the settlement. Nor is it the court's function to litigate the merits of the action. I would also state that it is not the function of the court to simply rubber-stamp the proposal.

The court must consider the nature of the claims that were advanced in the action, the nature of the defences to those claims that were advanced in the pleadings, and the benefits accruing and lost to the parties as a result of the settlement.

When the director under the Act proposes a settlement for approval, he is acting as a public officer authorized, as *parens patriae* under the Act not only to institute actions but also to compromise them. Settlements proposed by the director, in my view, run with a strong initial presumption that they are reasonable and fair.

That presumption operates where, as here, the director is acting after extensive pre-trial discovery, on the advice of experienced and competent counsel, in circumstances where his negotiations have been conducted at arm's length, and, indeed, in a manner which all parties agree including the objectors, was *bona fide*. In this context, the judicial evaluation of a proposed settlement involves a limited inquiry as to whether the potential rewards of successful litigation, with its attendant risks and costs, are outweighed by the benefits of the proposed settlements.

The matter was aptly put in two American cases that were cited to me in the course of argument. In a decision of the Federal Third Circuit Court in *Young v. Katz*, 447 F. 2d 431 (1971), it is stated:

It is not necessary in order to determine whether an agreement of settlement and compromise shall be approved that the court try the case which is before it for settlement. Such procedure would emasculate the very purpose for which settlements are made. The court is only called upon to consider and weigh the nature of the claim, the possible defences, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.

In another case cited by all parties in these proceedings, *Greenspun v. Bogan*, 492 F. 2d 375 at p. 381 (1974), it is stated:

... any settlement is the result of a compromise -- each party surrendering something in order to prevent unprofitable litigation, and the risks and costs inherent in taking litigation to completion. A district court, in reviewing a settlement proposal, need not engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial. See *United Founders Life Ins. Co. v. Consumer's National Life Ins. Co.*, 447 F. 2d 647 (7th Cir. 1971); *Florida Trailer & Equipment Co. v. Deal*, 284 F. 2d 567, 571 (5th Cir. 1960). It is only when one side is so obviously correct in its assertions of law and fact that it would be clearly unreasonable to require it to compromise to the extent of the settlement, that to approve the settlement would be an abuse of discretion.

(Emphasis added.)

While the litigation itself has only been pending 12 months, without the proposed settlement, the trial and ensuing appeals would unquestionably consume additional years in a case of this magnitude and complexity. The defendants throughout have denied liability and quite properly have raised all possible defences. The expense of preparing the case, not only on the issue of liability but on issues such as the assessment of the value of options, would be substantial and time-consuming.

By the time the final decision would be rendered, the financial markets would have been placed for a long period of time in a state of uncertainty which would impact adversely on the interests of all shareholders involved. I note that this consideration played a role in the decision of the Securities Commission which was cited to me in argument in relation to earlier proceedings with reference to this matter.

The objectors in these proceedings represent at the very best count a small percentage of the shareholders. That indicates that most of the shareholders approve the proposed settlement. I cannot let the matter pass without noting that the legal costs of the objectors in this proceeding, save those of Imperial, are all financed by a single investment group (record p. 217). That is a matter which I believe goes to the weight to be attributed to the objections.

This proposal, as noted, comes forward at a point in the litigation when counsel have had an opportunity to assess their positions in the light of the productions and discoveries made by the plaintiff and the defendants herein. Such counsel are acting, in recommending this proposal, with a

firm grasp of the strengths and weaknesses of this case, and it is not for this court to second-guess that professional judgment.

In assessing the fairness and reasonableness of the proposal, the court should also consider the nature of the risks involved in establishing the liability claimed.

In this regard, it is noted that the objectors have conceded that the defendant directors believed that the exchange agreement which is in issue in these proceedings made good business sense for the defendant Southam Inc.: see the factum of the objectors, para. 4(f). Furthermore, it is apparent that there were no statutory or regulatory rules mandating shareholder approval of that exchange. The success of the plaintiff's claim would rest on a court finding as a fact that the primary purpose of the share exchange was to prevent a take-over. In light of the foregoing, establishing that primary purpose -- or the scienter, as it is sometimes referred to -- would have been a contentious matter, both as a matter of fact and as a matter of determining the applicable law in these circumstances. The "proper purpose" doctrine relied upon by the objectors, as it appears in *Howard Smith Ltd. v. Ampol Petroleum Ltd.*, [1974] A.C. 821, to put it simply, is not universally accepted; and I do not believe it has been clearly defined as the only applicable doctrine by the Court of Appeal of this province to govern the fiduciary duties and objectives of directors of a target company resisting unsolicited take-over bids. In my view, there were considerable risks attendant upon the plaintiff's claim. There were issues of some legal and factual significance that were open in this matter, and it would be ludicrous to suggest that the plaintiff in this litigation was so obviously correct in his assertions of law and fact that it was unreasonable for him to compromise.

While the settlement in a limited sense affects the right to sue of the existing shareholders, as it removes from prospective litigation the unwinding of the share exchange agreement, it does not affect the right of the shareholders to initiate action for any damages they may have sustained as a result of the impugned transactions. It specifically preserves the rights of potential claimants with respect to the matters complained of in the statement of claim.

It has been submitted on behalf of Imperial that this court should direct a vote of a certain group of the public shareholders on the proposed settlement. This submission, while intriguing, is not one which I believe the court should accept. Aside from the mechanical problems -- which would be substantial -- in determining such matters as constituency, content of information circulars, etc., I am not convinced that I should derogate from the responsibility placed on the court by the Act. In this proceeding there has been extensive notification to all of the shareholders of Southam Inc. and an opportunity afforded them to be heard. A relatively few have appeared. The Act imposes the responsibility on the court to consider this matter on the basis of the material put before it. I do not believe that that responsibility should be passed on or adjourned pending such a vote. I note that the Ontario Securities Commission, when this matter was brought before it, concluded, after consideration of a similar request, that such sanction was not appropriate (affidavit of R.W. McDowell, ex. B, p. 30). For the reasons stated by the commission, I am of the same view and I decline to make such an order.

In conclusion, therefore, I accept the recommendation of the director. I am not satisfied that the presumption of fairness and reasonableness mentioned above has been overcome, and I am satisfied that the settlement effects a substantial modification of the original arrangements herein and avoids the costs and uncertainty of what was bound to be very extensive litigation. Accordingly, the application for approval is granted.

The order will include a direction that all documents and discoveries are to be made available to shareholders who execute an appropriate confidentiality agreement indicating that such documents and discoveries are for use only in considering prospective litigation. I leave it to counsel to work out the appropriate terms.

I have considered the matter of costs and am of the view that this court has no mandate to deal with costs incurred by these parties before the Ontario Securities Commission. I have concluded that this is not a proper case for costs in any event.

Order accordingly.

1 greater concern is the generic nature of the evidence and
2 its applicability to a very broad range of stakeholders.

3 The evidence clearly raises policy questions. An
4 issue of this importance demands an appropriate forum. It
5 is not clear at this time what that forum should be, but
6 Board Staff will develop a generic approach to the
7 appropriate forum and timing for the Board's consideration
8 of this important issue.

9 In light of this, the Panel assumes that the
10 additional enquiries that Mr. Manning referred to this
11 morning are no longer needed.

12 Regarding the settlement, I want to personally say
13 that the Board really appreciates the efforts of all
14 parties to come to such a significant settlement and we
15 accept the settlement agreement as filed.

16 Do you have any questions for me or are there any
17 matters before we begin with the risk management panel?

18 MR. SMITH: Madam Chair, there is one quick matter.
19 Mr. Penny had referred this morning to Union attempting to
20 prepare schedules which would reflect the settlement
21 agreement, if it were approved by the Board. In fact, over
22 the break we were able to finalize that.

23 What we are passing out and what is available to the
24 parties is a selection of the schedules which would have
25 been found at Exhibit H3, tab 1. They are not, I should
26 caution, all of those schedules, but those which Union
27 thought people would have most interest in, as soon as
28 possible. Of course, a full schedule will be prepared, but

1.3 THE SETTLEMENT AGREEMENT

- 1.3.1 Following the ten-day Settlement Conference, a Settlement Agreement was filed with the Board on May 15, 2006. The Settlement Agreement is attached to this Decision as Appendix "A".
- 1.3.2 The Settlement Agreement proposed a settlement of all but four (4) issues on the Issues List. All parties participating in the Settlement Conference agreed to a complete settlement on the other 47 issues. After hearing a presentation of the Settlement Agreement at the start of the hearing on May 23, 2006, the Board accepted the Settlement Agreement.
- 1.3.3 One intervenor, residential ratepayer Mr. Crockford, indicated that he did not support the Settlement Agreement, and indicated that he would be filing an appeal relating to a previous Board ruling regarding Union's answers to his interrogatories. Mr. Crockford did not make any further specific submissions regarding the Settlement Agreement.
- 1.3.4 The issues that were not settled include Risk Management (Issue 3.16), the 24-Month Fixed Cost Purchase Plan (Issue 3.15), the M2 Rate Class Split (Issue 6.2) and the Fixed Monthly Charge Increase (Issue 6.3). These issues were heard by the Board in the oral hearing.
- 1.3.5 The Board is very appreciative of the efforts of all the parties to come to a comprehensive settlement of this scale. The settlement meant that the oral hearing was able to proceed expeditiously and in fact, the Board was able to conclude the hearing, including oral argument, after only five hearing days.
- 1.3.6 The Board would also like to thank Mr. Ken Rosenberg who was retained by the Board to facilitate the settlement process.
- 1.3.7 All of the financial issues were settled. Union's original filing showed a 2007 revenue deficiency of \$94.8 million. The approved Settlement Agreement showed

a significant reduction of this deficiency to the agreed-upon amount of \$24.7 million.

1.4 THE FINAL RATE ORDER

1.4.1 This Decision will not take effect in Union's rates until January 1, 2007 because the matters under review in this proceeding concern Union's 2007 fiscal year. The Board expects that it will issue a Rate Order prior to the start of the 2007 rate year.

1.4.2 The Board notes that there are several other matters currently before other panels of this Board that will, or may, affect the final 2007 rates prior to their implementation. Among these are the Board's Demand-Side Management Generic Proceeding and the Natural Gas-Electricity Interface review. Both of these proceedings are currently active with Decisions yet to be rendered. The Board expects that any matters arising from such other proceedings having rate consequences for Union's 2007 rate year, will be captured in the forthcoming Rate Order. In addition, the Board notes that January 1, 2007 is the expected timing of the gas commodity price adjustment through the regular quarterly QRAM gas price adjustment process. The rate change effects of the QRAM would also likely be captured in the Rate Order.

1.5 PARTICIPANTS AND THEIR REPRESENTATIVES

1.5.1 Below is a list of participants and their representatives that were active either at the oral hearing or at another stage of the proceeding.

Board Counsel and Staff

Michael Millar

Colin Schuch

Rudra Mukherji

Union Gas Limited

Michael Penny

Crawford Smith

Filed: 2009-04-02
 EB-2009-0101
 Exhibit A
 Appendix D
 Schedule 2
 Page 1 of 1

UNION GAS LIMITED
General Service Bill Impacts

Line No.	Particulars	2008 Earning Sharing (1) (\$000's) (a)	Jul-Dec 2009 Forecast Delivery Volumes (10 ³ m ³) (b)	Unit Rate for Prospective Recovery (cents/m ³) (c) = (a / b) x 100	Volume (2) (m ³) (d)	Delivery Bill Impact (\$) (e) = (c x d) / 100
1	Rate 01	(2,811)	325,165	(0.8028)	1,013	(8.13)
2	Rate 10	(482)	162,395	(0.2971)	38,833	(115.38)
3	Rate M1	(6,102)	1,072,157	(0.5691)	829	(4.72)
4	Rate M2	(928)	418,954	(0.2214)	23,871	(52.85)

Notes:

(1) EB-2009-0101, Exhibit A, Appendix D, Schedule 1

(2) Average consumption, per customer, for the period July 1 to December 31, 2009

2009-06-05

EB-2009-0101
 Union Gas Limited
 General Service Bill Impacts
 Prefiled Evidence includes proposed \$15.203 Million Earnings Sharing

Line No.	Particulars	2008 Price Cap Index (\$000's)	2008 Price Cap Index (\$)	2008 Earnings Sharing (\$000's)	2008 Earnings Sharing (\$)	2008 Delivery-related Deferrals (\$000's)	2008 Delivery-related Deferrals (\$)	Bill Impact Delivery-related Deferrals (\$)	Bill Impact Delivery-related Deferrals (\$)	Bill Impact Price Cap & Earnings Sharing Only (\$)	Bill Impact Price Cap & Earnings Sharing & Deferrals (\$)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)=(b)+(d)+(f)
Northern & Eastern Operations Area											
1	Small Volume General Firm Service	01	0.94	(2,611)	(8.13)	(5,073)	(15.80)	(7.20)	(23.00)		
2	Large Volume General Firm Service	10	13.06	(482)	(115.36)	(4,757)	(1,137.53)	(102.32)	(1,239.85)		
Southern Operations Area											
3	Small Volume General Service Rate	M1	0.71	(6,102)	(4.72)	(1,126)	(0.87)	(4.01)	(4.88)		
4	Large Volume General Service Rate	M2	7.17	(928)	(52.85)	(3,542)	(201.81)	(45.68)	(247.48)		

Notes:

Col (a) 2008 Price Cap Index of 0.22%. See EB-2007-0606 Rate Order Working Papers Schedule 3, Column (m)

Col (b) Annual bill impact is calculated using 2008 approved annual volumes.

Col (c) 2008 Earnings Sharing prefiled amount of \$15.203 million. See EB-2009-0101, Exhibit A, Appendix D, Schedule 1 filed 2009-04-02. Excludes interest.

Col (d) Per EB-2009-0101, Exhibit A, Appendix D, Schedule 2, Column (e). Excludes interest.

Col (e) 2008 Delivery-related deferrals only (excludes UDC). See EB-2009-0052, Exhibit A, Tab 2, Schedule 1, Line 22 - Line 1, filed 2009-03-31. Excludes interest.

Col (f) Per EB-2009-0052, Exhibit A, Tab 2, Schedule 3, Column (g). Excludes interest.

2008-06-05

EB-2009-0101

Union Gas Limited

General Services Bill Impacts

Settlement Agreement includes \$34,170 Million Earnings Sharing

Line No.	Particulars	2008 Price Cap Index (\$000's)	2008 Price Cap Index (\$)	2008 Earnings Sharing (\$000's)	2008 Earnings Sharing (\$)	2008 Delivery-related Deferrals (\$000's)	2008 Delivery-related Deferrals (\$)	Bill Impact Delivery-related Deferrals (\$)	Bill Impact Price Cap & Earnings Sharing Only (\$)	Bill Impact Price Cap & Earnings Sharing & Deferrals (\$)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)=(b)+(d)	(h)=(b)+(d)+(f)	
Northern & Eastern Operations Area										
1	Small Volume General Firm Service	01	0.94	(5,867)	(18,28)	(5,073)	(15,80)	(17,34)	(33.15)	
2	Large Volume General Firm Service	10	13.06	(1,084)	(259.32)	(4,757)	(1,137.53)	(246.27)	(1,383.79)	
Southern Operations Area										
3	Small Volume General Service Rate	M1	0.71	(13,715)	(10.61)	(1,126)	(0.87)	(9.90)	(10.77)	
4	Large Volume General Service Rate	M2	7.17	(2,085)	(118.78)	(3,542)	(201.81)	(111.61)	(313.42)	

Notes:

- Col (a) 2008 Price Cap Index of 0.22%. See EB-2007-0606 Rate Order Working Papers Schedule 3, Column (m)
- Col (b) Annual bill impact is calculated using 2008 approved annual volumes.
- Col (c) 2008 Earnings Sharing - Settlement Agreement amount of \$34,170 million. Excludes interest.
- Col (d) 2008 Delivery-related deferrals only (excludes UDC). See EB-2008-0052, Exhibit A, Tab 2, Schedule 1, Line 22 - Line 1, filed 2008-03-31. Excludes interest.
- Col (e) Per EB-2009-0052, Exhibit A, Tab 2, Schedule 3, Column (c). Excludes interest.
- Col (f)