



Ryder Wright Blair & Holmes LLP

**333 Adelaide Street West, 3rd Floor Toronto ON M5V 1R5
T. 416-340-9070 F. 416-340-9250**

September 4, 2007

Ontario Energy Board
P.O. Box 2319
2300 Yong Street
Toronto, ON
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli :

Re: Application Regarding a T1 Contract Between
Union Gas Limited and Lanxess
Board File No. EB-2007-0717
Letter of Intervention by the City of Kitchener

Please treat this letter as Kitchener's Intervention in the above-captioned proceedings.

Description of the Intervenor

1. The Corporation of the City of Kitchener ("Kitchener") is an embedded gas distributor receiving storage space and storage deliverability services from Union Gas Limited ("Union") under the Board's Rate T3.
2. Kitchener's T3 contract with Union covering storage space and associated deliverability expires March 31, 2008.

Grounds for Intervention

3. Union has provided storage space and deliverability to its T1 and T3 customers at cost since the commencement of regulatory oversight under the *Ontario Energy Board Act* and its predecessors. The settlement agreement approved by the Board in RP-1999-0017 authorizing the aggregate excess method for the allocation of storage space did not address the provision of deliverability.
4. The evidence filed in proceedings before the Board show that there is no "standard deliverability" as Union is now asserting and that Union's in-franchise

customers receive at cost various levels of deliverability well above the 1.2% level.

5. The NGEIR Decision did not address the question of deliverability to Union's existing in-franchise customers and did not find that they are to receive only 1.2% deliverability at cost. Nor did this decision authorize deliverability above 1.2% at market prices.

6. Union has misinterpreted the NGEIR Decision as authority to limit the provision of cost based deliverability to the 1.2% level and to charge market prices for deliverability above 1.2%. Union's policy filed with the Board on February 2, 2007 and its post-NGEIR dealings with its customers have repeated this misinterpretation. The concerns of Kitchener (T3) and IGUA (T1) respecting Union's misinterpretation and approach were brought to the attention of the Board by correspondence dated February 13 and February 14, 2007 respectively.

7. The proceedings initiated by the Board in EB-2007-0724 and EB-2007-0725 are intended to address the appropriateness of policies of Union and Enbridge Gas Distribution Inc. ("Enbridge") respecting storage allocation and deliverability.

8. The instant application in EB-2007-0717 for the approval of Union's storage contract with Lanxess (the "Lanxess Application" and "Lanxess Contract") is the first opportunity to consider questions relating to

- a) the appropriateness of Union's post-NGEIR storage allocation and deliverability policy;
- b) the appropriateness of the Lanxess Contract in light of the determinations which the Board will make in EB-2007-0724 and EB-2007-0725.

Kitchener Materially Affected

9. Neither of these issues can be properly considered before the Board issues its decision in EB-2007-0724 and EB-2007-0725.

10. Kitchener is obliged to complete a new storage contract with Union effective April 1, 2008 covering both storage space and deliverability. It is important to Kitchener and to the regulation of storage generally in Ontario that conditions, terms and parameters of all storage contracts are consistent with the determinations to be approved by the Board in EB-2007-0724 and EB-2007-0725. Accordingly, Kitchener submits that the Board's consideration of the Lanxess Application should be deferred until the proceedings in EB-2007-0724 and EB-2007-0725 have been concluded. Only in this way can consistency be achieved.

11. In any event, and if the Board decides to proceed with its consideration of the Lanxess Application, Kitchener submits that it stands to be adversely affected by any approval of conditions, terms and parameters of the Lanxess Contract which can be subsequently invoked by Union in its forthcoming negotiations with Kitchener.

12. Kitchener is also concerned that the misinterpretation of Union noted in paragraph 6 (above) has been carried forward in the Lanxess Contract and that the parties to that contract are seeking approval inconsistent with the principles in NGEIR.

Scope of the Intervenors Intended Participation

13. Kitchener wishes to fully participate in the proceeding. It should be conducted by way of an oral hearing accompanied by pre-hearing Interrogatories and a settlement discussion opportunity in order to ensure there is a fair, open and thorough canvassing of the important questions raised by this Application. Kitchener does not seek an award of costs.

Objection to the Confidentiality Claim

14. Kitchener submits that the confidentiality claim in the Application be denied and that full disclosure provided to the participants on the following basis.

- a) Kitchener submits that all storage space and deliverability services to Union's in-franchise customers are regulated services and that confidentiality creates the antithesis of regulation. Regulation, to be effective, must be transparent.
- b) As regulated services the provision and rates respecting the allocation of storage space and deliverability are not governed by competitive considerations on which any claim for confidentiality must be based.
- c) Confidentiality over the terms, conditions and parameters of storage contracts will continue the discriminatory practices of Union which concerned the Board in NGEIR.
- d) Without full disclosure of the Lanxess Application and the Lanxess Contract, Kitchener is unable to determine if any term, condition or parameter could be invoked by Union to impose an unfair or unreasonable term condition or parameter on Kitchener. Further, without full disclosure, it will not be possible for any party to determine if any term, condition or parameter of the Lanxess Contract is inappropriate or inconsistent with the NGEIR Decision

and other Board Decisions respecting the regulation of storage in Ontario.

Service on the City of Kitchener

13. Service of all documents on the City of Kitchener in this application should be directed to:

Jim Gruenbauer
City of Kitchener
200 King Street West
P.O. Box 1118
Kitchener, ON N2E 1H7

Tel: (519) 580-3568
Fax: (519) 741-2633
Email: Jim.Gruenbauer@kitchener.ca

J. Alick Ryder, Q.C.
Ryder Wright Blair & Holmes LLP
333 Adelaide Street West, 3rd Floor
Toronto, ON M5V 1R5

Tel: (416) 340-9070
Fax: (416) 340-9250
Email: jaryder@rwbh.ca

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP

"Alick Ryder"

J. Alick Ryder, Q.C.
JAR:lo

Cc: Chris Ripley, Manager, Regulatory Applications
Union Gas Limited

Cc: All Participants in the proceeding that established Union's 2007 rates