



By E-mail

September 4, 2007

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Dear Ms Walli

**Union Gas Limited and LANXESS Inc. - Five Year Contract Extension  
(the "LANXESS Application")**

**Union Gas Limited and St. Clair Power LP - 20 Year Contract  
(the "St. Clair Power Application")**

**Board File Nos.: EB-2007-0717 (Union/LANXESS)  
EB-2007-0718 (Union/St. Clair Power)**  
**Our File No.: 302701-000420**

We are writing on behalf of our client, the Industrial Gas Users Association ("IGUA") with respect to the Notices of Application in the above-noted matters issued on August 24, 2007.

In the LANXESS Application, Union seeks approval of the parties to, the period of, and the space for storage that is the subject of a five year T1 Gas Storage Contract Amendment Agreement expiring October 31, 2012. In the St. Clair Power Application, Union seeks approval of the parties to, the period of, and the space for storage that is the subject of a 20 year T1 Gas Storage Contract expiring October 31, 2027. Distribution Services ("DS") are to be provided under each of the contracts.

There is no evidence to show the impacts that these two contracts will have on Union's ability to continue to meet the distribution and storage services needs of its existing in-franchise customers under the auspices of cost-based rates. In the absence of such evidence, there is a possibility that Board approvals of these contracts could have an adverse effect on Union's existing in-franchise customers and, in particular, on some or all of Union's existing T1 customers.

A matter of particular concern to IGUA is Union's attempt within the last several weeks to impose on some of its existing T1 customers so called market-based rates for a portion

Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
World Exchange Plaza  
100 Queen Street, Suite 1100  
Ottawa ON K1P 1J9  
tel.: (613) 237-5160 fax: (613) 230-8842  
www.blgcanada.com

PETER C.P. THOMPSON, Q.C.  
direct tel.: (613) 787-3528  
e-mail: pthompson@blgcanada.com

Vancouver  
•  
Toronto  
•  
Ottawa  
•  
Montréal  
•  
Calgary

of the storage injection and withdrawal services these T1 customers are currently receiving from Union under the auspices of cost-based rates.

The City of Kitchener and IGUA initially raised this matter with the Board several months ago. The City of Kitchener's letter to the Board dated December 20, 2006, raised the question of deliverability rights. The Board responded on January 10, 2007, indicating that this topic would be addressed in the yet to be scheduled proceeding pertaining to storage allocation matters. IGUA raised the matters of space and deliverability in its counsel's letter to the Board dated February 14, 2007. In that letter, IGUA also requested confirmation that Union would adhere to the status quo until proceedings with respect to the allocation of cost-based storage services were completed. The Board responded by indicating that these matters would be addressed in the "allocation proceeding" to be scheduled as a result of the NGEIR Decision. For your reference, the relevant correspondence is attached to this letter.

We have just received this morning the Board's Notice of Proceeding on Natural Gas Storage Allocation Policies.

What is before the Board for approval in these particular proceedings are two T1 Contracts for both storage space and DS. The redacted contracts which Union has provided do not reveal the manner in which the space injection and withdrawal features of the contracts have been derived. Board approval of the space allocation and the injection and withdrawal features of these arrangements could adversely affect the rights and interests of existing T1 customers in the upcoming Proceeding on Natural Gas Storage Allocation Policies.

IGUA has no desire to prevent the LANXESS and St. Clair Power Contracts from commencing to operate on November 1, 2007, provided that the rights of IGUA members are protected and issues with respect to storage space allocation and deliverability access are not pre-judged in any way.

In all of these circumstances, IGUA submits that any approval which the Board grants of the LANXESS and St. Clair Power Contracts be subject to the following conditions:

- (a) The approvals will be without prejudice to the rights of the parties in the upcoming Proceeding on Natural Gas Storage Allocation Policies;
- (b) Union confirms that the LANXESS and St. Clair Power Contracts will not have an adverse effect on Union's existing in-franchise customers and, in particular, on Union's existing T1 customers;
- (c) Union will disclose to interested parties the manner in which the storage space and deliverability features of the LANXESS and St. Clair Power Contracts have been determined with respect to both quantities and price; and
- (d) Until such time as the Proceeding on Natural Gas Storage Allocation Policies has been completed, the space and deliverability features of all the T1 Contracts

existing as of the date of the NGEIR Decision will continue in full force and effect.

IGUA's ability to participate in proceedings before the Board depends on the Cost Awards it receives. IGUA urges the Board to find that its participation in these proceedings is deserving of an award of 100% of its reasonably incurred costs.

Yours very truly

A handwritten signature in black ink, appearing to read 'P. Thompson', with a long horizontal flourish extending to the right.

Peter C.P. Thompson, Q.C.

PCT\VJD\slc  
enclosure

c. Chris Ripley (Union Gas Limited)  
Murray Newton (Industrial Gas Users Association)

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# APPENDIX A

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# RWBH

NGEIR

Ryder Wright Blair & Holmes LLP 333 Adelaide Street West, 3rd Floor Toronto ON M5V 1R5  
T. 416-340-9070 F. 416-340-9250

December 20, 2006

**VIA SAME DAY COURIER**

Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

**Re: EB-2005-0551 NGEIR RATES ORDER**

We act for the gas utility of the City of Kitchener in this matter. It has recently come to our attention that in a meeting with its T1 customers to discuss its proposals with respect to its storage allocation policy, Union Gas Ltd. is interpreting the Board's decision in NGEIR as:

- a. Fixing the level of cost based deliverability from storage to in-franchise customers at 1.2%;
- b. Authorizing market pricing for deliverability above 1.2%.

I am enclosing slides excerpted from a presentation to T1 customers on December 13, 2006 which illustrates Union's position.

It is submitted that Union's position on deliverability and its interpretation of the NGEIR decision are wrong. For the integrity of the Board's orders and for the benefit of clarity among Union's contract customers in their dealings with the utility it is submitted that the rates order in NGEIR should expressly state that it does not cover the allocation of storage deliverability for existing in-franchise customers.

The following background on the deliverability issue may be appropriate.

1. Deliverability is the maximum rate of withdrawal from storage. It is expressed as a percentage of the allocated space so that, for example, deliverability of 1.5% means that the customer can withdraw gas from storage equal to 1.5% of its space in any 24 hour period. If the deliverability from storage is insufficient in any 24 hour period to meet actual demand when combined with supply based on average forecast demand, then the deficit will likely be covered by the purchase of expensive winter gas. Otherwise the customer is exposed to penalties payable to Union. It will be seen that deliverability has a significant financial impact on customers.
2. Currently, all in-franchise customers receive their deliverability needs at cost. There is no standard level of deliverability applicable to Union's customers. The range is indicated by Exhibit J5.87 from RP-2003-0063 which I have taken the liberty of enclosing. As of that case, it shows a range running through T3 (1.5%) M2 (2.18%), M7 (2.52%) and SPS at 10%. The only Board approval that exists on deliverability relates to the allocation of deliverability costs (see Exhibit N19.6 also from RP-2003-0063). In NGEIR, the Board's approval of a standard 1.2% deliverability was the subject of agreement between Union and new power generation customers which have very different storage requirements from existing customers (see NGEIR decision at pp. 69-70). No Board approval for a level of cost based deliverability was either proposed or given by the Board in NGEIR for existing in-franchise rates customers.
3. Currently, among contract customers served under T1 and T3, deliverability is treated as a contract parameter to be negotiated. Charges for deliverability are applied on a cost-of-service basis under the approved Rate Schedule. No existing rate class, including T1 and T3 was faced with an application by Union for any alteration in their levels of deliverability in NGEIR or in the recent rates case of EB-2005-0520.
4. It will be seen from the current range of deliverability needs of Union's customers that market prices above 1.2% will significantly increase their deliverability costs. The excerpted slides from Union's recent meeting with T1 customers shows the intention to immediately implement its "1.2% cost based deliverability methodology" for all new T1 customers and non-grandfathered T1 renewals.

In the circumstances, it is submitted that a clarification by the Board by inserting in the NGEIR Rates Order a clause expressly stating that the Order does not address the allocation of deliverability as an asset to existing in-franchise

customers would avoid confusion and assist those customers in their subsequent dealings with the Utility. Given the relationship with EB-2005-0520 it may also be necessary to amend the Order in that proceeding as well.

Finally it is submitted that the Board should address the question of an appropriate level of deliverability for in-franchise customers so that the question can be determined in an orderly way and not through unilateral initiatives of Union. In this respect, Kitchener respectfully submits that the Board issue a Procedural Order at its convenience to set out the process and timeline to address the question. Due to the potential financial impact on affected customers, including intervenors in NGEIR such as Kitchener, it is submitted that the Board provide in this process full opportunity for these parties to participate in the decision making process. Further, and to ensure that the issue and its rate-making consequences will be controlled by the Board, it is asked that Union be directed to continue the pre-NGEIR practice of negotiating deliverability with contract customers and to terminate the practice of asserting that deliverability has been determined in NGEIR.

Yours truly,

**RYDER WRIGHT BLAIR & HOLMES LLP**

*"Alick Ryder"*

J. Alick Ryder, Q.C.  
Encls.

cc: All Participants of NGEIR, via email  
Dwayne Quinn, City of Kitchener, via email  
Jim Gruenbauer, City of Kitchener, via email  
Glenn Leslie, Blake, Cassels & Graydon LLP, counsel to Union Gas Ltd,  
via email

# **T1 Customer Meeting**

## **Cost-Based Storage Allocation Responding to OEB NGEIR Directive**

**Sheraton Four Points  
London Ontario  
December 13<sup>th</sup> 2006**

# Deliverability



- The Board recognizes that Union's standard cost-based storage service has 1.2% deliverability attached
- Deliverability among existing T1 customers today is quite varied
- Pursuant to the OEB's NGEIR Decision:
  - Deliverability up to 1.2 % of allocated space is available at cost based rates (firm and interruptible)
  - Anything greater than 1.2% at market price
    - Price to be determined annually
  - T1 customers will enjoy greater flexibility with market priced deliverability



# Implementation



- Adjustments to Grandfathered T1 customers will be made upon renewal - after the Board's decision is received
- Adjustments to existing long term contracts will be made upon contract renewal
- During the transition period between now and a Board decision
  - The 1.2% cost-based deliverability methodology will be implemented for all new T1 customers and non-grandfathered T1 renewals

Exhibit J5.87

Page 1 of 2

UNION GAS LIMITEDAnswer to Interrogatory  
from the City of KitchenerReference: Issue H.5.6Question

- a) Please provide a table showing the amounts of storage deliverability historically underpinning service at EBRO 494, EBRO 499 and since EBRO 499
- i) To the City of Kitchener  
ii) To rates M-2, M-4, M-9, M-7 and T-3
- b) What was Union's proposed level of storage deliverability for contract unbundled customers in RP-1999-0017? (U-2, U-7, and U-9)
- c) Please describe how SPS contributes to the deliverability of U-2. Please include in your explanation the allocations and deliverabilities attached to SSS and SPS.
- d) Please also provide a table showing the storage space historically underpinning service to the City of Kitchener at and since EBRO 494.

Answer

- a) The tables as requested are attached below:

i)

	EBRO 494	EBRO 499	RP-2003-0063
	Level of Deliverability		
CCK	1.84% *	1.69% *	1.50%

\* CCK included in Rate M9 Class

ii)

Rate Class	EBRO 494	EBRO 499	RP-2003-0063
	Level of Deliverability		
M2	2.49%	2.36%	2.18%
M4	3.01%	1.87%	2.50%
M9	1.84%	1.69%	1.71%
M7	0.08%	0.92%	2.52%
T3			1.50%

PL R4

Witness: Mark Kitchen / Pat McMahon  
 Question: July 24, 2003  
 Answer: August 13, 2003  
 Docket: RP-2003-0063

Exhibit J5.87

Page 2 of 2

- b) The approved Standard Storage Service (SSS) available to all unbundled rate classes includes storage deliverability of 1.2% for inventory levels greater than or equal to 20% of the allocated space.

The approved Standard Peaking Service (SPS) available to U2 customers only, includes storage deliverability of 10%.

The methodology and assumptions relating to the Standard Storage Service (SSS) and Standard Peaking Service (SPS) were discussed in RP-1999-0017, Exhibit B, Tab1, page 55 to 60 (Attachment #1). Further discussion and amendments to Union's position related to SSS and SPS appear in RP-1999-0017 Decision with Reasons, Appendix D, pages 22 to 25 (Attachment #2). Union also provided evidence related to the rate design of the SSS and SPS at RP-1999-0017, Exhibit B, Tab 4, pages 16 to 18 (Attachment #3). The Board approved the rate design as proposed by Union in its RP-1999-0017 Decision at para. 3.35 (Attachment #4).

- c) Please see part (b) above.

d)

	EBRO 494	EBRO 499	RP-2003-0063
	Storage Space ( $10^3 \text{ m}^3$ )		
CCK	69,000 (1)	75,922 (2)	89,300 (3)

Notes:

(1) Estimated.

(2) RP-1999-0017, Exhibit C19.15, Issue 1.3.3, Page 2 of 2, Line 5 (Attachment #5).

(3) As per their T3 contract.

Witness: Mark Kitchen / Pat McMahon  
Question: July 24, 2003  
Answer: August 13, 2003  
Docket: RP-2003-0063

**Ontario Energy  
Board**  
P.O. Box 2319  
26th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'Énergie  
de l'Ontario**  
C.P. 2319  
26e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone; 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL ONLY**

January 10, 2007

Mr. J. Alick Ryder, Q.C.  
Ryder, Wright Blair & Holmes LLP  
33 Adelaide Street  
3<sup>rd</sup> Floor  
Toronto, ON M4V 1R6

Dear Mr. Ryder:

**Re: EB-2005-0551 NGEIR Rates Order**

This will acknowledge receipt of your letter dated December 20, 2006 seeking a clarification on Union's interpretation of the Board's decision in this matter. The Board believes that this issue can be addressed when Union Gas submits its allocation methodology as directed in the NGEIR Decision.

Please direct any questions to Rudra Mukherji at 416-440-7608 or at [Rudra.Mukherji@oeb.gov.on.ca](mailto:Rudra.Mukherji@oeb.gov.on.ca).

Yours truly,

*Original signed by*

Peter H. O'Dell  
Assistant Board Secretary

cc: Dwayne Quinn, City of Kitchener  
Jim Gruenbauer, City of Kitchener  
Glenn Leslie, Counsel to Union Gas Limited  
NGEIR – All Parties

# RWBH

Ryder Wright Blair & Holmes LLP 333 Adelaide Street West, 3rd Floor Toronto ON M5V 1R5  
T. 416-340-9070 F. 416-340-9250

February 13, 2007

## VIA FACSIMILE TRANSMISSION

Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

### Re: **EB-2005-0551 NGEIR RATES ORDER**

We act for the Gas Utility of the City of Kitchener. The Board will have my letter of December 20, 2006 expressing concern over the fact that Union has interpreted the decision in NGEIR as having fixed the level of cost based storage **deliverability** to in-franchise customers at 1.2% and authorized market pricing for **deliverability** above 1.2%. My letter outlined some of the existing facts from other proceedings relating to deliverability for in-franchise customers. None of these facts were addressed in company proposals or in the evidence and argument in NGEIR. My letter, therefore, sought the Board's assurances that:

- a) any Order implementing NGEIR would confirm that it is not addressing the question of storage deliverability, and;
- b) the parties would be given an opportunity to fully address the question of appropriate deliverability in a future proceeding.

On January 10<sup>th</sup>, 2007, the Board responded to my letter stating that the matter can be addressed when Union submits its allocation methodology as directed in the NGEIR decision. Since the Board's letter, Union's responses to the Board's direction has been received. These responses contain Union's first proposals on deliverability for non-generator customers at 1.2%. In effect, Union's proposals on deliverability and on allocation methods form an application to the Board to be considered at a hearing. Accordingly, it is submitted that it would not be

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appropriate for the Board to issue an Order in NGEIR until after it has completed its hearing on Union's recent proposals.

In addition, it is noted that the Board has recently received three applications to review the decision in NGEIR. It is submitted that the need to make a determination on these applications provide an additional reason to defer the issuance of any Order in NGEIR.

I appreciate the Board's consideration of the above submissions.

Yours truly,

**RYDER WRIGHT BLAIR & HOLMES LLP**

*"Alick Ryder"*

J. Alick Ryder, Q.C.  
/rg

cc: Dwayne Quinn, via email  
Jim Gruenbauer, via email  
Glenn Leslie, via email  
NGEIR parties, via email



By E-mail

February 14, 2007

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> floor - 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms Walli

**Storage Allocation Proposals of Union Gas Limited**

**Board File No.: EB-2005-0551**

**Our File No.: 302701-000415**

Borden Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
World Exchange Plaza  
100 Queen Street, Suite 1100  
Ottawa ON K1P 1J9  
tel.: (613) 237-5160 fax: (613) 230-8842  
www.blgcana.com

PETER C.P. THOMPSON, Q.C.  
direct tel.: (613) 787-3528  
e-mail: pthompson@blgcana.com

We are writing to inform the Board that our client, the Industrial Gas Users Association ("IGUA"), does not yet regard the response that Union Gas Limited ("Union") has provided to the Board's NGEIR Decision directives with respect to Storage Allocation to appropriately address the different requirements of IGUA members who obtain storage services as an component part of the distribution services provided to them by Union. Although IGUA and Union have had several useful discussions, whereby Union has responded to some of the concerns of our members, IGUA would have preferred to continue these collaborative efforts before Union made its filing.

Therefore, we write to inquire whether we can safely assume that the Board will not rule on the appropriateness of Union's response to the Storage Allocation directives contained in the NGEIR Decision without first inviting comments thereon from parties adversely affected by the proposals and allowing them to file any responding information which they wish the Board to consider. In other words, can we assume that no orders will issue implementing Union's Storage Allocation proposals without first allowing those affected thereby to be heard? Can we assume that, for the time being, the status quo with respect to storage services for T1 customers will prevail?

Similarly, IGUA has questions about Union's proposals to change the deliverability access rights for T1 customers. IGUA did not understand the issue of deliverability access rights for Union's T1 customers to be a matter in issue in the NGEIR proceedings. Once again, IGUA will continue to work with Union in an attempt to find ways to fairly address this issue. Can we assume that before issuing any orders with respect to deliverability access rights for T1 customers, the Board will first allow interested parties to be heard and that the status quo will prevail for the time being?

Yours very truly

Peter C.P. Thompson, Q.C.

PCT/slc

c. NGEIR parties

Murray Newton (Industrial Gas Users Association)

OTT01\3144428\1

Vancouver  
Toronto  
Ottawa  
Montréal  
Calgary

12

Ontario Energy  
Board  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

Commission de l'Énergie  
de l'Ontario  
C.P. 2319  
27<sup>em</sup> étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY EMAIL**

February 28, 2007

Peter C.P. Thompson, Q.C.  
Counsel for IGUA  
Borden Ladner Gervais LLP  
World Exchange Plaza  
100 Queen Street, Suite 1100  
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

**Re: Storage Allocation Proposals of Union Gas Limited**

We are in receipt of your letter dated February 14, 2007 in which you inquire regarding the Board's process in respect of the storage allocation proposal filed by Union Gas Limited ("Union") in accordance with the requirements of the November 7, 2006 Natural Gas Electricity Interface Review Decision.

The Board is in receipt of the proposals of both Union and Enbridge Gas Distribution Inc. ("Enbridge"), dated February 2, 2007 and February 6, 2007, respectively.

The Board is developing a process for the review and consideration of these proposals and will inform all interested parties from the EB-2005-0551 proceeding once that process is developed.

Yours truly,

*Original signed by*

Peter H. O'Dell  
Assistant Board Secretary

cc: All Interested Parties in EB-2005-0551