



ONTARIO ENERGY BOARD

STAFF SUBMISSION

Union Gas 2006 Deferral Accounts and 2006
Earnings Sharing Disposition

EB-2007-0598

September 6, 2007

BACKGROUND

Pursuant to Procedural Order No. 4 this document provides the submissions of Board Staff on a Draft Rate Order filed by Union Gas Limited ("Union") subsequent to the Board Decision and Order to this proceeding.

On April 27, 2007 Union filed an application requesting approval for final disposition and recovery of certain 2006 year-end deferral account balances and the 2006 year-end earnings sharing amount. Board File No. EB-2007-0598 was assigned to this application. Union proposed that the impacts resulting from the disposition be implemented on July 1, 2007 to align with the Quarterly Rate Adjustment Mechanism ("QRAM") proceeding. During the proceeding Union revised the proposed implementation date to align with the October QRAM.

On May 24, 2007 the Industrial Gas Users Association requested that a matter concerning the relief sought for certain deferred taxes, totaling \$10.524 million, proposed for recovery via the Earnings Sharing Mechanism be considered as part of an oral hearing (the "Deferred Taxes Issue"). The Deferred Taxes Issue is outlined in the Long-Term Peak Storage Services Account, Account No. 179-72 ("LSS account"). This can be found at Ex. A, Tab 1 of Union's evidence which states, "Included in the actual cost to provide storage services in 2006 is an increase in deferred income tax expense of \$10.524 million resulting from the Board's decision in the Natural Gas Electricity Interface Review."¹

On July 9, 2007 the Board held an oral hearing concerning the Deferred Taxes Issue.

On August 17, 2007, the Board issued its Decision and Order on Union's EB-2007-0598 application. In this decision, the Board declined to approve the disposition of the balances proposed by Union in the LSS account. In Union's EB-2007-0598 application, Union had claimed \$10.524 million as an increase in deferred income tax expense, and had recorded this in the LSS account, which when grossed up for taxes, equals \$16.475 million. According to Union's earnings sharing mechanism this would be shared 75/25 between ratepayers and shareholders resulting in a \$12.356 million debit to ratepayers. The Board ordered that the debit balance of \$9.341 million in this account be revised to

¹ Union Evidence, Exhibit A, Tab 1, page 11 of 29

a credit balance of \$3.015 million to ratepayers to eliminate the addition of the \$16.475 million towards Union's Cost to Provide Service in 2006.^{2 3 4}

On August 27, 2007 Union filed a Draft Rate Order for Rates Effective October 1, 2007 and supporting working papers, intending to reflect the Board Decision. In its Draft Rate Order, Union has made a debit adjustment of \$10.524 million to corporate earnings. This reduces the amount due to ratepayers through the earnings sharing mechanism as indicated in Union's revised earnings sharing calculation filed with the rate order.

The question staff seeks to answer is: should the deferred tax liability of \$10.524 million that was disallowed in the Board's decision be allocated in any part to ratepayers.

DISCUSSION AND SUBMISSION

In its August Decision and Order (EB-2007-0598) the Board denied Union's request to claim \$10.524 million of deferred taxes stating that, "...any liabilities associated with these [storage] assets should properly be associated with Union's newly formed ex-franchise storage service business."⁵ The Board continued, "The taxes associated with this line of business, including the deferred taxes residing in the account should form a part of this new undertaking."⁶ The Board pointed to similar treatment in past Board Decisions on ancillary services and stated, "This is the same treatment afforded to like liabilities associated with the divestiture of the ancillary services, detailed in Undertaking J1.3."⁷

The Board discussed the impact of the relief sought by Union and stated, "the treatment requested by Union would result in a significant cross-generational subsidy...it is inequitable that today's ratepayers should be burdened with costs that have accumulated [since 1997]."⁸

² Decision and Order, EB-2007-0598, page 10

³ Exhibit B3.3 (reproduced as the revised Table 3 at Exhibit A, Tab 1, Page 11 of 29 filed August 27)

⁴ Exhibit A, Tab 1, Page 11 of 29, Table 3.

⁵ Decision and Order, EB-2007-0598, page 9

⁶ Ibid.

⁷ Ibid; Undertaking J1.3: Transcript, July 9, page 60.

⁸ Decision and Order, EB-2007-0598, page 9

From the draft rate order it appears that Union takes the position that the Decision and Order either did not intend, or does not explicitly prohibit, the recovery from ratepayers of some portions of the deferred tax amount as would occur in its proposed adjustment to corporate earnings.

The portions of the Decision and Order reproduced above appear to indicate that the Board did not intend for the amount in question to be collected in rates at all. The Decision appears to indicate that the Board meant for the amounts of this debit to be allocated to Union's now unregulated ex-franchise storage service business.

If this view is in fact correct, then Union would need to refile its Rate Order without any part of the deferred tax liability of \$10.524 million that was disallowed in the Board's decision allocated to ratepayers.⁹

All of which is respectfully submitted

⁹ Union Draft Rate Order, EB-2007-0598, Appendix C.