



**uniongas**

A Spectra Energy Company

September 6, 2007

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario  
M4P 1E4

**Re: EB-2007-0606/EB-2007-0615 - Notice of Motion**

Dear Ms. Walli,

Please find enclosed Union Gas Limited's ("Union's") Notice of Motion to sever its application from Enbridge in the above mentioned proceedings.

Yours truly,

[original signed by]

Mike W. Packer, CMA, CIM  
Director, Regulatory Affairs

Enclosure

cc: EB-2007-0606 / EB-2007-0615 Intervenors of Record  
Michael Penny, Torys

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008;

**AND IN THE MATTER OF** a combined proceeding Board pursuant to section 21(1) of the *Ontario Energy Board Act*, 1998.

### **NOTICE OF MOTION**

Union Gas Limited (“Union”) brings this motion for an order varying the Ontario Energy Board’s July 13, 2007 Decision and Order in these proceedings.

THE MOTION IS FOR an order that Union’s application for rates effective January 1, 2008 be severed from these proceedings and proceed independently of the Enbridge Gas Distribution Inc. (“Enbridge”) 2008 rate application on an expedited schedule.

#### **THE GROUNDS FOR THE MOTION ARE:**

1. Procedural Order No. 1 in these proceedings provided for the applicants’ evidence to be filed by July 9 and for a hearing to commence October 4, 2007. Union filed its evidence on June 28, 2007. Enbridge was unable to meet the existing deadline and sought extensions to the schedule of proceedings, including an extension for the filing of its evidence to August 2, 2007. The Board’s Decision of July 13, 2007 and Procedural Order No. 3 provided for an extension to the filing of Enbridge’s evidence to August 2, 2007 and for a joint hearing to commence October 25, 2007. Union’s request that its application proceed independently of Enbridge in accordance with the original schedule was denied.
2. Enbridge was unable to file all of its evidence on August 2, 2007. Following further submissions on scheduling concerns (again, having nothing to do with Union or its application), the process in these proceedings was further delayed, resulting in a schedule under which Enbridge would file its remaining evidence in two tranches on September 4 and 25, answers to interrogatories would be filed by

the applicants on September 4 and the hearing would to commence December 6, 2007.

3. Union filed all of its interrogatory responses on September 4, 2007. Enbridge has not yet filed all of its evidence or its answers to interrogatories.
4. Union acknowledges that there may be sound reasons why Enbridge needed more time to file its evidence and interrogatory answers. However, Union is concerned that there will be further delays and a further rolling back of the scheduled commencement date for the hearing in this matter.
5. The evidence Enbridge has filed to date also makes it abundantly clear that Enbridge's application for an incentive mechanism to fix rates in 2008 is radically different from the proposal Union has made. Enbridge is proposing a revenue cap, calculated on a per customer basis (which will rely on a forecast of average number of customers) with pass-through adjustments for capital expenditure costs for system safety & integrity, leaves to construct and CIS/customer care costs. Enbridge also appears to be planning to complete cost allocation studies during the term of the incentive regulation plan. Union's proposal contains none of these features. In addition, Enbridge still has to file evidence on and deal with outstanding issues related to its customer information system. All these factors suggest that the potential for efficiencies and economies in a joint hearing are eliminated or dramatically reduced.
6. Although the current schedule contemplates a total of only 12 hearing days, Union considers it highly unlikely that two totally different rate proceedings for the province's two major gas distributors can be concluded in only 12 hearing days.
7. As a result of the scheduled changes to the commencement date of the hearing, and the likely implications of those changes for when a hearing would be concluded and a decision rendered, Union and its customers will be prejudiced by the additional retroactivity in implementing 2008 rates. In particular, with a hearing now scheduled to start no earlier than December 6, 2007, it is unlikely that Union would be in a position to implement 2008 rates before June, 2008 at the earliest.
8. Union, therefore, in light of these changed circumstances and new facts asks the Board to reconsider its Decision and Order of July 13, 2007 and to direct that Union's application for new rates commencing January 1, 2008 proceed on an expedited schedule independently of the application of Enbridge.

UNION WILL RELY ON:

- (a) Rules 42 to 44 of the Ontario Energy Board Rules of Practice and Procedure;
- (b) The affidavit of Mike Packer sworn September 6, 2007.

**Torys LLP**

Suite 3000, Maritime Life Tower  
P.O. Box 270  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1N2

**Michael Penny**

Tel: (416) 865-7526  
Fax: (416) 865-7380

DATED: September 6, 2007

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008;

**AND IN THE MATTER OF** a combined proceeding Board pursuant to section 21(1) of the *Ontario Energy Board Act*, 1998.

**AFFIDAVIT OF MIKE PACKER**  
**(sworn September 6, 2007)**

I, Mike Packer, of the Municipality of Chatham-Kent, MAKE OATH AND SAY:

1. I am the Director, Regulatory Affairs for Union Gas Limited (“Union”) one of the Applicants in these proceedings, and as such have knowledge to which I hereinafter depose.
2. Procedural Order No. 1 in these proceedings provided for the evidence of Union and Enbridge Gas Distribution Inc. (“Enbridge”) to be filed by July 9 and for a hearing to commence on October 4, 2007.
3. Union filed its evidence on June 28, 2007. Enbridge, however, due to the unique circumstances related to its 2007 rate case, was unable to meet the existing deadline and sought extensions to the schedule of proceedings, including an extension for the filing of its evidence to August 2, 2007.
4. The Board received submissions on this request on July 13, 2007. Union’s position was that if the request for an extension of time were granted, its application should proceed

independently of Enbridge in accordance with the original schedule. Union's request was denied.

5. The Board issued its decision and Procedural Order No. 3 dated July 16, 2007. Procedural Order No. 3 established a new schedule under which Enbridge's evidence was to be filed by August 2, 2007 and a joint hearing to determine rates for both utilities, effective January 1, 2008, was scheduled to proceed commencing on October 25, 2007.

6. Enbridge was unable to file all of its evidence on August 2, 2007. There were then additional submissions on scheduling. None of the grounds for further delay arose from Union's application or timetable. As a result of further submissions on scheduling, the process in these proceedings was further adjusted. The new schedule, embodied in Procedural Order No. 5, contemplated that Enbridge would file its remaining evidence in two tranches on September 4 and 25, 2007, that answers to interrogatories would be filed by the applicants on September 4, 2007 and that the hearing would commence December 6, 2007.

7. The evidence Enbridge has filed to date makes it abundantly clear that Enbridge's application for an incentive mechanism to fix rates in 2008 is radically different from the proposal Union has made.

8. Enbridge is proposing a revenue cap, calculated on a per customer basis (which will rely on a forecast of average number of customers) with pass-through adjustments for capital expenditure costs for system safety & integrity, leaves to construct and CIS/customer care costs. Enbridge also appears to be planning to complete cost allocation studies during the term of the incentive regulation plan. Union has proposed a price cap with none of these features. In addition, Enbridge still has to file evidence on and deal with outstanding issues related to its customer information system. All these factors suggest that the potential for efficiencies and economies in a joint hearing are eliminated or dramatically reduced.

9. Although the current schedule contemplates a total of only 12 hearing days, commencing December 6, 2007, based on my experience with regulatory proceedings before the Ontario Energy Board, I believe it is highly unlikely that two different rate proceedings for these two gas distributors can be concluded in only 12 hearing days.

10. Union filed its interrogatory responses on September 4, 2007. Enbridge has not yet filed all of its answers to interrogatories.

11. Union acknowledges that there may be sound reasons why Enbridge needed more time to file its evidence and interrogatory answers. Indeed, the circumstances facing Enbridge are vastly different than the circumstances facing Union, which simply serves to emphasize the different nature of the applications and how the two utilities are differently situated.

12. As a result of the additional scheduling delays in the conduct of these proceedings, and the increasing high likelihood that substantially more than 12 hearing days will be required to conclude the hearing in this matter, Union and its customers will be prejudiced by additional retroactivity in implementing 2008 rates. Union now believes in light of the known and anticipated further delays and when a decision is likely to be rendered by the Ontario Energy Board in this proceeding, it will not be in a position to implement 2008 rates before June 2008 at the earliest.

13. In light of these changed circumstances and new facts, therefore, Union asks the Ontario Energy Board to reconsider its decision and Order of July 13, 2007 and to direct that Union's application for rates commencing January 1, 2008 proceed on an expedited schedule independently of the application of Enbridge in this matter.

SWORN BEFORE ME at the  
Municipality of Chatham-Kent, in the  
Province of Ontario, on September 6,  
2007.

[original signed by Dan Jones]  
Commissioner for Taking Affidavits

[original signed by]

Mike Packer