



uniongas

A Spectra Energy Company

September 11, 2007

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2007-0606/EB-2007-0615 – Notice of Motion - Factum

Dear Ms. Walli:

Please find enclosed Union Gas Limited's ("Union's") factum outlining their submissions for the hearing of the Motion, September 13, 2007.

Yours truly,

[original signed by Joanne Clark for]

Mike Packer
Director, Regulatory Affairs

Enclosure

cc: All EB-2007-0606 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.

**UNION GAS LIMITED
ARGUMENT**

PART I - FACTS

Overview

1. This is a motion by Union Gas Limited (“Union”) for reconsideration of the Board’s decision not to allow Union’s application in this matter to proceed independently from Enbridge Gas Distribution Inc. (“Enbridge”). The motion is based on changed circumstances and new facts since the first order was made. The key changes/new facts are:

- (a) it is now clear, from the evidence Enbridge has filed, that the two proposals are radically different, such that any economics or efficiencies of a joint proceeding to deal with common issues are likely to be small to nonexistent; and
- (b) the delays to Union involved in having this matter proceed as a joint hearing have, for reasons having nothing to do with Union or its application, ballooned from an initial three week delay (when the original order was made) to over two months. This delay results in uncertainty for Union and its customers and significant retroactive effects in implementing new rates for 2008.

Background

2. The Ontario Energy Board issued its report on the Natural Gas Forum in March of 2005. The NGF Report introduced the Board's plan to institute multi-year incentive regulation in the natural gas distribution industry effective January 1, 2008. The proceeding to address the features of incentive regulation was, in the original plan, to have been concluded by mid-2007.

Natural Gas Regulation in Ontario: A Renewed Policy
Framework, Ontario Energy Board, March 30, 2005
("NGF Report")

September 14, 2005 Letter from the Board Secretary

3. The goals for incentive regulation articulated in the NGF Report were sustainable gains in efficiency, appropriate quality of service and the creation of an attractive investment environment.

NGF Report, pp. 18-19

4. Stakeholder consultations on multi-year incentive regulation for gas distribution utilities in Ontario began a year ago, in September 2006, and carried on through November 2006.

5. A detailed discussion paper on multi-year incentive regulation was released by Board staff in January 2007.

Staff Discussion Paper on an Incentive Regulation Framework for
Natural Gas Utilities, January 5, 2007

6. The initial draft of the Pacific Economics Group incentive regulation study and recommendations, commissioned by the Ontario Energy Board, became available on March 30, 2007.

Pacific Economics Group, Price Cap Index Design for Ontario's
Natural Gas Utilities, 30 March 2007

7. Although it was originally contemplated that the incentive regulation process would be a Board sponsored process, as a result of intervenor concerns the Board asked Union to initiate its own utility specific application. Union did so by filing its present application on May 11, 2007.

Application of Union Gas, EB-2007-0606, May 11, 2007

The Initial Three Week Delay

8. The Board's Procedural Order No. 1 in this proceeding required the applicants' evidence to be filed by July 9, 2007 and provided for a hearing to commence on October 4, 2007. Union filed its evidence on June 28, 2007.

OEB Procedural Order No. 1

9. Enbridge could not meet the initial deadline and asked for a three week extension -- to August 2, 2007 -- for the filing of its evidence.

10. At a hearing held on July 13, 2007, Union asked, if Enbridge's extension were granted, that Union's application proceed independently. The Board ultimately denied that request and granted Enbridge's request for an extension.

11. It is important to note that at the time the extension was granted and Union's request to proceed independently of Enbridge was denied, the common understanding of the Board, the applicants and intervenors was that the consequences of the extension of time for Enbridge to file its evidence was a total delay of only three weeks, i.e., it was contemplated that the hearing of this matter would commence October 25, 2007. These expectations were embodied in the Board's Procedure Order No. 3, which reflected the Board's decision of July 13 and provided for Enbridge to file its evidence by August 2, 2007 and for a hearing to commence October 25, 2007.

OEB Procedural Order No. 3

The Two Month Delay

12. As a result of circumstances having nothing to do with Union or its application, however, the Board's August 31, 2007 Procedure Order No. 5 now contemplates additional pre-hearing processes relating to Enbridge's application which will delay the commencement of the hearing until at least December 6, 2007.

Affidavit of Mike Packer sworn September 6, 2007 ("Packer Affidavit"), para. 6

OEB Procedural Order No. 5

13. Union's concerns throughout have been achieving certainty around how the framework will work, both from a customer and an investment point of view and the avoidance or minimizing of retroactivity in the implementation of Union's 2008 rates. Certainty is important in the commercial context for purposes of financial planning and decision making. The avoidance of retroactivity beyond a January 1, 2008 implementation date is important, not only to avoid retroactivity of any kind, but because any retroactivity after that date is occurring during the winter months when customer consumption is at its highest, thereby exacerbating the financial impact of any retroactively implemented rate changes.

Union Submission, July 13, 2007

Packer Affidavit, para. 12

14. The delays contemplated at the time of the July 13, 2007 hearing and Procedure Order No. 3 involved the likely implementation of 2008 rates in April of 2008.

Union Submissions, July 13, 2007

15. With the additional delays embodied in Procedure Order No. 5 and a hearing not starting until December 6, 2007, it is likely that Union will now not be able to implement new rates before June 2008.

Packer Affidavit, para. 12

The Applications Are Radically Different

16. It is clear from the evidence that has been filed that Enbridge's application is radically different from the proposal Union has made.

Packer Affidavit, para. 7

17. Enbridge has proposed a revenue cap, calculated on a per customer basis, which relies on annual forecasts of revenue requirement, average number of customers and throughput. Enbridge's proposed revenue cap also involves pass through adjustments for capital expenditure costs related to leaves to construct, power generation, system reinforcement and community expansion, system safety and reliability, and CIS/customer care costs. Enbridge also plans to assign its distribution revenue requirement to customer classes based on cost allocation study cost drivers such as peak day demand and customer numbers during the term of its incentive

regulation plan. In addition, the Board has indicated that it will deal with outstanding issues related to Enbridge's customer information system in this proceeding.

Packer Affidavit, para. 8

Enbridge Evidence: Exhibit B, Tab 1, Schedule 1 and Tab 4,
Schedules 1 & 2; Exhibit C, Tab 2, Schedules 1 and 2; Exhibit I,
Tab 1, Schedule 1

18. Union's proposed price cap incentive regulation mechanism has none of these features. It is clear, therefore, that the numerous additional features of Enbridge's proposed plan, and the attendant interrogatories, cross-examination and argument, will mean that significant segments of the evidence and the hearing will be devoted to issues that do not involve Union or its application at all. This will have the dual result that the potential for efficiencies and economies in the joint hearing will be eliminated or dramatically reduced and that the prospect of completing the hearing before the end of 2007 (as is currently contemplated in Procedure Order No. 5) is unlikely.

Packer Affidavit, paras. 8 and 9

PART II - ARGUMENT

19. Rule 42 of the Ontario Energy Board's Rules of Practice and Procedure provides for the review of the Board's orders and for the variation, suspension or cancellation of such orders.

20. The grounds to review a prior order, as listed in Rule 44, are not exhaustive but include changes in circumstances and new facts that have risen since the order was made.

21. In this case, a material factor in the Board's decision to deny Union's request to sever its application from that of Enbridge was that the perceived consequences of accommodating Enbridge's request for an extension would involve a delay of only three weeks.

22. Due to circumstances arising out of Enbridge's application having nothing to do with Union, the schedule for the hearing of this matter is now more than two months behind the original schedule prescribed in Procedure Order No. 1.

23. It also now clear from the evidence that has been filed that there are many significant issues raised by the Enbridge application that are not raised by the Union application, including:

- (a) the determination of an annual revenue requirement;
- (b) the determination of an annual customer attachment forecast;
- (c) the determination of an annual through-put forecast, including a forecast of heating degree days;
- (d) pass through adjustments for capital expenditure costs related to leaves to construct, power generation, system reinforcement and community expansion, system safety and reliability, and CIS/customer care costs ;
- (e) the assignment of distribution revenue requirement to customer classes based on cost allocation study cost drivers such as peak day demand and customer numbers; and
- (f) outstanding issues related to Enbridge's customer information systems.

24. It is therefore clear that large portions of the hearing will be devoted to exploring aspects of Enbridge's evidence that do not involve Union at all. Given the plethora of issues raised by the Enbridge application which are not relevant to Union's application and the radically different nature of the two applications themselves, it also seems unlikely that the hearing will result in efficiencies or economies or that it will be concluded before year end. This has the likely effect of creating even further delays in the implementation of 2008 rates. Specifically, Union now anticipates that even under the current timetable it would not be able to implement 2008 rates until June, 2008 at the earliest.

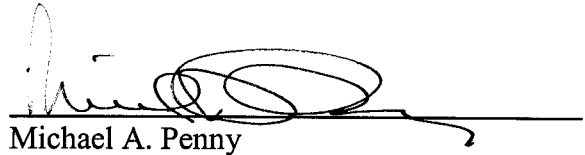
25. It is acknowledged that there may be some benefits to be achieved through hearing common issues examined in a joint proceeding. However, it is becoming increasingly clear, given how different the two proposals are, that "common" issues, to the extent there are any, are significantly outweighed by the differences between the two proposals. The mere fact that the issues list may articulate similar structural concepts cannot be sufficient. Otherwise, cost of service proceedings would be joint proceedings as well. It is the content, not the form, of the issues that determines commonality. Union submits, therefore, that any benefits of a joint proceeding are now outweighed by the complications arising from the divergent nature of the two proposals.

26. Union submits that the radically different nature of Enbridge's application from that of Union and the further procedural delays of over two months associated with the accommodation of Enbridge's unique scheduling needs constitute new facts and circumstances not known to the Board on July 13, 2007 when Union's request to proceed independently was rejected.

PART III - ORDER REQUESTED

27. Union, therefore, asks the Board to reconsider its earlier decision and to issue an order directing Union's application for new rates commencing January 1, 2008 to proceed on an expedited schedule independently of the application of Enbridge.

All of which is respectfully submitted

A handwritten signature in black ink, appearing to read 'Michael A. Penny', is written over a horizontal line.

Michael A. Penny
Torys LLP
Of Counsel to the Applicant,
Union Gas Limited