Ontario Energy Board

Commission de l'Énergie de l'Ontario

**EB-2007-0717**
**EB-2007-0718**

**IN THE MATTER OF** the *Ontario Energy Board Act,1998,* S.O. 1998, c. 15, Sched. B;

**AND IN THE MATTER OF** two applications from Union Gas Limited for orders of the Board approving the parties to, the period of, and the storage that is the subject of T1 Gas Storage and Distribution Contracts with LANXESS Inc. and with St. Clair Power LP.

**BEFORE:** Bill Rupert
Board Member

# DECISION AND ORDER

## THE APPLICATIONS

Union Gas Limited ("Union") has filed two applications, dated August 8, 2007, with the Ontario Energy Board under section 39 (2) of the *Ontario Energy Board Act, 1998* (the "Act") for orders of the Board approving the parties, the period of, and the space for storage that is the subject of T1 Gas Storage and Distribution Contracts (the "T1 Contracts") with LANXESS Inc. and with St. Clair Power LP.

The Board assigned file number EB-2007-0717 to the application regarding the LANXESS T1 Contract and EB-2007-0718 to the application regarding the St. Clair Power T1 Contract.

A Notice of Application for the proceedings was issued on August 24, 2007 and was served on all the participants in the EB-2005-0520 proceeding that established Union's 2007 rates. The City of Kitchener ("Kitchener") and the Industrial Gas Users Association ("IGUA") have been granted intervenor status in these proceedings.

In its letter of intervention, Kitchener objected to Union's request that the Board hold in confidence certain information in the contracts that Union considers commercially sensitive or customer specific.

The Board's Procedural Order No. 1 issued on October 9, 2007 provided a timeline for Union to reply to Kitchener's objection to the confidentiality request. Union filed its reply submission on October 15, 2007 and Kitchener filed a response to that submission on the same date.

The Board has now considered the confidentiality issue and its findings are described below. This decision applies to both the LANXESS and the St. Clair Power contracts.

## THE ISSUES

The T1 Contract between Union and LANXESS Inc., a chemical producer located in Sarnia, is for 206,000 GJ of space and has a five-year term. The other T1 contract is a 20-year agreement with St. Clair Power LP, which is constructing a gas-fired electricity generation plant near Sarnia. It is for 322,500 GJ of space.

Union filed the contracts for the Board's approval under section 39 (2) of the Act, which states:

> ***Gas storage agreements to be approved***
> *(2) No storage company shall enter into an agreement or renew an agreement with any person for the storage of gas unless the Board, with or without a hearing has approved,*
> *(a) the parties to the agreement or renewal;*
> *(b) the period for which the agreement or renewal is to be in operation; and*
> *(c) the storage that is the subject of the agreement or renewal.*

The Board has issued a Blanket Storage Order that permits Union to enter into storage contracts with in-franchise customers for volumes up to 2 Bcf with terms not exceeding 17 months without prior Board approval. The terms of the LANXESS and St. Clair Power storage contracts exceed 17 months and, therefore, Board approval of those contracts is required.

Union filed copies of the contracts with the Board and requested that customer information that it considers to be commercially sensitive be kept confidential in accordance with Rule 10 of the Board's Rules of Practice and Procedure. Union also filed a redacted version of each contract, and made that version available to intervenors. The redacted version discloses the amount of storage space and the term

of the contract but omits all other customer-specific information such as the customer's injection and withdrawal rights, daily contract demand, and firm contract demand.

IGUA and Kitchener expressed concerns about Union's request to keep certain contract information confidential. Both parties made reference to the Board's Proceeding on Natural Gas Storage Allocation Policies (EB-2007-0725), which is considering the methods Union should use to allocate storage to unbundled and semi-unbundled customers at cost-based rates. In a September 4, 2007 letter to the Board, IGUA stated:

> *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 requested that Union be required to 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 quantity and price.

Kitchener formally objected to Union's request for confidentiality. Kitchener submitted that:

a) All storage and deliverability services to in-franchise customers are regulated services, and confidentiality is the antithesis of regulation;

b) The amount of regulated storage space and deliverability, and the rates for service, are not governed by competitive considerations on which claims for confidentiality can be based;

c) Confidentiality of the parameters of storage contracts will continue what Kitchener described as Union's discriminatory practices; and

d) Without full disclosure of contract terms, it is not possible for Kitchener or any other party to determine if the T1 Contracts are consistent with the Board's decision in the Natural Gas Electricity Interface Review proceeding ("NGEIR Proceeding").

In its reply to Kitchener's objection, Union provided copies of letters from LANXESS and St. Clair Power supporting the request for confidentiality. LANXESS stated:

> *As one example of the sensitivity of the matters covered in the T1 contract, competitors and customers of LANXESS could potentially use the information contained in the T1 contract to develop a profile of LANXESS' consumption of natural gas and thereby derive information concerning production efficiencies and costs.*

St. Clair Power noted that: “The disclosure of certain contractual terms would affect the competitive position of St. Clair in regard to bidding the price of electricity into the Ontario Electricity System Operator.”

Kitchener made further submissions on October 15, 2007. It asserted that the letters from Union and the two customers do not provide any particulars on which a claim of confidentiality can be assessed. It noted that the letters did not address Kitchener’s concern that, without disclosure, there is no way for Kitchener to determine if the cost-based storage space and deliverability in the two T1 Contracts is more favourable than the amounts offered to Kitchener and other customers.

Kitchener asked for disclosure of the contract parameters and the assumptions underpinning those parameters, such as monthly and annual forecast of gas use and daily demand. In the alternative, Kitchener said it would hold its objection in abeyance provided one of its employees and its external legal counsel, who would execute confidentiality undertakings, could review the contracts.

## THE BOARD’S RULES ON CONFIDENTIAL FILINGS

The Board’s Practice Direction on Confidential Filings (the “Practice Direction”) sets out the procedures for the filing of confidential materials in proceedings before the Board.

The Board strives to strike a balance between the public interest in transparency and openness and the need to protect information that has been properly designated as confidential. It is the Board’s expectation that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure.

Appendix B of the Practice Direction lists some of the factors the Board may consider in addressing confidentiality filings. Those factors include the potential harm that could result from disclosure, such as prejudice to any person’s competitive position, and whether the disclosure would be likely to produce a significant loss or gain to any person.

Rule 10 of the Board’s Rules of Practice and Procedure sets out how the Board deals with objections to requests for confidentiality. Rule 10.04 states:

*After giving the party claiming confidentiality an opportunity to reply to any objection made under Rule 10.03, the Board may:*

*(a) order the document be placed on the public record, in whole or in part;*

*(b) order the document be kept confidential, in whole or in part;*

*(c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document prepared by the party claiming confidentiality be revised;*

*(d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or*

*(e) make any other order the Board finds to be in the public interest.*

## BOARD FINDINGS

A T1 contract contains many terms and conditions that are specific to the particular customer, including credit information, distribution parameters (such as firm and interruptible daily contract demand, and maximum hourly volume), firm minimum annual volume, and storage parameters (such as firm storage space and firm injection/withdrawal rights). A T1 contract also may include storage services that are provided at market rates, not regulated cost-based rates.

The Board is persuaded by the comments from LANXESS and St. Clair Power that at least some of the customer-specific information is commercially sensitive and that full disclosure of the terms of the contracts could prejudice the competitive positions of those customers. Therefore, the Board will not order Union to disclose all contract parameters, as requested by Kitchener, or to place unredacted versions of the contracts on the public record.

The concerns expressed by IGUA and Kitchener appear to relate largely to how much storage space and deliverability are being made available to LANXESS and St. Clair Power at regulated cost-based rates, and how those amounts were determined. Section 39 (2) of the Act requires the Board to approve the parties to the contract, the contract term, and “the storage that is the subject of the agreement or renewal.” The Act does not distinguish between storage space and storage deliverability.

Union’s applications in respect of the two T1 Contracts state that the company is applying for approval of the “space for storage” set out in each contract. Union has redacted from each contract all information about the amount of storage deliverability (that is, injection and withdrawal rights). This appears to be consistent with Union’s practice in past storage contract applications.

The Board has concluded that Union will be required to disclose certain information related to the storage space and deliverability features of the T1 Contracts. Section 39 (2) is not limited to storage space. In section 39 (2) proceedings that took place prior to the Board's November 7, 2006 decision on the NGEIR Proceeding, the level of deliverability might not have been important to the Board's deliberations on a contract; however, the NGEIR decision has changed several aspects of storage services and pricing in Ontario.

The Board's Proceeding on Natural Gas Storage Allocation Policies (EB-2007-0725), which is in process, is considering how much storage space and deliverability Union's unbundled and semi-unbundled customers should be entitled to acquire at regulated cost-based rates. The outcome of that proceeding will be Board-approved methods that will govern the amounts of space and deliverability available to in-franchise customers at cost-based rates. Until those methods are approved and are being implemented by Union, the Board believes interested parties in a section 39 (2) proceeding should be provided with information on how Union has determined the space and deliverability being made available at cost-based rates.

The Board has considered whether disclosure of information on the space and deliverability being provided at cost-based rates could potentially cause harm to the customers or prejudice their competitive positions. The Board finds that no such harm or prejudice will result from disclosure. Union's applications already disclose the amounts of storage space specified in the contracts. The Board is not aware of a circumstance in which disclosure of the method Union used to determine those amounts (or the amounts provided at cost-based rates, if those are less than the full contract amounts) could harm the competitive positions of the customers.

The Board will not require Union to disclose the customer-specific parameters that have been used to determine the space, such as average daily demand, nor will it require disclosure of any storage space being provided at market prices. The Board believes that information could be commercially sensitive and, in any event, is not required to respond to the issues of concern to IGUA and Kitchener.

As for deliverability, the Board also finds that disclosure of the amounts that will be provided at cost-based rates, and method of determining those amounts, is unlikely to harm or prejudice the customers. The issue of how much deliverability Union has provided, or should provide, to T1 customers at cost-based rates has been the subject of considerable discussion in the NGEIR Proceeding and, the Board understands,

meetings between Union and groups of T1 customers. It seems unlikely to the Board that competitors of either customer are unaware of generally how much deliverability Union makes available at cost-based rates. Again, the Board will only require disclosure of deliverability priced at cost-based rates; it will not require any disclosure of deliverability that is priced at market rates.

**THE BOARD ORDERS THAT:**

1. Union shall provide to the Board and interested parties by **October 31, 2007**, for each of the T1 Contracts, the following information in respect of storage services to be provided at Board-approved cost-based rates:

    - The amount of firm storage space (in GJs) to be provided at cost-based rates (if different from the amount of storage already disclosed by Union in its application) and the method used by Union to set that amount. If an amount has been determined using Union's aggregate excess method (as described in the NGEIR proceeding) or, in the case of St. Clair Power, in accordance with the method described in the June 13, 2006 Union settlement agreement in the NGEIR proceeding, it is sufficient to state that.

    - The amounts of firm injection and withdrawal rights (in GJ per day, and as a percentage of cost-based storage space) to be provided at cost-based rates and how Union determined those amounts.

2. The dates for filing of interrogatories and responses given in Procedural Order No. 2 remain unchanged.

**DATED** at Toronto, October 29, 2007

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli
Board Secretary