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APPRO

ASSOCIATION OF
POWER PRODUCERS
OF ONTARIO

April 29, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
Toronto, ON, M4P 1E4

**Re: EB-2010-0155 Union Gas STAR Compliance Plan
Submissions of APPRO**

Dear Ms. Walli

On April 9, 2010 the Board issued Procedural Order No. 1 for the above noted proceeding related to Union Gas' filing for certain tariff changes related to compliance with the Board's recent Storage and Transportation Access Rule (STAR). The Board issued the STAR pursuant to EB-2008-0052. The Procedural Order indicates that parties who were registered participants in EB-2008-0052 were automatically registered in EB-2010-0155. APPRO was a registered participant in EB-2008-0052. APPRO has also separately requested intervenor funding as indicated in the Order.

The changes advanced by Union related to the M12, C1 and M16 services. Gas-fired power generators currently use both M12 and C1 services. APPRO has reviewed Union's filing and has the following comments:

1. APPRO supports the vast majority of the changes requested by Union. These changes assist in making Union's tariff compliant with the STAR requirements. The changes requested by Union generally include:
 - a. Transferring a number of provisions from the base contract into the General Terms and Conditions (GTC) which forms part of the tariff
 - b. Adding new provisions as required by STAR
 - c. Providing for minor wording changes that do not change the underlying nature of the tariff
2. Clause V. 2 of the proposed General Terms and Conditions provides:
"Shipper agrees that Union is not a common carrier and is not an insurer of Shipper's gas, and that Union shall not be liable to Shipper or any third

party for loss of gas in Union's possession, except to the extent such loss is caused entirely by Union's gross negligence or wilful misconduct."

Although Union's proposed provision was taken from Union's existing M12 contract, to APPrO's knowledge, the provision has never been scrutinized or approved by the Board. However, now that it is being proposed as part of Union's tariff, it is appropriate for the Board to determine whether such provision is appropriate.

In determining whether the provision is appropriate, the Board must be guided by the objective of protecting the interests of consumers with respect to prices and the reliability and quality of gas service (as set out in section 2 of the *Ontario Energy Board Act, 1998*). The corollary provision on the electricity side (section 1 of the OEB Act) was very recently the subject of an Ontario Court of Appeal decision which found that the OEB fulfils its mandate to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service via its rate-setting function (*Toronto Hydro-Electric System Limited v. Ontario Energy Board*, Ontario Court of Appeal, April 20, 2010). The Court of Appeal found that this language justified the imposition of a condition on Toronto Hydro to have future dividends approved by a majority of their independent directors. Further, the Court held that a regulated utility must operate in a manner that balances the interests of the utility's shareholders against the interests of its ratepayers and if a utility fails to operate in this way, it is incumbent on the OEB to intervene in order to strike this balance and protect the interests of ratepayers.

The findings in the Court of Appeal case are equally applicable to the Board's role in regulating natural gas.

The provision proposed by Union does not represent a proper balancing of Union's interests with those of its ratepayers. The provision (below) proposed by APPrO represents an appropriate and fair approach to incidents where a Shipper's gas is lost while in Union's possession. The provision protects Union from liability associated with any such loss of gas unless the loss is attributable to Union's negligence or wilful misconduct. Further, the provision commits Union to assist the Shipper to mitigate and potentially recoup any losses suffered by the Shipper in the event of such a loss (regardless of the loss is attributable to Union's actions or those of a third party).

Proposed Provision:

Shipper agrees that Union is not a common carrier and is not an insurer of Shipper's gas, and that Union shall not be liable to Shipper or any third party for loss of gas in Union's possession, except to the extent such loss is caused by Union's negligence or reckless or wilful misconduct. In the event of a loss of Shipper's gas, Union shall, on a timely basis: (a) provide notice to the Shipper that such an event has occurred; (b) seek to obtain and share with Shipper detailed information as to the cause of the event and the identity of potentially responsible parties; (c) provide advanced notice to Shipper of any legal

***action to be commenced by Union in relation to the event; and
(d) in consultation with Shipper, to act diligently in
taking reasonable steps to recoup Shipper's losses from
any potentially responsible third party, including by way of legal
action at Shipper's direction and cost.***

1. Union proposed clause XVIII in the GTC relates to service curtailment. This new clause is not identical to the Priority of Service Policy #07-CM-POS-015 which is posted on Union's website. The body of clause XVIII does however refer to the posted policy. APPrO would like Union to clarify if it is proposing to modify the Priority of Service Policy at this time and if so what changes are proposed. Union also notes in XVIII 2, that it reserves the right to change its procedures for sharing interruptible capacity. APPrO is interested in knowing if as a result of such changes, Union will also revise its Priority of Service Policy and post such changes on a timely basis.

Sincerely

A handwritten signature in black ink, consisting of a large, loopy 'D' followed by a series of connected loops and a final horizontal stroke.

David Butters
President & CEO

cc: Karen Hockin (Union); John Wolnik; Richard King