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WeirFoulds LLP
BARRISTERS & SOLICITORS

November 28, 2007

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms Walli:

Re: Union Gas Limited Application to Purchase Shares of Tipperary Gas Corp./Ontario Energy Board File EB-2007-0837

We are counsel to the Consumers Council of Canada (the "Council"). On behalf of our client, and pursuant to the Notice of Application and Notice of Written Hearing, dated November 13, 2007 ("Notice"), we are providing comments on the proposal by Union Gas Limited ("Union") to purchase 75% of the shares of Tipperary Gas Corp. ("Tipperary").

The Board's Notice asks for comments on two questions, namely what is the effect of the proposed transaction on rational development and safe operation of storage and does the proposed transaction facilitate the maintenance of a financially-viable industry for the transmission, distribution and storage of gas.

It would appear, from its pre-filed evidence, that Union believes the test related to a "financially viable industry" is met in this case because Tipperary needs additional financing to complete the development of its storage pools. It is our position that that is too narrow a view of what constitutes a "financially viable industry". To be financially viable, a storage market must be a competitive one, that is one in which new competitors, large or small, can develop storage and compete effectively. Our client's concern is that the proposed transaction, by enhancing Union's dominant position in the marketplace, will increase the difficulty which relatively small entities may have in developing storage facilities. The acquisition will not contribute to this being a "financially viable industry".

It is our client's view that the notion of "rational development" must be seen in the context of the public policy objective of having a fully competitive storage market. In that context, enhancing Union's dominant position in the competitive market does not contribute to the "rational development" of the storage market.

The Council submits that the Board should not, and indeed can not, confine itself to only two of the objectives set out in section 2 of the *Ontario Energy Board Act*. The Board's public interest review requires it to consider objective 2, namely to protect consumers with respect to prices.

The Council, which represents the interests of the broad array of residential consumers of natural gas in Ontario, acknowledges that approving the transaction will not have an impact, in the short term, on the prices paid by residential consumers. However, the Board's recent decision in the NGEIR matter provides for a phasing out of the protection which, for example, the residential ratepayers of Enbridge Gas Distribution Inc. enjoy from the full effects of market pricing of storage. If Union continues to increase its dominant position in the storage market, its ability to charge whatever prices it wishes will, by the end of the phase-in period, be largely unfettered. Accordingly, the proposed transaction, to the extent that it enhances Union's dominance in the storage market, will, in the longer term, have an adverse impact on residential consumers.

We have had an opportunity to review Mr. Thompson's letter of November 28, 2007, expressing the concerns, with the proposed transaction, of his client, the Industrial Gas Users Association. In that letter, Mr. Thompson refers to other information which, as he puts it, "strongly indicates that Union's earnings from the unregulated segment of the storage business, which the NGEIR Decision creates, are and will be excessive and supernormal". We agree with Mr. Thompson that that information is relevant, and should be kept in mind when the Board considerers whether to approve the proposed transaction. The information referred to by Mr. Thompson is evidence, not just of the impact of the NGEIR Decision, but of the adverse effect of the dominant position of Union in the storage market.

Yours very truly,

WeirFoulds LLP

Robert B. Warren

RBW/dh
cc: Bill Huzar, Consumers Council of Canada
cc: Glenn Leslie, Blake, Cassels & Graydon, LLP
cc: Michèle Thébeau, Union Gas Limited

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