



By E-mail

November 23, 2007

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
World Exchange Plaza  
100 Queen Street, Suite 1100  
Ottawa ON K1P 1J9  
tel.: (613) 237-5160 fax: (613) 230-8842  
www.blgcanada.com

PETER C.P. THOMPSON, Q.C.  
direct tel.: (613) 787-3528  
e-mail: pthompson@blgcanada.com

Dear Ms Walli

**Union Gas Limited and LANXESS Inc. - Five Year Contract Extension**

**Board File No.: EB-2007-0717**

**Our File No.: 302701-000389**

This letter contains the submissions on behalf of the Industrial Gas Users Association (“IGUA”) with respect to approvals Union Gas Limited (“Union”) seeks for storage features of its long term obligated DCQ T1 Contract between Union and LANXESS Inc. (“LANXESS”) expiring October 31, 2012.

Union’s initial T1 Contract with LANXESS, effective November 1, 2006, was for a term of one (1) year, expiring on October 31, 2006. On August 15, a date subsequent to the release of the Board’s November 7, 2006 NGEIR Decision, Union and LANXESS amended the expiry date in the T1 Contract to October 31, 2012. This case presents an unusual situation in that the storage parameters, which the Board is being asked to approve, were negotiated prior to the Board’s NGEIR Decision and the long term duration of the Contract was negotiated after the date of the Board’s NGEIR Decision but before the Board has determined the storage allocation methodology issues which that Decision raises.

IGUA intervened in this proceeding because of its concern that any approvals granted herein might have an influence on the important storage allocation issues which the Board has listed for determination in the on-going proceedings with respect to the Natural Gas Storage Allocation Policies of Union and Enbridge Gas Distribution Inc. (the “Storage Allocation Case”).

In our September 4, 2007 letter to the Board and in the Intervention filed subsequently on behalf of IGUA, we stated that IGUA has no desire to prevent the T1 Contract between Union and LANXESS from operating provided that certain conditions were attached to the approval order. The conditions we proposed were as follows:

Calgary • Montréal • Ottawa • Toronto • Vancouver

- (a) That any Board approval of the Contract be expressly stated to be without prejudice to the rights of parties in the Storage Allocation Case;
- (b) That Union confirm that its T1 Contract with LANXESS will not have an adverse effect on Union's existing franchise customers; and
- (c) That Union disclose the manner in which the storage space and deliverability features of its T1 Contract with LANXESS have been determined with respect to both quantities and price.

In Exhibit A1.14, Union confirmed that its T1 Contract with LANXESS will have no adverse effect on its existing in-franchise customers. This response satisfies our proposed condition (b) above. This condition is no longer required.

As a result of the Board's Ruling in these proceedings on October 29, 2007, our proposed condition (c) is no longer appropriate. In its Ruling, the Board directed IGUA to pursue information requests with respect to matters of relevance to the issues in the Storage Allocation Case in that proceeding.

The Board's October 29, 2007 Ruling prompted Union to refuse to respond to IGUA's questions in Exhibits A1.8, A1.9, A1.11, A1.12 and A1.13. As a result, in this proceeding, complete details of Union's representations to LANXESS prior to the extension of the duration of the T1 Contract about the method or methods to be applied to determine the on-going storage space and storage injection and withdrawal parameters of its T1 Contract with LANXESS are unknown.

In its October 31, 2007 letter to the Board, Union advises that the Aggregate/Excess ("A/E") method and the 1.2% of Space method were applied to determine the space and deliverability parameters of the T1 Contract. IGUA notes that the space result for LANXESS is 206,000 Gjs, a volume amount which appears to be about the same result that would ensue by applying Union's "10 times DCQ" method for determining storage space. The obligated DCQ of LANXESS, which is shown in the redacted copy of the T1 Contract available on the public record, is 20,010 Gjs which leads to a space entitlement of 201,000 Gjs of Union's "10 times DCQ" method is applied.

In Exhibit A1.10, we asked whether Union agrees that LANXESS should have an opportunity to revise the storage features of its five (5) year T1 Contract to conform to whatever allocation methodology the Board approves. In its response, Union indicates that it will do whatever the Board directs it to do and adds that "Generally, unless otherwise mutually agreed to by both parties, the opportunity to revise contractual parameters is at the time of contract renewal." For LANXESS, contract renewal time is some five (5) years hence, in 2012.

At a DCQ multiple of 40, which IGUA believes is much more supportable than Union's DCQ multiple of 10, and with storage deliverability parameters based on the method applied by Union, prior to the NGEIR proceedings, for determining the deliverability parameters for its DCQ obligated T1 customers, LANXESS would receive considerably more regulated space and deliverability than the amounts allocated to it in its T1 Contract with Union.

In these circumstances, we urge the Board to consider whether the approval of the storage parameters of LANXESS's T1 Contract with Union, including the duration thereof, should be subject to a condition which provides LANXESS with a right to ask for revisions to the storage parameters of its five (5) year T1 Contract after the Board renders its storage allocation methodology decision and before the October 31, 2012 expiry date of the Contract.

After the Board renders its storage methodology decision, LANXESS can determine whether or not it has legitimate grounds for seeking Board-ordered revisions to the storage parameters of its T1 Contract before its October 31, 2012 expiry date. To obtain such relief, LANXESS will need to satisfy the Board that there are compelling circumstances for allowing the storage parameters of its Contract to be revised prior to the agreed upon expiry date.

Having regard to the foregoing, IGUA suggests that the storage parameters of Union's T1 Contract with LANXESS requiring approval be approved on the following conditions:

1. The approval will be without prejudice to the rights of all parties in the Storage Allocation case, and
2. The approval will be without prejudice to LANXESS's right, if so advised, to seek revisions to the storage parameters of its T1 Contract with Union after the Board renders its Decision in the Storage Allocation case proceeding and before the expiry date of the Contract on October 31, 2012.

As an intervenor eligible for Cost Awards, IGUA requests that Union be required to pay IGUA its reasonably incurred costs of participating in this proceeding.

Please contact me if the Board requires any further information.

Yours very truly



Peter C.P. Thompson, Q.C.

PCT\slc

- c. Interested Parties EB-2007-0717  
Chris Ripley (Union Gas Limited)  
Murray Newton (Industrial Gas Users Association)

OTT01\3337276\1