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January 7, 2008

VIA COURIER AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Union Gas / Enbridge Gas Distribution Inc. - Incentive Rate Regulation for Natural Gas Utilities
EB-2007-0606 / EB-2007-0615

We are in receipt of a letter dated January 4, 2008 from Mr. Penny enclosing new written evidence to be filed on behalf of Union Gas. We are also in receipt of a letter dated January 7, 2008 from Mr. Shepherd on behalf of the School Energy Coalition responding to the new evidence.

We understand from Mr. Penny's letter that "If intervenors require additional time to respond, Union has no objection to them being granted that option." With respect, it is unclear from Mr. Penny's letter whether Union proposes or accepts that the introduction of this new evidence requires interrogatories and a technical conference process, or whether Union is suggesting only that intervenors be granted time to file responding evidence.

We agree with Mr. Shepherd that Union should be required to file a motion seeking leave to have this new evidence considered by the Board in this proceeding. The filing of this new evidence falls outside all the timelines in the numerous procedural orders issued to date. On the basis of that motion the Board would consider

a) whether the evidence should be admitted, and

b) what conditions and procedural changes should be implemented in order to protect the rights of the parties responding to the evidence, assuming the Board is satisfied the evidence should be admitted.

Having only just received the evidence, we can only speculate pending further review as to what conditions and procedural changes may be required in the event the Board is satisfied the evidence should be considered. However it seems very likely that an interrogatory process, followed by a time period to obtain responding expert evidence, will be required before the issue can go to a hearing.

Mr. Shepherd raises an additional point, namely the possible impact of changing the evidentiary record on the settlement agreement. Again, we agree with Mr. Shepherd that it may be inappropriate for the Board to consider the Union Settlement Agreement until the issue of the new evidence is determined. Accordingly we support Mr. Shepherd's request that the Board defer the Settlement Agreement hearing until after a motion with respect to the new evidence has been heard, a decision has been rendered, and, if the Board accepts the new evidence into the record, the intervenors have had the opportunity to submit responding material.

Yours truly,

Michael Buonaguro
Counsel for VECC