

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of October 1, 2011.

NOTICE OF MOTION

Union Gas Limited (“Union”) will make a motion to the Ontario Energy Board (the “Board”) on September 13, 2011 at 9:30 a.m. or as soon after that time as the motion can be heard at the offices of the Board, 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

- (a) Leave, if necessary, to file the affidavit of Chris Ripley sworn August 31, 2011 (the “Ripley Affidavit”), in response to the motion brought by Canadian Manufacturers & Exporters (“CME”) returnable September 13, 2011.
- (b) Such further and other relief as the Board may deem just.

THE GROUNDS FOR THE MOTION ARE

Overview of CME’s Motion

- (a) By notice of motion dated August 15, 2011, CME has brought a motion for an order requiring Union to provide the amount of a one-time adjustment to the balance of Deferral Account No. 179-72 Long-Term Peak Storage Services (“Account 179-72”) to reflect changes sought by CME to the methodology used by Union in the calculation of the balance in Account 179-72.
- (b) CME seeks the requested relief for the purpose of making a retrospective adjustment to final orders of the Board made in EB-2009-0052 and EB-2010-

0039 deposing of the 2008 and 2009 year balances in Account 179-72, respectively.

- (c) Among the grounds for its motion, CME alleges that:
 - (i) Union's evidence in the EB-2009-0052 proceeding at Exhibit B5.5 incorrectly confirmed that the proposed methodology for allocating balances in Deferral Accounts No. 179-170 and 179-72 was consistent with that used by Union and approved by the Board in the past (para. 6);
 - (ii) Union's evidence in the EB-2010-0039 proceeding at Exhibit B7.2 incorrectly indicated that no changes had been made in the methods used to determine the amount of storage premiums allocated to ratepayers (para. 7);
 - (iii) Only in this proceeding were intervenors advised of the methodology used by Union in the calculation of the amount recorded in Account 179-72 (para. 8); and that,
 - (iv) Union has breached its obligations to make timely, transparent and complete disclosure to the Board of all deviations it made from the storage margin calculation methodology applied in the NGEIR proceeding (para.13).
- (d) All of CME's above allegations are inaccurate.

The Ripley Affidavit

- (e) As detailed in the Ripley Affidavit, Union is in possession of information directly responsive to the allegations in the CME motion. CME and other intervenors were aware of the method used by Union to calculate the amount recorded in Account 179-72 including the use of a "hurdle" rate in respect of storage related assets acquired by Union subsequent to the Board's NGEIR Decision to provide Long-Term Peak Storage Services.
- (f) More specifically, intervenors were aware that the "return" component of the costs attributable to Account 179-72 reflected a deemed return on the storage related assets employed by Union in the provision of long-term peak storage

services and that it had been calculated by taking a weighted average of the return on Union's storage related assets in place at the time of the NGEIR decision at the Board-approved rate of 8.54 percent together with the return on assets acquired subsequent to the NGEIR Decision at the rate of return required by Union's shareholder in respect of new development (i.e. the hurdle rate). Intervenor's were further aware that the weighted average return, expressed as a percentage, was 4.48 percent after taking account of Union's overall capital structure of 36 percent equity. The figure of 4.48 percent is also reflected on Ex. B6.01 (EB-2010-0039).

- (g) Given the serious, but unsubstantiated nature of the allegations made by CME, it is in the public interest that leave be granted, if necessary, to the file the Ripley Affidavit.
- (h) Granting leave to file the Ripley Affidavit will ensure a complete record before the Board on which it can render a decision.
- (i) Union has sought the consent of intervenors to the admission of the Ripley Affidavit which consent has been refused.
- (j) Further, to the extent CME seeks an order, the effect of which would be to vary the Settlement Agreement in EB-2010-0039, the Ripley Affidavit is relevant to the resolution of any ambiguity in relation to that agreement.
- (k) Rules 1.03, 2.01 and 2.02 of the Board's *Rules of Practice and Procedure*.
- (l) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion: *(List the affidavits or other documentary evidence to be relied on)*

- (a) The Affidavit of Chris Ripley, sworn August 31, 2011 (sealed).
- (b) The Responding Motion Record of Union Gas Limited served August 30, 2011.
- (c) Such further and other evidence as the lawyers may advise and the Board may permit.

September 6, 2011

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AND TO: **Intervenors in EB-2011-0038**