



By Electronic Filing and By Email

November 1, 2007

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

Dear Ms Walli

**Combined Proceeding
Enbridge Gas Distribution Inc. and Union Gas Limited Rates for 2008**

Enbridge Gas Distribution Inc. ("EGD")
Board File No.: EB-2007-0615

Union Gas Limited ("Union")
Board File No.: EB-2007-0606

Our File No.: 302701-000411

Please find attached a Factum submitted on behalf of the Industrial Gas Users Association ("IGUA") in connection with Union's Motion for interim relief.

The required paper copies will follow shortly.

Yours very truly

A handwritten signature in black ink, appearing to read 'Peter C.P. Thompson', is located below the 'Yours very truly' text.

Peter C.P. Thompson, Q.C.

\slc
enclosure

c. Interested Parties EB-2007-0606 and EB-2007-0615
Murray Newton (Industrial Gas Users Association)

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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 approving or fixing a multi-year incentive rate mechanism to determine rates for the regulated distribution, transmission and storage of natural gas effective January 1, 2008;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas effective January 1, 2008;

AND IN THE MATTER OF a combined proceeding before the Board pursuant to section 21(1) of the *Ontario Energy Board Act*, 1998.

FACTUM OF THE INDUSTRIAL GAS USERS ASSOCIATION (“IGUA”)

I. INTRODUCTION

1. In the Written Argument of Union Gas Limited (“Union”) circulated on October 23, 2007, Union identifies two (2) issues with respect to its Motion for interim relief. IGUA paraphrases these issues as follows:
 - (1) Should Union’s current rates be continued as interim rates effective January 1, 2008; or
 - (2) Should Union’s current rates be replaced by new interim rates effective January 1, 2008, and, if so, then at what level?
2. For reasons which follow, IGUA submits that Union’s current rates should be replaced with new interim rates effective January 1, 2008, which enable Union to recover the portion of the rate increase it seeks related to Storage Premium, Incremental Demand Side Management (“DSM”), and Gas Distribution Access Rule (“GDAR”) costs. The Board has already adjudicated upon these components of the rate changes Union seeks.
3. In a case such as this where there is no evidence to show that current rates will not produce the allowed return in 2008, an interim order changing current rates

should be confined to items upon which the Board has previously adjudicated. The components of rate changes proposed by Union which are in dispute should only become recoverable in rates after the disputes have been determined by the Board in accordance with the rules of natural justice. Accordingly, IGUA submits that the portions of the rate increase Union seeks related to its proposed Price Cap and its proposed Weather Normalization adjustment should not be recoverable in interim rates.

II. ARGUMENT

Issue 1 - Should Union's current rates be continued as interim rates?

4. If the Board agrees with IGUA and approves interim rates, effective January 1, 2008, which allow Union to recover the Storage Premium, the Incremental DSM and GDAR components of the rate changes it seeks, then Union's current rates should expire as of December 31, 2007. The new interim rates, effective January 1, 2008, will replace Union's current rates.

Issue 2 - To what extent should Union's current rates be changed by an interim order effective January 1, 2008?

5. Attached as Schedule A to this Factum is a document prepared by intervenor representatives and derived from Exhibit D, Tab 3, Schedule 3 of Union's evidence. Schedule A segregates the rate increase Union seeks between its Storage Premium, Price Cap, Weather Normalization, Incremental DSM and GDAR components.
6. The Board has previously adjudicated upon matters pertaining to the Storage Premium, Incremental DSM and GDAR costs. In these circumstances, IGUA submits that it would be appropriate to allow Union to recover these amounts in interim rates effective January 1, 2008.
7. The Weather Normalization component of the rate increase Union seeks should not be recoverable in rates before the appropriateness of this item, as a Base Rate Adjustment, and the appropriateness of other items pertaining to Base Rate Adjustments have been fully scrutinized at the hearing.
8. In addition to the Weather Normalization adjustment Union proposes, matters in dispute with respect to Base Rate Adjustments include:

- (i) The contingency that Union's current rates are too high and may need to be reduced before they become the base from which an Incentive Regulation ("IR") Plan operates; and
 - (ii) The under-allocation of storage rate base to ex-franchise storage services.
- 9. IGUA's submissions with respect to these Base Rate Adjustment items are summarized below.

(a) Weather Normalization Adjustment

- 10. IGUA and others oppose Union's request to change the weather normalization methodology used to derive its 2007 revenue requirement and rates on the grounds that the relief requested is incompatible with the Board's prior Decision in RP-2003-0063. In that proceeding, the Board rejected Union's 20 year trend methodology proposal and instead, directed Union to implement, for the longer term and in stages, a methodology based on an eventual 50/50 weighting of the 30 year average forecast and 20 year trend forecast respectively. Union is in the final stage of implementing the Board's prior Decision with respect to weather normalization.
- 11. The weather normalization adjustment Union seeks would, if granted, constitute a variance of the Board's prior Decision; yet Union has failed to follow the process and address the limited grounds upon which a variance order can be requested pursuant to the provisions of Rules 42 to 45 of the Board's *Rules of Practice and Procedure*.
- 12. Further grounds upon which IGUA opposes Union's request to vary the weather normalization methodology are that such methodology changes are incompatible with one of the objectives of IR which is to enhance the stability and predictability of rate setting.

(b) Rates True-Up Contingency

- 13. Union has not yet filed any evidence showing its actual/estimated normalized results for 2007, including the ROE that its existing rates are likely to produce in 2007. Union's Quarterly Report to its shareholders for the Third Quarter ending September 30, 2007, which should be available shortly, may shed some light on

the extent to which its current rates may be too high. As well, the Reporting and Recordkeeping Requirements ("RRR") filings requested by counsel for the Schools Energy Coalition ("SEC"), which Union seeks to produce in confidence, may assist the parties in evaluating the reasonableness of the level of Union's 2007 rates as a base from which an IR Plan will operate.

14. The only evidence in the record which IGUA has found pertaining to the level of returns being produced by Union's 2007 rates is contained in Schedule 2 of Exhibit C23.52 where 2007 utility ROE for Union is estimated at 8.75%. This estimated ROE exceeds Union's allowed ROE of 8.54% by 21 basis points. This evidence suggests that Union's 2007 rates may be too high and may need to be lowered before they become the base from which an IR plan will operate.

(c) Under-Allocation of Storage Rate Base to Ex-Franchise Storage Services

15. The evidence indicates that Union has only allocated 21% of the rate base value of storage assets to the ex-franchise storage services business, despite the fact that about one third (1/3) of Union's storage capacity is earmarked for the ex-franchise storage services market. The issue of the appropriateness of Union's allocation of storage-related rate base to the non-utility ex-franchise storage services business was neither raised nor considered in Union's 2007 rate case, which was settled and decided before the hearing in the NGEIR proceeding commenced. The matter of the appropriateness of Union's allocation of storage rate base to the ex-franchise storage services business only arises as a consequence of the Board's NGEIR Decision classifying Union's ex-franchise storage business as non-utility.
16. The information provided by Union pertaining to its allocation of 21% of the value of storage rate base to the ex-franchise storage services business, to which the Board refers at page 72 of its NGEIR Decision with Reasons, was provided by Union by way of an undertaking response to Board Panel Questions of Union during the course of its counsel's argument. The information was never tested during the course of the NGEIR proceeding and, on its face, the allocation of only 21% of the value of storage rate base to the ex-franchise storage services business appears to be unreasonable when one third (1/3) of the storage

capacity is earmarked for and is being used to serve the ex-franchise storage services market.

17. The evidence indicates that an allocation of 1/3 of the storage rate base to the ex-franchise services market would reduce Union's 2007 revenue requirement and rates based thereon by about \$8.37M.
18. In combination, Base Rate Adjustment proposals for true-up and for the under-allocation of storage rate base to ex-franchise storage services are in an amount which exceeds the amount of the revenue requirement and rate increases of about \$6.2M which Union's proposed weather normalization adjustment produces. The granting of any interim relief with respect to the weather normalization component of Union's rate increase request, without considering and granting offsetting interim relief with respect to the true-up and the under-allocation of storage rate base to the ex-franchise storage services, will be perceived as a pre-judgment, in Union's favour, of disputed matters in issue with respect to Base Rate Adjustments.

(d) Price Cap Index ("PCI") Value

19. With respect to Union's proposed PCI adjustment factor, the values to be ascribed to each of the component thereof are disputed. The untested evidence with respect to the components of a PCI adjustment factor for Union is capable of supporting findings that the sum of all components of the X factor will be more than sufficient to offset the currently forecast rate of inflation. In these circumstances, IGUA submits that any interim order which implies a PCI adjustment factor greater than zero will be perceived as a pre-judgment, in Union's favour, of disputed matters in issue.
20. IGUA further submits that the granting of any interim relief in Union's favour with respect to either the "Price Cap" or the "Weather Normalization" components of its rate increase request will materially prejudice the settlement negotiations between intervenors and Union scheduled to commence on November 14, 2007.

III. IGUA'S INTERIM RATE ORDER PROPOSAL

21. For all of these reasons, IGUA submits that any interim increase to Union's current rates, effective January 1, 2008, should be limited to the amounts shown for each rate class in Schedule A for the following items:
 - (a) "Storage Premium" totalling \$3.750M,
 - (b) "Incremental DSM" totalling \$1.7M, and
 - (c) "GDAR" totalling \$1.643M,for a grand total of \$7.093M.
22. All aspects of the rate changes proposed by Union and intervenors with respect to Base Rate Adjustments and the values to be ascribed to the component parts of a PCI adjustment factor for Union should not be recoverable in interim rates, effective January 1, 2008.
23. Any interim order increasing Union's rates should be specifically conditioned to be without prejudice to the rights of any parties and subject to refund or other adjustment when the Board's final Rate Order issues.
24. IGUA requests that it be awarded 100% of its reasonably incurred costs in connection with this motion for interim relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of November, 2007.



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SCHEDULE A

Sources of Rate Increase for Union Gas Interim Rates

Source: Exhibit D, Tab 3, Schedule 3

	Approved Revenue	Proposed Revenue	Change	Storage Premium	Price Cap	Weather Normalization	Incremental DSM	GDAR	Total Change	Check
R01	132,952	137,474	4,522	825	1,262	1,894	162	378	4,521	-1
R10	21,882	22,639	757	127	185	301	140	4	757	0
R20	7,444	7,669	225	41	83	0	101	0	225	0
R25	2,402	2,449	47	15	31	0	0	0	46	-1
R77	28	28	0	0	0	0	0	0	0	0
R100	<u>16,153</u>	<u>16,592</u>	<u>439</u>	<u>90</u>	<u>187</u>	<u>0</u>	<u>163</u>	<u>0</u>	<u>440</u>	<u>1</u>
Total North	180,861	186,851	5,990	1,098	1,748	2,195	566	382	5,989	-1
M1	359,454	371,912	12,458	2,047	5,447	3,170	541	1,252	12,457	-1
M2	51,350	53,014	1,664	236	363	831	225	9	1,664	0
M4	13,769	14,164	395	55	156	0	184	0	395	0
M5	8,038	8,180	142	37	105	0	0	0	142	0
M7	6,670	6,842	172	24	78	0	70	0	172	0
M9	592	602	10	2	8	0	0	0	10	0
M10	5	6	1	0	0	0	0	0	0	-1
T1	55,033	56,082	1,049	231	704	0	114	0	1,049	0
T3	<u>5,588</u>	<u>5,682</u>	<u>94</u>	<u>20</u>	<u>73</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>93</u>	<u>-1</u>
Total South	500,499	516,484	15,985	2,652	6,934	4,001	1,134	1,261	15,982	-3
Total	<u>681,360</u>	<u>703,335</u>	<u>21,975</u>	<u>3,750</u>	<u>8,682</u>	<u>6,196</u>	<u>1,700</u>	<u>1,643</u>	<u>21,971</u>	<u>-4</u>

Share of the Rate Change

	Storage Premium	Price Cap	Weather Normalization	Incremental DSM	GDAR	Total Change
R01	18%	28%	42%	4%	8%	100%
R10	17%	24%	40%	18%	1%	100%
R20	18%	37%	0%	45%	0%	100%
R25	33%	67%	0%	0%	0%	100%
R77	0%	0%	0%	0%	0%	0%
R100	<u>20%</u>	<u>43%</u>	<u>0%</u>	<u>37%</u>	<u>0%</u>	<u>100%</u>
Total North	18%	29%	37%	9%	6%	100%
M1	16%	44%	25%	4%	10%	100%
M2	14%	22%	50%	14%	1%	100%
M4	14%	39%	0%	47%	0%	100%
M5	26%	74%	0%	0%	0%	100%
M7	14%	45%	0%	41%	0%	100%
M9	20%	80%	0%	0%	0%	100%
M10	0%	0%	0%	0%	0%	0%
T1	22%	67%	0%	11%	0%	100%
T3	22%	78%	0%	0%	0%	100%
Total South	<u>17%</u>	<u>43%</u>	<u>25%</u>	<u>7%</u>	<u>8%</u>	<u>100%</u>
Total	17%	40%	28%	8%	7%	100%