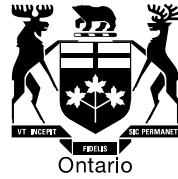


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**BY E-MAIL**

February 10, 2012

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

Dear Ms. Walli:

**Re: Board Staff Submission on Draft Rate Order  
Union Gas Limited 2010 Earnings Sharing & Disposition of Deferral  
Accounts and Other Balances  
Board File No. EB-2011-0038**

Please find attached the Board staff submission with respect to the above noted proceeding.

Yours truly,

*Original signed by*

Lawrie Gluck  
Case Manager

Attachments

C: Chris Ripley (Union)  
Crawford Smith (Torys LLP)  
All Intervenors of Record



# **ONTARIO ENERGY BOARD**

## **BOARD STAFF SUBMISSION DRAFT RATE ORDER**

**Union Gas Limited**

**2010 Earnings Sharing & Disposition of Deferral Accounts and Other  
Balances**

**Board File No. EB-2011-0038**

**February 10, 2012**

## **Background**

Union Gas Limited (“Union”) filed an application dated April 18, 2011 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2011 in connection with the sharing of 2010 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2010 year-end deferral account and other balances (the “Application”).

The Application also requested approval for a cost allocation methodology to be used to allocate costs between Union’s regulated and unregulated businesses. The Board assigned file number EB-2011-0038 to the Application.

## **The Proceeding**

A Notice of Application and Procedural Order No. 1 was issued on May 13, 2011, setting dates for interrogatories and responses to interrogatories. By letter dated June 14, 2011, the Federation of Rental-housing Provider of Ontario (“FRPO”), the Canadian Manufactures and Exporters (“CME”) and the City of Kitchener (“Kitchener”) (or the “Intervenor Group”) indicated that they intended to file intervenor evidence in this proceeding.

Procedural Order No. 2 was issued on June 17, 2011 setting out dates for supplemental interrogatories, intervenor evidence, interrogatories on intervenor evidence, responses to interrogatories on intervenor evidence, a Technical Conference, a Settlement Conference and a Settlement Proposal.

By letter dated August 9, 2011, Union advised the Board that the company and intervenors were unable to reach a settlement.

On August 15, 2011, CME filed a Notice of Motion (the “CME Motion”) for a Board 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) to reflect corrections for Union’s use, in its calculations of deferral account balances for 2008, 2009 and 2010, of certain items that CME alleged were unauthorized and did not constitute “costs” of providing unregulated storage services. The CME Motion also requested an

Order of the Board requiring Union to provide calculations of the Return on Equity it earned from its unregulated storage assets for 2008 and 2010 in a particular format.

Procedural Order No. 3 was issued on August 24, 2011, which set out the process for addressing the CME Motion.

On September 6, 2011, Union filed a Notice of Motion (the "Union Motion") for a Board Order granting Union leave to file the affidavit of Chris Ripley sworn August 31, 2011 (the "Ripley Affidavit"), in response to the motion brought by CME. Union noted that the Ripley Affidavit includes information that is directly responsive to the allegations in the CME motion. Union noted that 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. Union noted that granting leave to file the Ripley Affidavit would ensure a complete record before the Board upon which it can render a decision.

Procedural Order No. 4 was issued on September 8, 2011, which set out the process for addressing the Union Motion and set a date for the Oral Hearing.

On September 13, 2011, Union filed Minutes of Settlement relating to both the CME and Union Motions. The Minutes of Settlement stated that Union and CME had agreed to withdraw their respective motions on the following terms:

1. Union will file all of the information sought in the CME Motion;
2. The parties will not seek, directly or indirectly, any relief with respect to the Decisions of the Board in EB-2009-0052 and EB-2010-0039 regarding Deferral Account Nos. 179-70 or 179-72 or related thereto, including through a one-time adjustment to the balances in those accounts as contemplated by the CME Motion or otherwise;
3. Union will not take the position that acceptance by the parties in the settlement agreement in EB-2010-0039 of the disposition of Deferral Account Nos. 179-70 or 179-72 precludes the parties from challenging the correctness of the methods used in EB-2009-0052 and EB-2010-0039 in determining the balances in Deferral Account Nos. 179-70 or 179-72 and will not take the position that the

Board is precluded from approving in this application a different method of calculating the deferral account balances in those accounts in 2010;

4. Subject to paragraph 2 above, the parties will be at liberty to examine the material filed by Union and to argue that the methods of calculation used by Union, in determining the balances in Deferral Account Nos. 179-70 or 179-72, in 2008 and 2009 were incorrect, and that a different method or methods should be used in calculating the deferral account balances in those accounts in 2010;
5. Subject to its right to contest the amount of costs claimed, Union agrees that it will not contest a claim for costs, by the CME or other parties, with respect to the time spent in dealing with the CME Motion and the Union Motion.

As agreed in the Minutes of Settlement, on September 15, 2011 Union filed the information requested in the CME Motion.

On September 19<sup>th</sup> to 21<sup>st</sup> 2011, the Board held a hearing in regards to all matters in this proceeding. On the morning of September 21, 2011 the Board heard the argument-in-chief of Union. At the hearing, the Board set out the schedule for the remaining procedural matters. Namely, the filing of argument by Board staff and intervenors and the filing of reply argument.

On January 20, 2012, the Board issued its Decision and Order. The Board directed Union to file a Draft Rate Order which reflected the Board's findings in its Decision. The Board directed Union to include working papers in its Draft Rate Order which provide:

- An updated margin sharing calculation for the Long-term Storage account which reflects the Board's findings on this matter;
- An updated UDC account balance which reflects the Board's findings on this matter; and
- An updated ESM amount, if necessary, which reflects the Board's findings in this Decision.

The Decision and Order set out the schedule for the filing of the Draft Rate Order and for submissions on the Draft Rate Order.

## Submission

Board staff is of the view that the Draft Rate Order accurately reflects the Board's findings in this proceeding, with one possible exception discussed below.

In regards to the calculation of margin sharing in Account 179-70 Short Term Storage and Other Balancing Services ("Short-term Storage account"), CME filed a letter on January 27, 2012 which stated that the ratepayers' share of 2012 net short-term revenues should be \$0.831 million, rather than the \$0.657 million referenced in the Decision. Board staff agrees with CME.

Board staff notes that the Natural Gas Electricity Interface Review ("NGEIR") Decision set out the methodology for margin sharing of short-term storage transactions. In the NGEIR Decision, the Board stated that:

The Board finds that the entire margin on storage transaction that are underpinned by "utility asset" storage space, less an appropriate incentive payment to the utilities, should accrue to ratepayers...

As long as the utility and non-utility storage is operated as an integrated asset, it will not be possible to determine that any particular short-term transaction physically utilized space from either the "utility asset" or the "non-utility asset"...

Given the impossibility of physically linking a short-term transaction to a specific slice of storage space, the Board considered other methods of determining the amount of storage margins that should accrue to Union's ratepayers. The Board has decided that the calculation should be based on how the costs of the storage facilities are split between the utility and non-utility businesses. Specifically, Union's revenues in any year from short-term storage transactions, less any incremental costs incurred by Union to earn those revenues, should be shared by Union and ratepayers in proportion to Union's allocation of rate base between utility and non-utility assets...

The allocation is currently 79/21 utility/non-utility.<sup>1</sup>

Board staff is of the view that the Board's findings in the current proceeding effectively fix 100 PJs as the utility asset.<sup>2</sup> In addition, the Board findings speak to Union's ability to track what storage assets are being used for each type of storage transaction<sup>3</sup> and state that the entire amount of utility storage above in-franchise requirements is

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<sup>1</sup> See EB-2005-0551, NGEIR Decision with Reasons at pp.101-102.

<sup>2</sup> See EB-2011-0038, Decision and Order at p.6.

<sup>3</sup> See EB-2011-0038, Decision and Order at p. 16.

available for sale short-term storage services (and all costs of this space is to be paid for by in-franchise customers).<sup>4</sup>

Based on the above noted Board findings, Board staff submits that there is no longer a need to utilize the rate base allocator set out in the NGEIR decision to allocate margins in the Short-term Storage account. Board staff submits that all net revenues (minus a 10% incentive payment as set out in the NGEIR Decision<sup>5</sup>) in the Short-term Storage account should accrue to the benefit of ratepayers as it is a utility asset (i.e. the storage space between in-franchise requirements and 100 PJs) which is supporting these short-term transactions.

Board staff notes that CME's comments were not addressed in the Draft Rate Order filed by Union. Board staff has reviewed CME's letter dated February 9, 2012 and LPMA's submission dated February 10, 2012, and does not agree that a separate process needs to be established to deal with this issue, particularly since that process would essentially amount to providing submissions on the issue raised by CME, which the current process can adequately accommodate. There is sufficient time, in Board staff's view, to address this issue in the current Draft Rate Order comment process. If parties have not yet, but would like to address this issue, Board staff is of the view that comments should be included in the submissions due on February 10, 2012 or failing that, prior to February 14, 2012 subject to the Board granting a short extension. Since Union's reply submission is not due until February 17, 2012, Board staff is of the view that there is adequate time for Union to reply to such submissions if received before February 14, 2012. Board staff submits that this suggested process would serve to manage this issue in an efficient manner.

All of which is respectfully submitted.

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<sup>4</sup> See EB-2011-0038, Decision and Order at pp. 20-21.

<sup>5</sup> See EB-2005-0551, NGEIR Decision with Reasons at p.103.