



**EB-2011-0038**

**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.

## **PROCEDURAL ORDER NO. 5**

### **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. Submissions on the Draft Rate Order were scheduled to be due on February 10, 2012.

CME, LPMA, and FRPO requested that the Board establish a process for hearing argument in regards to the amount that should be shared with ratepayers in Account No. 179-70 (the "Short-term Storage Account"). Board staff and Union submitted that this issue could be sufficiently addressed as part of the existing Draft Rate Order submission process. Board staff suggested granting an extension until February 14, 2012 to all parties who wish to file (additional) comments on the Draft Rate Order.

The Board has decided to grant intervenors an extension until February 14, 2012 to make comments on the Draft Rate Order. Union's reply submission will still be due on February 17, 2012 as set out in the Decision and Order dated January 20, 2012.

Accordingly, the Board will make provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

## **THE BOARD ORDERS THAT**

1. Any intervenors who wish to make additional comments on the Draft Rate Order may do so before **Tuesday, February 14, 2012.**

All filings to the Board must quote file number **EB-2011-0038**, be made through the Board's web portal at [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to the [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

All parties must also provide the Case Manager, Lawrie Gluck, [Lawrie.gluck@ontarioenergyboard.ca](mailto:Lawrie.gluck@ontarioenergyboard.ca) with an electronic copy of all comments and correspondence related to this case.

**ISSUED** at Toronto, February 13, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary