

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;

REPLY SUBMISSION OF UNION GAS LIMITED

(on comments relating to the draft rate order)

Overview

1. This is the response of Union Gas Limited (“Union”) to the parties’ comments on the draft rate order provided by Union on February 3, 2012 (the “Draft Rate Order”). In its January 20, 2012 decision in this matter (the “Decision”) the Board directed Union to prepare the Draft Rate Order to reflect the Board’s findings in its Decision.
2. It is Union’s position that the Draft Rate Order reflects the Board’s findings in its Decision and should be approved.
3. The position advanced by CME in its letter filed January 27, 2012 that the ratepayers’ share of 2012 net revenues in Short-Term Storage and Other Balancing Services (179-70) (the “Short-term Storage account”) should be \$0.831 million, rather than the \$0.657 million referenced in the Board’s Decision, is procedurally misconceived. The preparation of a draft rate order is properly concerned with giving effect to a decision that the Board has already made. The process of preparing a draft rate order is not the proper context for new and inventive arguments about matters not explicitly dealt with by the Board, particularly where, as here, the Board expressly dealt with the calculation of margin sharing in the Short-term Storage account in its Decision. Accepting CME’s comments on the Draft Rate Order, and those of other parties and Board Staff in support of them, would result in litigation by installments.

4. Finally, if the Board accepts that Union's ability to track its non-utility storage position warrants a departure from the NGEIR Decision, then there is no need to distinguish between short-term and long-term storage at all. The logical consequence is that the categories of short-term and long-term storage should be abolished, not simply that the sharing of margin on the Short-term Storage account should be changed.

Sharing of 2012 net revenues in the Short-term Storage account

5. The Short-term Storage account includes revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing Services, C1 Short-Term Firm Peak Storage, and C1 Firm Short-Term Deliverability. The net margin for Short-Term Storage and Other Balancing Services is determined by deducting the costs incurred to provide the service from gross revenue.

Decision, p. 18

6. The margin available for sharing in the Short-term Storage account was in dispute in this proceeding. CME, LPMA and others who now object to the rate order took the position that the margin had been understated. Union disagreed. It was Union's position that the NGEIR calculation was unchanged. In the result, the Board agreed with Union.

Decision, p. 18

7. In the Decision, the Board found that the credit balance in the Short-term Storage account was \$0.657 million. Notwithstanding this finding by the Board, CME and others take the position that the ratepayers' share of 2012 net revenues in the Short-term Storage account should be \$0.831 million. Their position is procedurally misconceived. The preparation of a draft rate order is properly concerned with giving effect to a decision that the Board has already made. The process of preparing a draft rate order is not the proper context for new and inventive arguments about matters not explicitly dealt with by the Board, particularly where, as here, the Board expressly dealt with the calculation of margin sharing in the Short-term Storage account in its Decision.

Decision, p. 18

8. At page 18 of the Decision, the Board began its discussion of the Short-term Storage account. The Board recognized the basis upon which Union had calculated that the credit balance in the Short-term Storage account was \$0.657 million. The Board calculated this balance by comparing the actual 2010 net margin for Short-Term Storage Services of \$16.753 million to the net margin approved by the Board of \$15.829 million in the EB 2007-0606 Rate Order. The result is a net deferral credit of \$0.924 million. The Board adjusted the net deferral margin to \$0.730 million to reflect the 79% utility portion (EB-2005-0551), of which 90% or \$0.657 million is shared with ratepayers.

Decision, p. 18

9. The Board expressly dealt with the calculation of margin sharing in the Short-term Storage account in its Decision. It is not proper to attempt to reopen the issue in the context of comments on a Draft Rate Order. Accepting CME's comments would result in litigation by installments.

CME's position is inconsistent with existing rates

10. This proceeding relates to the clearance of deferral accounts during the five-year incentive rate period. Base rates established subsequent to the NGEIR Decision reflect the 79/21 split in rate base between utility and non-utility. That is, rates already include a credit to ratepayers of \$11.254 million (Rate Order Working Papers, Schedule 14) to reflect the 79/21 split and the 90/10 sharing. As Union indicated in its argument-in-chief, this allocation may and likely will change (Transcript 3, pp. 31-2).

11. Union is currently in an incentive rate-making period. To the extent this issue warrants consideration at all it should be raised in Union's rebasing proceeding (EB-2011-0210) later this year. Union indicated in argument-in-chief that it would raise this issue in the rebasing proceeding and it has done so (Transcript 3, pp. 31-2).

The logical consequence of CME's position

12. Finally, if the Board accepts the argument advanced by CME and others and concludes that Union's ability to track its non-utility storage position is a reason to depart from the NGEIR Decision in relation to the sharing of margin on short term transactions, then there is no need to distinguish between short-term and long-term storage at all. The logical consequence is that the categories of short-term and long-term storage should be abolished.

13. At page 6 of the Decision the Board held that 100 PJ shall be reserved as the utility asset. The remainder is non-utility. As a result, transactions (be they optimization or otherwise) that utilize only non-utility storage should be 100% to the account of the shareholder regardless of the length of the transaction. Equally, transactions which utilize the utility storage asset (again, regardless of the length of the transaction) should be to the account of ratepayers, subject only to the 10% incentive payment to the shareholder set out at pages 102-103 of the NGEIR Decision.

Other Issues

14. By letter filed February 13, 2012 CME complained that by failing to make submissions in chief that were responsive to CME's position on short-term revenues, Union deprived the other parties of an opportunity to comment on such a response from Union.

15. Here again CME's submission is procedurally misconceived. The Board's Procedural Order No. 4 was clear on the order of submissions to be made by the parties. The order of submissions was confirmed again by Procedural Order No. 5. CME cannot create for itself a right of reply by stealing a march on Union and making pre-emptive submissions on the Draft Rate Order.

February 17, 2012

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ONTARIO ENERGY BOARD

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EB-2011-0038

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**REPLY SUBMISSION OF
UNION GAS LIMITED**

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