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April 5, 2012

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

Dear Ms. Walli:

Re: Union Gas Limited - 2010 Earnings Sharing and Deferral Accounts and Other Balances
Response to CME Letter

A. Overview

We are counsel to Union Gas Limited ("Union") in this matter. This is Union's response to counsel for CME's letter dated March 27, 2012 (the "CME Letter").

The CME Letter seeks a "correction" to the Rate Order issued by the Board on February 29 to revise upwards the credit to ratepayers in respect of net short-term revenues from $0.831 million to $3.824 million. The CME Letter seeks this relief despite the final nature of the Rate Order, the fact that CME has not brought a motion to vary that Order, and the quantum ordered by the Board was based on its own assessment of the appropriate credit to ratepayers and a careful review of the draft rate order filed by Union to ensure that assessment had been carried out.

The central theme of the CME Letter is that CME and the Board were unaware of the basis upon which the amounts in Deferral Account 179-70 had been calculated. It is alleged that only subsequent to the Rate Order did it emerge that CME's submissions in respect of that order were based on a misapprehension as to the calculation of Deferral Account 179-70. Union is said to be at fault for this misapprehension. This submission, and the allegation that CME and the Board were misled, is devoid of any merit. It is based on a premise that CME was unaware of Schedule 14 to Union's 2010 Rate Order prior to the issuance of the Rate Order in this matter. That premise is faulty; Schedule 14 (or its predecessor) has been a feature of Union proceedings and rate orders since 2008; it has been the subject of interrogatories from CME and others in those proceedings; and it was explicitly cited in Union's Reply Argument in this matter.

B. Relevant Background

In what follows, we summarize the facts relevant to the relief requested and respond to certain mischaracterizations of those facts in that letter.

Calculation of Short Term Margin

The margin associated with short-term storage services offered by Union is shared between Union and its ratepayers. This sharing is reflected in two places: (1) Deferral Account 179-70 and (2) base rates.

Deferral Account 179-70. This account includes revenues from short-term peak storage, C1 off-peak storage, gas loans and other balancing services. The net margin available for sharing is determined by deducting the costs incurred to provide these services from gross revenues. The net margin is then compared to the Board approved forecast of short-term revenues ($15.829 million) with any excess or under recovery shared with ratepayers. In EB-2010-0039, Union described this Board approved methodology as follows. A similar description can be found in Union's evidence in each of its deferral account proceedings.

> The credit balance in the Short-Term Storage and Other Balancing Services deferral account is $4.949 million. The balance is calculated by comparing the actual 2009 net margin for Short Term Storage Services of $22.789 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 $6.960 million. The net deferral margin is adjusted to reflect the 79% Utility portion (EB-2005-0551) and is to equal $5.498 million, of which 90% or $4.949 million is shared with ratepayers. The details of the balance in the Storage Services deferral accounts are shown in Table 2 below. (Emphasis added.)[1]

Base Rates. Prior to NGEIR, Union shared short-term margins 90/10 in favour of ratepayers. In its EB-2005-0551 decision ("NGEIR") the Board found that beginning January 1, 2008, the margin associated with short-term storage services would be shared between Union and its ratepayers in proportion of the split between non-utility (21%) and utility (79%) storage related base rate. The Board found that all of the short-term margin arising from the use of the non-utility storage assets and 10% of the short-term margin arises from the use of storage assets would go to Union's shareholder.

Union began its 5 year incentive rate making program in 2008. Union's first rate proceeding under this program was EB-2007-0606. In its pre-filed evidence in that proceeding, Union indicated as follows:

> Union will be implementing the Board approved changes to the sharing of long-term and short-term storage premiums starting January 1, 2008.
>
> . . .
>
> The change in sharing associated with short-term storage margins is $2.922 million (Exhibit D, Tab 3, Schedule 15, line 7). The change in sharing of short-term sharing margin will only result in an adjustment to 2008 rates. (Emphasis added.)[2]

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[1] EB-2010-0039, Ex. A, Tab 1, p. 6

[2] EB-2007-0606, Ex. D, Tab 1, pp. 3-4

Consistent with Union's evidence, Schedule 15 indicated the change in rates from 2007 to 2008 arising from the NGEIR decision ($2.992 million). The Schedule also indicated the Board approved net margin associated with short-term storage transactions ($15.829 million). For convenience, line 7 of Schedule 15 is set out below.[3]

Union Gas Limited
Summary S&T Transactional Margin Included in 2008 Rates

Line No.	Particulars ($000's)	Total Revenue (1)	Allocated Cost (2)	Total Margin	Included in 2007 In-franchise Rates	Included in 2008 In-franchise Rates	Change in Sharing of Forecast S&T Margin
		(a)	(b)	(c)=(a-b)	(d)	(e)	(f)=(d-e)
...							
7	Total Short Term Storage & Balancing Services	17,961	2,132	15,829	14,246	11,254(4)	2,992
...							
Notes: (4) EB-2005-0551, Decision with Reasons, Section 9.1.2							

Following the Board's Decision in EB-2007-0606, Union prepared a draft rate order. Schedule 16 of the working papers filed with that order mirrored Schedule 15.[4] On March 13, 2008, the Board released its Decision and Order for Interim Rates approving, among other things, the credit included in 2008 in-franchise rates of $11.254 million referred to above. Through Union's October 2008 QRAM (EB-2008-0281), the Interim Rates approved in EB-2007-0606 were finalized.[5]

Subsequent Proceedings

(a) 2008 Deferral

EB-2009-0052. Union applied to dispose of 2008 deferral account balances in EB-2009-0052. In its pre-filed evidence, Union described the method to calculate the balance in Deferral Account 179-70, substantially in the terms set out above. Union's pre-filed evidence compared net margin to the Board approved forecast of $15.829 million. CME and others asked interrogatories in respect of the balance in the account. The interrogatories included detailed requests in relation to Deferral Account 179-70, including a request that Union disaggregate the Board approved net margin of $15.829 million and compare that amount to 2008 actual revenues. Parties then subsequently challenged Union's calculation. In Union's Reply Argument it again referenced Schedule 16 of the EB-2007-0606 as "identifying the S & T

[3] EB-2007-0606, Exhibit D, Tab 3, Schedule 15

[4] EB-2007-0606, Rate Order Working Papers, Schedule 16

[5] EB-2007-0606, Decision and Order for Interim Rates; EB-2008-0281, Decision and Order

revenues and costs included in rates."[6] By Decision and Order dated August 9, 2009 the Board agreed with Union.[7]

(b) 2009 Rates and Deferral

EB-2008-0220. In EB-2008-0220, Union applied for an Order of the Board approving or fixing rates effective January 1, 2009. CME again asked a number of interrogatories. Its interrogatories B3.5 and B3.6 specifically referenced Schedule 14. In relation to the purpose of that Schedule, CME was advised, "the purpose of Rate Order Working Papers Schedule 14 is to summarize the S&T transactional margin included in 2009 rates."[8]

On January 29, 2009, the Board issued its Decision with Reasons and directed that Union file a draft rate order, which Union did. Consistent with its interrogatory response, Schedule 14 of the working papers summarized the short-term margin included in 2009 rates. Schedule 14 was identical to Schedule 16 prepared in respect of 2008 rates. That is, Schedule 14, again identified for the Board and interested parties the credit included in 2009 in-franchise rates of $11.254 million and the change arising from NGEIR from 2007 to 2008 (and then 2009) of $2.992 million. It also identified the Board approved total margin of $15.829 million used in connection with the calculation of the amount available for sharing in deferral account proceedings.[9]

By Decision and Rate Order dated February 24, 2009, the Board approved Union's rates for 2009.[10]

EB-2010-0039. Union applied to dispose of 2009 deferral account balances in EB-2010-0039. Union again described the method used to calculate the balance in Deferral Account 179-70 substantially in the terms set out above. And again, CME and others asked interrogatories in respect of the calculation of the amount available for sharing in that account. Following interrogatories the parties reached a settlement. By Decision dated August 10, 2010 the Board approved the settlement agreement and the balance in Deferral Account 179-70.[11]

(c) 2010 Rates and Deferral

EB-2009-0275. Union applied for an Order approving 2010 rates in EB-2009-0275. The Board issued its Decision and Order on Union's application on November 9, 2009 and directed that Union file a draft rate order, which it did. Again, Union included among the working papers Schedule 14 which summarized the short-term storage margin included in 2010 rates. Consistent with the Schedules filed in respect of 2008 and 2009 rates, Schedule 14 provided full particulars of the short-term margin, including the total net margin ($15.829 million), and the amount included as a credit in rates for each of 2008 to 2010 ($11.254 million).[12]

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[6] EB-2009-0052, Ex. A, Tab 1, pp. 5-6; Ex. B 3.1, Attachment 2; Reply Argument of Union Gas Limited, p. 5

[7] Decision and Order dated August 9, 2009.

[8] EB-2008-0220, Ex. B.3.5 and B.3.6. Union's pre-filed evidence in the proceeding included a draft order and working papers.

[9] EB-2008-0220, Rate Order Working Papers, Schedule 14

[10] EB-2008-0220, Decision and Rate Order dated February 24, 2009

[11] See, for e.g., EB-2010-0039, Ex. B1.01 and Ex. B3.01; Decision and Order dated August 10, 2010

[12] EB-2009-0275, Decision and Rate Order, Working Papers, Schedule 14

On November 17, 2009, counsel for CME submitted a letter of comment in respect of the draft rate order. In his letter, counsel indicated,

> We find Union's draft rate order to be in accordance with the settlement agreement that was filed with the Board on November 2, 2009 and which was subsequently approved by the Board on November 9, 2009.[13]

CME requested its reasonable costs incurred in reviewing the draft rate order.

On December 1, 2009, CME submitted its cost claim. The claim included 3.5 hours to review the draft rate order submitted by Union. These costs were approved by the Board.[14]

EB-2011-0038. This matter concerned 2010 deferral account balances. Union's pre-field evidence again detailed the calculation of the amount available for sharing Deferral Account 179-70. CME and others asked interrogatories in respect of that calculation.

On January 20, 2012, the Board released its Decision with Reasons. In its Decision, the Board directed Union to prepare a draft rate order reflecting the Board's findings. On February 3, 2012, Union provided its draft rate order. That order subsequently became the subject of comment by CME, Board Staff and others. In its submissions, CME argued that as the Board had found that Union tracks the storage space used for short-term and long-term storage sales, "it inevitably follows that 100% and not 79% of the net credit in Account No. 179-70 of $0.924 million (to which the Board refers at page 18 of the Decision), is the utility portion of the net revenue used on short-term storage sales made entirely from utility storage assets, and that 90% of these revenues, or $0.831 million, is the amount to be shared with rate payers."[15]

Union disagreed with CME's position. The thrust of Union's position was that it had accurately reflected the Board's Decision in the draft rate order and that the Board had dealt with the calculation of short term margin in its decision. Union argued that accepting CME's comments at this stage would encourage litigation by installments. Contrary to the CME Letter, Union's Reply Argument also specifically discussed the disconnect which would occur between base rates and Deferral Account 179-70 if the Board were to agree with CME. As Union indicated:

> 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.
>
> . . .

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[13] EB-2009-0275, Letter from counsel for CME dated December 1, 2009

[14] EB-2009-0275, CME cost claim, p. 6

[15] EB-2011-0038, CME submission on Draft Rate Order dated January 27, 2012, p. 2

CME's position is inconsistent with existing rates

> 10. CME's position is inconsistent with existing rates. 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. (Emphasis added.)[16]

The Board released its Decision and Order on Draft Rate Order on February 29, 2012. Beginning at p. 4 the Board summarized Union's position. The Board made explicit reference to Union's argument that acceeding to CME's submission would create an inconsistency between the basis on which rates had been set and Deferral Account No. 179-70. At page 5, the Board found that the ratepayer share of 2012 net short-term revenues should be $0.831 million. The Board held, "[t]he Board finds that the ratepayers' share of 2012 net short-term revenues should be $0.831 million." At page 6, the Board held as follows:

> The Board did not include the specific amount to be shared with ratepayers in its findings related to the Short-Term Storage Account, however, the Board has found as part of this Draft Rate Order process that the amount of $0.831 million is a clear outcome of its findings in the Decision and Order.

The Board then directed Union to file a revised draft rate order reflecting the Board's findings in the Decision. The Board indicated that it would review the draft rate order to confirm that all necessary changes had been made and would issue a final rate order in due course.[17]

On March 2, 2012, Union submitted an updated draft rate order and supporting working papers. At Appendix C, Schedule 2 Updated Union provided an updated calculation of the balance in Deferral Account 179-70 arriving at a balance, as directed by the Board, of $0.832 million.[18]

On March 8, 2012, the Board issued its final Rate Order. In its Rate Order, the Board indicated that it had determined that the revised rate order accurately reflected the Board's findings in this proceeding.[19]

Subsequent Events

Beginning on March 8, 2012, CME, through its counsel, began its current campaign with Union, its counsel and Board Staff seeking the relief now claimed in the CME Letter. None of the communications attached to the CME Letter are properly before the Board, nor are they relevant to the merit of the relief sought in the CME Letter (except to the extent they reveal the weakness of CME's position). That said, Union strongly disagrees with the suggestion that it ever implied

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[16] EB-2011-0038, Reply Submission of Union Gas Limited, p. 3

[17] EB-2011-0038, Decision and Order on Draft Rate Order dated February 29, 2012, pp. 4-6

[18] EB-2011-0038, Updated Draft Rate Order, Appendix C, Schedule 2 Updated. The slight variation to $0.832 being caused by rounding.

[19] EB-2011-0038, Rate Order, p. 2

that it had used an "unapproved methodology" to calculate the amount credited to ratepayers or that it changed its position, somehow, throughout these discussions. Both suggestions are wholly inaccurate and, deliberate or otherwise, are creations of CME's own-making. In his email dated March 16, 2012, counsel for CME set out in substance the "facts" as reflected at paragraphs A(j) to A(q) of the CME letter and asked that Union advise whether he correctly understood Union's position. By email dated March 18, 2012, we responded on Union's behalf, indicating:

> We do not agree with your characterization of Union's position, nor am I able (given existing commitments today and tomorrow) to further restate that position for you. However, by way of example, Union has never asserted that a "unapproved methodology" was used to calculate a margin available for sharing the short-term deferral account. [20]

Despite this clear advice, CME continues to repeat its mischaracterization of Union's position.

C. Submissions

In support of its claimed relief, CME asserts that four factors are relevant to the Board's determination. These factors can be summarized as follows:

1. The concept underpinning the submissions made by CME and others;

2. Union's response to that concept, "including its failure to disclose facts relevant to its potential implementation";

3. Whether the language of the decision can be reasonably interpreted to support the Rate Order; and

4. Whether "correcting" the amount credited to ratepayers to deferral account 179-70 constitutes a prohibited change to base rates.

Each of these factors is discussed below.

1. The conceptual basis for its submissions does not assist CME

The CME letter argues that the conceptual basis for the submissions it and others made in respect of the initial draft rate order leads to the conclusion that all short-term storage revenues should "forthwith flow to ratepayers."

The obvious weakness of CME's position is that the conceptual basis for its submissions (or any party's) is irrelevant to the consideration of what the Board actually decided. The Board's findings are unequivocal. As described above, the Board expressly found that the correct amount to be credited to ratepayers was $0.831 million. The Board further determined that the updated draft rate order submitted by Union accurately reflected the Board's findings in its Decision on Draft Rate Order.

CME's conceptual argument also ignores the nature of the application before the Board. Union

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[20] Email from counsel for Union to counsel for CME dated March 16, 2012

had applied to clear 2010 deferral account balances. Union was not seeking to re-set base rates, which had already been considered and approved by the Board in EB-2009-0275. The question before the Board concerned Deferral Account 179-70. The methodology used to calculate the amount available for sharing with ratepayers concerned the application of net margin to the Board approved forecast of $15.829 million, viz., the methodology used by the Board in EB-2009-0052, in EB-2010-0039 and earlier. Re-calculation of the credit included in base rates was not at issue, although the inconsistency which would result between base rates and the Deferral Account was adverted to by Union in its Reply Argument. Contrary to the CME Letter, the Board was aware of this potential disconnect when it rendered its Decision and Order on Draft Order; Union's Reply Argument in this respect was summarized by the Board and, obviously, well understood.

2. No Merit to Criticisms of Union's Reply Argument on the Draft Rate Order

At the root of the CME Letter is the assertion that CME and the Board were under a misapprehension as to the "correct" amount to be reflected in Deferral Account 179-70. It is alleged that Union caused this confusion through lack of disclosure. CME's position hinges on whether Schedule 14 of the 2010 Rate Order Working Paper was disclosed by Union. As the CME Letter says:

> Schedule 14 of the Working Papers demonstrated that the submissions made by CME, to the effect that the amount to be credited to ratepayers in 2010 was about $0.831 m, were based on a mistake and assumption and the Board approved credit imbedded in Union's 2010 rates was the 2007 amount initially imbedded therein of $14.246 m being 90% of the Board approved forecast for 2007 of $15.829 m. The document revealed that this assumption was incorrect because, in conjunction with its implementation of the NGEIR decision for 2010, being the first year of Unions 5 year IRM plan, the amount of the credit imbedded in Union's 2007 rates of $14.284 m was reduced for the years 2008 and following to 79% of $14.246 m, being an amount of $11.254 m.[21]

The foundational nature of Schedule 14 to CME's position is reinforced later in the CME Letter, in its admission that, "[h]ad these documents [Schedule 14 and other similar documents referred to above] been provided by Union on February 17, 2012, when it presented its Reply Submissions, everyone would have been aware that" that Appendix C, Schedule 2 Updated did not include the "$2.992M that had been streamed to Union's owner at the time that the NGEIR Decision was implemented in Union's 2008 Rates."[22]

With respect, the suggestion that Union failed to advise the Board, CME and others of Schedule 14 of the 2010 Rate Order Working Paper is utter nonsense. At paragraph 10 of its Reply Argument above, Union did just that. Union indicated that "base rates established subsequent to the NGEIR decision reflect the 79/21 split in base rates between utility and non-utility. Union proceeded to indicate that, "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)" (emphasis added.)

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[21] CME Letter, p. 3, para. A(f)

[22] CME Letter, p. 6, para. A(t)

In other words, Union directed CME and the Board to the very document that CME now asserts only "emerged subsequently."[23] As set out above, the Board was certainly under no misapprehension, summarizing this portion of Union's Reply Argument in its Decision and Order on Draft Rate Order.

Even absent direct reference to Schedule 14 in Union's Reply Argument, the suggestion that the Board or CME somehow failed to appreciate the basis upon which base rates had been set is fanciful.

In each of its 2008 to 2010 rate proceedings, Union filed Schedule 14 or its equivalent in its pre-filed evidence and in support of draft rate orders ultimately approved by the Board. CME was an active participant in each of those proceedings, just as it was in Union's deferral account proceedings. In each case, CME asked interrogatories; a number specifically in respect of respect of Schedule 14 and its purpose. In EB-2009-0275, CME claimed that its counsel had spent 3.5 hours reviewing Union's draft rate order. Presumably some of this time included a review of the attached Schedules.

To be blunt, after actively participating in at least 6 separate proceedings, directing interrogatories at documents and matters in respect of which it now claims ignorance, CME's position lacks any air of reality; it was aware of Schedule 14, the method used to calculate short-term margins available for sharing and the credit included in rates.

Attached to the CME Letter are several disclosure related decisions of the Board. They concern the disclosure of non-public information. None of the decisions assists CME. Here, all of the documents in question are public; they were filed by Union in multiple proceedings, available on the Board's website, the subject of interrogatories, reviewed by, among others, CME and the Board, and in relation to Schedule 14, referenced explicitly by Union in its Reply Argument.

3. The language of the decision is consistent with the rate order

The CME letter argues that, "taken as a whole," the language of the Board's decision reveals an intent to credit ratepayers with more than $0.831 million. With respect this submission ignores the explicit findings by the Board made in its Decision and the Rate Order. On both occasions, the Board unequivocally indicated that the amount of the credit to ratepayers should be $0.831 million.

4. Power of the Board to grant the requested relief

CME has not brought a motion to vary the Decision and Order on Draft Rate Order, nor has it appealed. Presumably, CME recognizes that it could not meet the threshold test required for a motion to vary, and the time to move or appeal has now expired.

Rather, the CME Letter argues that rule 43.02 provides sufficient basis for the relief claimed and that this would not amount to retroactive rate-making. On both accounts, CME is wrong.

Scope of Rule 43.02

Rule 43.02 of the Board's *Rules of Practice and Procedure* provides that the Board may, "correct a typographical error, error of calculation or similar error made in its orders or decision."

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[23] CME Letter, p. 8

Rule 43 is comparable to 59.06 of the *Rules of Civil Procedure*. The scope of that rule is well-established. If the request of the moving party is to do anything other than rectify an accidental slip or omission, such as to correct an error in the judge or master's determination, it becomes an error for appeal.[24]

The limited scope of rule 43.02 is confirmed by rules 42, 44 and 45 (motion to vary) and the Board's jurisprudence in relation to those rules. As the Board held in EB-2011-0053 (Grey Highlands), a motion to vary "is not an opportunity to reargue the case."[25]

Here, the Board made an explicit finding as to the proper amount that should be shared with ratepayers. It did so after a thorough review of the parties' submissions and its own consideration of the draft rate order. There is no error to correct, let alone an accidental slip. In effect, CME is simply attempting to increase the relief it was granted at first instance by re-arguing its position. This is not a proper use of rule 43.

The Rule Against Retroactive Rate Making

The Board does not have the authority to retrospectively change rates. In *Northwestern Utilities v. The City of Edmonton*, the Court stated at page 691:

> It is clear from many provisions of the Gas Utilities Act that the Board must act prospectively and may not award rates which may cover expenses incurred in the past and not recovered under rates established for past periods.[26]

The policy underlying this general principle is retrospectively adjusting rates causes a lack of certainty for utility market participants. If a regulator could retrospectively change rates, market participants would never be assured of the finality of rates paid for utility services.

Distinctions from this general principle have been made where the rates sought to be adjusted were considered "interim" and therefore open to retrospective adjustment. Here, however, the rates sought to be adjusted are "final" in a strict sense.

Provincial appellate courts across Canada have repeatedly affirmed this principle. In *Atco*, the Supreme Court of Canada referred to these authorities and confirmed the prohibition against retrospective rate making at paragraph 71:

> It is well-established throughout the various provinces that utility boards do not have the authority to retroactively change rates [cites omitted]. But more importantly, it cannot even be said that there was over compensation: the rate setting process is a speculative process in which both the rate payers and the shareholders jointly carry their share of the risk related to the business of the utility.[27]

The Court in *Atco* also confirmed at paragraph 71 that, absent clear language to the contrary,

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[24] *Shaw Satellite G.P. (c.o.b. Shaw Direct[TM]) v. Pieckenhagen*, 2011 ONSC 5968 at para 26

[25] EB-2011-0053, Decision and Order on Motion to Vary, pp. 3-4

[26] *Northwestern Utilities v. The City of Edmonton*, [1979] 1 S.C.R. 684

[27] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140

administrative bodies do not have jurisdiction to alter final rates retrospectively. No such clear language granting jurisdiction to the Board to alter final rates retrospectively is found in the *Ontario Energy Board Act*.

Once the Board makes rates final, they are, by definition, just and reasonable in accordance with section 36(2). They cannot be retrospectively reduced to a level which must, by definition, be less than just and reasonable. Here, the relief sought by CME amounts to clear retrospective rate-making. Through the guise of the "correction" to the amount reflected in Deferral Account 179-70, CME seeks to increase the credit to ratepayers underpinning 2010 rates. In other words, CME seeks to unwind the reduction in the credit to ratepayers first reflected in 2008 rates and continued thereafter. There is no jurisdiction in the Board to grant this relief.

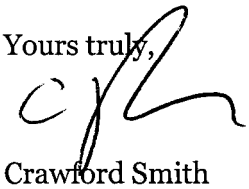
D. Concern Regarding CME Submissions

Allegations of intentional wrongdoing permeate the CME Letter. Unfortunately, this has become a recurring feature of CME submissions. This can only be deliberate, designed to provoke a reaction from the Board. The nature of these allegations, and the cavalier way in which they are made, is disturbing. Here, and in other proceedings, they are unfounded, see e.g. EB-2012-0048.[28] Union and its representatives should not be required to defend themselves against repeated baseless attacks on their credibility. Nor should ratepayers have to bear the increased regulatory costs which inevitably follow. In the civil context, CME's conduct would give rise to cost consequences. The same result should obtain in proceedings before the Board. Union asks that CME be denied any costs incurred subsequent to the Rate Order.

E. Conclusion

Union respectfully asks that the Board deny the relief claimed in the CME Letter. There is no proper basis for the relief. Nor is there any basis for CME's request that further process be ordered in relation to these matters.

Yours truly,



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CS/tm
cc: Kristi Sebalj, Board Staff
All EB-2011-0038 Invervenors

[28] EB-2012-0048, Decision and Order, p. 11

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3.	EB-2007-0606, Exhibit D, Tab 3, Schedule 15; EB-2007-0606, Rate Order Working Papers, Schedule 16
4.	EB-2009-0052, Ex. A, Tab 1, pp. 5-6; Reply Argument of Union Gas, pp. 1-2, 4-5; Decision and Order dated August 9, 2009, pp. 7-8
5.	EB-2008-0220, Ex. B.3.15 and B.3.06, Union's pre-filed evidence in the proceeding included a draft order and working papers
6.	EB-2008-0220, Decision and Rate Order; Rate Order Working Papers, Schedule 14
7.	EB-2009-0275, Decision and Rate Order, Working Papers, Schedule 14
8.	EB-2009-0275, Letter from counsel for CME dated December 1, 2009; EB-2009-0275, CME cost claim, p. 6
9.	EB-2011-0038, Reply Submission of Union Gas Limited, p. 3
10.	EB-2011-0038, Decision and Order on Draft Rate Order dated February 29, 2012, pp. 4-6
11.	EB-2011-0038, Updated Draft Rate Order, Appendix C, Schedule 2 Updated. The slight variation to $0.832 being caused by rounding
12.	EB-2011-0038, Rate Order, p. 2
13.	EB-2012-0048, Decision and Order, p. 11

TAB 1

supply. This results in UDC of $1.472 million for the Northern Operations area and $0.463 million for the Southern Operations area.

Interest

Interest associated with UDC amounted to a credit of $0.013 million for the Northern and Eastern Operations area and a debit of $0.001 million for the Southern Operations area, resulting in a net credit of $0.012 million.

(Credit)/Debit to Operations areas

The UDC deferral account has a net total credit balance of $1.285 million. The balance applicable to customers in the Northern and Eastern Operations area is a credit of $1.624 million. The balance applicable to customers in the Southern Operations area is a debit of $0.339 million.

STORAGE DEFERRAL ACCOUNT

Actual net revenues from storage services are deferred against the net revenues included in the rates approved by the Board. The credit balance of $19.736 million represents the ratepayer portion in the following storage deferral accounts.

Account No. 179-70 Short-Term Storage and Other Balancing Services

The Short-Term Storage and Other Balancing Services deferral 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 service from the gross revenue.

The credit balance in the Short-Term Storage and Other Balancing Services deferral account is $4.949 million. The balance is calculated by comparing the actual 2009 net margin for Short Term Storage Services of $22.789 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 $6.960 million. The net deferral margin is adjusted to reflect the 79% Utility portion (EB-2005-0551) and is to equal $5.498 million, of which 90% or $4.949 million is shared with ratepayers. The details of the balance in the Storage Services deferral accounts are shown in Table 2 below.

Account No. 179-72 Long-Term Peak Storage Services

The credit balance in the Long Term Peak Storage Services deferral account of $14.787 million is 50% of the variance between the forecast of $21.405 million and the actual net revenues of $50.980 million.

The details of the balance in the Storage Services deferral accounts are shown in Table 2 below. The methodology used to allocate operating costs to Union's unregulated storage activity can be found at Tab 4.

The Long-Term Peak Storage Services deferral account includes revenues from High Deliverability Storage, T1 Deliverability Upstream Balancing, Downstream Balancing, Dehydration Service, Storage Compression, C1 Long Term Storage, and Long Term Peak Storage. The net margin for Long Term Storage Services is determined by deducting the costs incurred to provide service from gross revenue.

The balance in the Long-Term Peak Storage Service deferral account reflects the rate payer portion of the deferred margin or 50% of the difference between actual revenue in excess of the costs to provide Long-Term Peak Storage Services and the revenue forecast in excess of the cost to provide these services as approved by the Board in the EB-2005-0520 Rate Order.

Table 2

Details of Balances in Storage Deferral Accounts
($ Millions)

	2009			2008	
	Short term (179-70)	Long term (179-72)	Total	Total	Variance
Storage revenue	$ 28.914	$106.372	$ 135.286	$ 110.420	$ 24.866
Operating costs					
Cost of gas	3.864	2.454	6.318	7.904	(1.586)
O&M	2.261	10.636	12.897	12.028	0.869
Depreciation	-	7.312	7.312	4.966	2.346
Property & capital taxes	-	1.754	1.754	0.953	0.801
	6.125	22.156	28.281	25.851	2.430
Interest, return and income taxes	-	33.236	33.236	18.233	15.003
Net margin	22.789	50.980	73.769	66.336	7.433
Board approved	15.829	21.405	37.234	37.234	-
Excess	$ 6.960	$ 29.575	$ 36.535	$ 29.102	$ 7.433

OTHER DEFERRAL ACCOUNTS

Account No. 179-26 Deferred Customer Rebates/Charges

The Deferred Customer Rebates/Charges account has no balance. This account captures unclaimed cheques related to amounts refunded to customers that arose from the disposition of deferral balances as approved by the Board.

TAB 2

general service rates were provided by Union at Schedules 22 and 23 of its EB-2005-0520 Rate Order Working Papers.

In this proceeding Union is adjusting 2008 rates to incorporate the incremental GDAR costs ($1.643 million) provided in the EB-2005-0520 Rate Order Working Papers. The impact on 2008 general service rates associated with implementing the Bill-Ready phase of GDAR appears in column (p) of Exhibit D, Tab 3, Schedule 3. Variances between the GDAR related costs included in rates and actual costs incurred will be captured in the GDAR Deferral Account (Account No. 179-112).

Treatment of Demand Side Management ("DSM") Costs

In accordance with the Board's EB-2006-0021 Decision, Union will increase its 2007 DSM budget by 10% per year for each of 2008 and 2009 to $18.7 million and $20.6 million, respectively. Union is proposing to treat the costs associated with DSM as a Y-factor. Accordingly, Union will remove the DSM costs currently in rates by rate class prior to applying the price cap index. After the price cap adjustment has been determined, Union will add back the DSM costs by rate class plus 10%. The result is that the increase in the 2008 and 2009 DSM budgets will be allocated in proportion to how the 2007 DSM budget was included in rates. Consistent with the Board's EB-2007-0598 Decision, Union will true-up for differences between the DSM costs included in rates and the actual amount spent on DSM programs on a rate class basis as part of the disposition of the DSMVA.

NGEIR Implementation

In its EB-2005-0551 Decision, the Board found that:

1. Union's share of the long term storage premium will increase to 25% in 2008, 50% in 2009, 75% in 2010 and 100% in 2011; and
2. Beginning January 1, 2008, the margin associated with short-term storage services will be shared between Union and its ratepayers in proportion to the split between non-utility

(21%) and utility (79%) storage-related rate base. The Board found that all of the short-term margin arising from the use of non-utility storage assets and 10% of the short-term margin arising from the use of utility storage assets will go to the Company.

Union will be implementing the Board approved changes to the sharing of long-term and short-term storage premiums starting January 1, 2008.

For 2008, the change in sharing associated with the long-term storage premium is $3.211 million (Exhibit D, Tab 3, Schedule 15, line 8). Consistent with the EB-2005-0551 Decision, Union will phase out the long-term premium in rates entirely by 2011.

The change in sharing associated with short-term storage margin is $2.922 million (Exhibit D, Tab 3, Schedule 15, line 7). The change in sharing of short-term storage margin will only result in an adjustment to 2008 rates.

Union is proposing to remove the long-term storage premium from in-franchise delivery rates as approved by the Board in the EB-2005-0551 proceeding using a storage premium adjustment factor. The storage premium adjustment factor will be calculated by taking the total annual impact of the change in sharing of forecast margin which results from the NGEIR decision divided by total in-franchise delivery revenue less DSM, storage and upstream transportation, fuel and UFG. The resulting adjustment factor will be applied to each in-franchise rate class. The 2008 adjustment factor will also include the impacts associated with including 100% of the Board approved 2007 forecast of margin from Transportation & Exchange Services, Other S&T Services and Other Direct Purchase Services as well as implementing the short-term storage margin sharing mechanism approved by the Board in the EB-2005-0551 proceeding beginning January 1, 2008. For 2009 to 2012, the storage premium adjustment factor associated with implementing the NGEIR decision will include only the reduction in long-term storage premium. The calculation of the storage premium adjustment factor is found at Exhibit D, Tab 3, Schedule

TAB 3

UNION GAS LIMITED
Summary of S&T Transactional Margin Included in 2008 Rates

Line No.	Particulars ($ 000's)	Total Revenue (1) (a)	Allocated Cost (2) (b)	Total Margin (c) = (a - b)	Included in 2007 In-franchise Rates (d)	Included in 2008 In-franchise Rates (e)		Change in Sharing of Forecast S&T Margin (f)=(d-e)
	Transportation & Exchange Services Acct. 179-69							
1	Transportation and Exchanges	4,000	1,417	2,583				
2	M12 Transportation Overrun	-	-	-				
3	Total Transportation & Exchanges	4,000	1,417	2,583	222	2,583	(3)	(2,361)
	Short Term Storage & Balancing Services Acct. 179-70							
4	Short Term Peak Storage	13,794	847	12,947				
5	Off Peak Storage, Balancing & Loans	4,092	1,285	2,807				
6	Enbridge LBA	75	-	75				
7	Total Short Term Storage & Balancing Services	17,961	2,132	15,829	14,246	11,254	(4)	2,992
8	Total Long Term Peak Storage Services Acct. 179-72	42,058	20,653	21,405	19,265	16,054	(5)	3,211
9	Other S&T Services Acct. 179-73 / 179-74	895	42	853	768	853	(6)	(85)
10	Total	64,914	24,244	40,670	34,501	30,744		3,756

Notes: (1) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (a)
(2) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (b)
(3) Includes in-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin
(4) EB-2005-0551, Decision with Reasons, Section 9.1.2
(5) EB-2005-0551, Decision with Reasons, Section 7.3
(6) Includes in-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin

UNION GAS LIMITED
Summary of S&T Transactional Margin Included In 2008 Rates

Line No.	Particulars ($ 000's)	Total Revenue (1) (a)	Allocated Cost (2) (b)	Total Margin (c) = (a - b)	Included in 2007 In-franchise Rates (d)	Included in 2008 In-franchise Rates (e)	Change in Sharing of Forecast S&T Margin (f)=(d-e)
	Transportation & Exchange Services Acct. 179-69						
1	Transportation and Exchanges	4,000	1,417	2,583			
2	M12 Transportation Overrun	-	-	-			
3	Total Transportation & Exchanges	4,000	1,417	2,583	222	2,583 (3)	(2,361)
	Short Term Storage & Balancing Services Acct. 179-70						
4	Short Term Peak Storage	13,794	847	12,947			
5	Off Peak Storage, Balancing & Loans	4,092	1,285	2,807			
6	Enbridge LBA	75	-	75			
7	Total Short Term Storage & Balancing Services	17,961	2,132	15,829	14,246	11,254 (4)	2,992
8	Total Long Term Peak Storage Services Acct. 179-72	42,058	20,653	21,405	19,265	16,054 (5)	3,211
9	Other S&T Services Acct. 179-73	895	42	853	768	853 (6)	(85)
10	Total	64,914	24,244	40,670	34,501	30,744	3,756

Notes:
(1) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (a)
(2) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (b)
(3) Includes in-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin
(4) EB-2005-0551, Decision with Reasons, Section 9.1.2
(5) EB-2005-0551, Decision with Reasons, Section 7.3
(6) Includes in-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin

TAB 4

Working Papers, Schedule 25, page 3). For 2008, Union actually recovered $3.142 million in the North and $0.126 million in the South.

3. Interest

Interest associated with UDC amounted to a credit of $0.060 million for the Northern and Eastern Operations area and a credit of $0.002 million for the Southern Operations area for a net amount of $0.062 million.

4. (Credit)/Debit to Operations areas

The UDC deferral account has a net total credit balance of $3.318 million. The balance applicable to customers in the Northern and Eastern Operations area is a credit of $3.202 million. The balance applicable to customers in the Southern Operations area is a credit of $0.116 million.

STORAGE AND TRANSPORTATION DEFERRAL ACCOUNTS

Actual net revenues from storage and transportation services are deferred against the net revenues included in the rates approved by the Board. The credit balance of $28.101 million represents the ratepayer portion in the following S&T deferral accounts.

Account No. 179-70 Short-Term Storage and Other Balancing Services

The Short-Term Storage and Other Balancing Services deferral account includes revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing

Services, C1 Short-Term Firm Peak Storage, C1 Firm Short-Term Deliverability and M12 Interruptible Deliverability.

The debit balance in the Short-Term Storage and Other Balancing Services deferral account is $0.360 million. The balance is calculated by comparing the actual 2008 net revenue sufficiency for Short Term Storage Services of $14.858 million to the net revenue sufficiency approved by the Board of $15.829 million in the EB-2007-0606 Rate Order. The result is a net deferral debit of $0.971 million. The net deferral margin is adjusted to reflect the 79% Utility portion (EB-2005-0551) and is to equal $0.767 million, of which 90% or $0.690 million is the ratepayer portion. In addition, the total deferred amount showing a debit balance of $0.360 million includes a 2007 true up credit of $0.330 million.

Account No. 179-72 Long-Term Peak Storage Services

The balance in the Long-Term Peak Storage Service deferral account reflects the rate payer portion of the deferred margin or 75% of the difference between actual revenue in excess of the costs to provide Long-Term Peak Storage Services and the revenue forecast in excess of the cost to provide these services as approved by the Board in the EB-2005-0520 Rate Order.

The credit balance in the Long Term Peak Storage Services deferral account of $28.461 million is 75% of the variance between the forecast of $21.405 million and the actual net

uniongas
A Spectra Energy Company

May 22, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 26th Floor
Toronto, ON
M4P 1E4

Re: Union Gas Disposition of 2008 Deferral Account and Other Balances (EB-2009-0052) – Union's Reply Argument

Dear Ms. Walli:

Please find enclosed two copies of Union's reply argument for the above noted proceeding.

If you have any questions please contact me at (519) 436-5476.

Yours truly,

[original signed by]

Chris Ripley
Manager, Regulatory Applications

cc M. Penny (Torys)
EB-2009-0052 Intervenors

EB-2009-0052

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 July 1, 2009;

UNION GAS LIMITED
REPLY ARGUMENT

Overview

1. By Application dated March 31, 2009, Union applied to the Board for final disposition of Union's 2008 deferral and other account balances.

2. The Board issued Procedural Order No. 1 on April 22, 2009 providing for a written hearing, including written evidence, written interrogatories and written argument. Union's written prefiled evidence was delivered, with its application, to the Board on March 31, 2009. Union's written responses to interrogatories were delivered to the Board on May 8, 2009. A supplemental response to Exhibit B3.1 was filed on May 14, 2009.

3. Written argument was filed by the Ontario Energy Board Staff ("Board Staff"), London Property Management Association ("LPMA"), the Vulnerable Energy Consumers Coalition ("VECC"), the School Energy Coalition ("SEC"), the City of Kitchener ("Kitchener"), the Canadian Manufacturers and Exporters ("CME"), Energy Probe and the Federation of Rental-housing Providers of Ontario ("FRPO").

4. Board Staff invited Union to comment on the "threshold above which it would consider it prudent to align the timing of the DVA (deferral variance account) disposition and the special purpose amounts contemplated in the GEA".

5. LPMA commented that in the interest of time, the Board should approve the deferral balances as filed, but LPMA was unable to the determine the reasonableness of the balances in two deferral accounts: the Short-Term Storage and Other Balancing Services (179-70) and the Long-Term Peak Storage Services (179-72). LPMA noted the Board should require Union to provide further details with respect to the balances in these two deferral accounts.

6. All other intervenors agreed with LPMA with respect to the balances in deferral accounts 179-70 and 179-72.

7. In addition, LPMA also argued that since Union does not true-up the difference between Board-approved deferral balances and actual recovery/disposition of deferral balances, that the Board should direct Union to track the difference between the Board-approved 2008 balances and the actual recovery / disposition in 2009.

8. This is Union's reply to all of the above arguments.

The Green Energy Act

9. The Ontario legislature has passed the Green Energy Act ("GEA") legislation which allows the Ministry of Energy to make assessments for expenses and expenditures related to conservation and renewable energy programs. Gas distributors will be

12. Further, to maintain customer charge transparency, it is Union's view that the deferral account disposition and GEA special purpose charge recovery must be displayed separately on customer's bills. The customer bill must also include contact information so that customers are able to make inquiries as to the nature of the special purpose charges. As it is Union's view that the GEA charges should be shown separately on the bills there is no mitigating rationale to align the deferral disposition timing with the GEA recovery.

Short-Term Storage and Other Balancing Services – Imputed Margin

13. Intervenors noted concerns about a perceived substantial increase in costs compared to a lower increase in total revenue in the Short-Term Storage and Other Balancing Services ("179-70") deferral account. The 2008 actual revenues represent a 30% increase over Board-approved revenues and the 2008 actual costs represent a 300% increase over Board-approved costs.

14. The Board-approved revenues and costs for 179-70 were determined in EB-2005-0520 (Union's 2007 Cost of Service proceeding). Initially, the revenues and costs for 179-70 were calculated based on 2 PJ of peak storage resulting in forecasted revenues of $1.794 million and forecasted costs of $0.847 million. As noted in Union's supplemental response to Exhibit B3.1, the Board-approved settlement agreement in EB-2005-0520 imputed $12.000 million of margin into 179-70. The settlement agreement did not specify the total revenues or any costs associated with the $12.000 million imputed margin.

15. In EB-2007-0606 (Union's Incentive Regulation and 2008 rate order proceeding) Union filed a rate order working paper (Schedule 16) identifying the S&T revenues and costs included in rates. At line 4 of Schedule 16, it can be seen that Union added the $12.000 million imputed amount to the Total Revenue (column a) but did not change or modify the Allocated Cost (column b) as it remained at $0.847 million. As a result, Union's forecasted revenues were increased by 670% but the costs were not increased at all.

16. Accordingly, Union submits that the comparison between the Board-approved costs for 179-70 and the 2008 actual costs is not appropriate due to the intervening $12.000 million of imputed margin. Achieving $12.000 million of additional revenue cannot be accomplished without additional costs.

17. In order to do a proper comparison of Board-approved revenues with associated costs to 2008 actual revenues it would be necessary to remove the $12.000 million of imputed margin from the Board-approved revenue. Removing the $12.000 million imputed revenue results in Board-approved revenue of $5.961 million. The 2008 actual revenues of $23.327 million represent a 300% increase over $5.961 million. This is exactly proportional to the increase in costs between Board-approved costs and actual costs which also was an approximate 300% increase.

18. To achieve $12.000 million in additional margin it was clear that Union would be required to sell additional short-term transactional services which would result in increased demand and commodity costs. However, as noted above, the EB-2005-0520 settlement agreement and the 2008 rate setting process did not forecast any cost

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2009-0052

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 July 1, 2009.

BEFORE: Gordon Kaiser
Presiding Member

Paul Sommerville
Member

Paul Vlahos
Member

DECISION AND ORDER

The Proceeding

Union Gas Limited ("Union") filed an application on March 31, 2009 with the Ontario Energy Board (the "Board") seeking approval for final disposition and recovery of certain 2008 year-end deferral account balances including approval and disposition of the market transformation incentive. Union proposed that the resulting impacts from the disposition be implemented on July 1, 2009 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") process. The Board assigned docket number EB-2009-0052 to the application.

The Board issued its Notice of Written Hearing and Procedural Order No.1 on April 22, 2009, which was served on a list of intervenors involved in Union's 2008 rates proceeding (EB-2008-0220). The Board received one intervention request from an

interested party not included on the previous intervention list. The Federation of Rental-housing Providers of Ontario ("FRPO") requested and was granted intervenor status.

Interrogatories were submitted by the London Property Management Association ("LPMA"), FRPO, The City of Kitchener ("Kitchener"), the School Energy Coalition ("SEC"), and Board staff.

LPMA, FRPO, Kitchener, SEC, the Canadian Manufacturers and Exporters ("CME"), the Vulnerable Energy Consumers Coalition ("VECC"), Energy Probe, and Board staff filed submissions. A number of these submissions supported LPMA's expressed concerns with the revenues and costs recorded in the Short-Term Storage and Balancing Services Deferral Account (Account 179-70) and the Long-term Peak Storage Services Deferral Account (Account 179-72) (the "Storage Revenue Issue").

On May 21, 2009, the Board issued Procedural Order No.2 allowing for further discovery and submissions on the Storage Revenue Issue. To expedite matters, intervenors were permitted to ask questions of the applicant at a technical conference on May 25, 2009. The Board maintained the date of May 22, 2009 for Union's filing of Reply Argument to provide further information that might help to clarify parties' concerns regarding the Storage Revenue Issue in advance of the technical conference.

After the technical conference, the Board received supplemental submissions on the Storage Revenue Issue from LPMA, FRPO, CME, Kitchener, and SEC. Union filed its supplemental reply submissions on June 1, 2009.

The Board has summarized the record of the proceeding only to the extent necessary to provide context to its findings.

Deferral Accounts

Union has classified the deferral accounts into four groups:

a) five Gas Supply accounts that are cleared through the QRAM process.
b) one Gas Supply account that is not cleared through the QRAM process.
c) two Storage and Transportation accounts.
d) eleven other accounts.

The Board agrees with Union. The panel sees no reason why this should delay the disposition of the credit to ratepayers as proposed by Union. The two matters are completely unrelated.

Forecast used to determine volumes for calculation of rate riders

Union and ratepayers would be exposed to over/under-recovery depending on the accuracy of the volume forecast used for the calculation of rate riders. LPMA requested that the Board direct Union to provide in the next proceeding the difference between the actual recovery/refund amounts and amounts approved by the Board to allow the Board to determine whether or not a true-up is necessary.

Union indicated in its reply that it over-refunded amounts to ratepayers in both 2007 and 2008, and did not seek a true-up in either year.

The Board sees no harm in Union addressing the merits of a true-up mechanism going forward. The Board expects Union to address this matter at the time it files for disposition of its 2009 accounts.

The Storage Revenue Issue

In the first phase of submissions intervenors indicated that the balances were reasonable in all accounts with the noted exceptions of:

- Account 179-70: Short-Term Storage and Balancing Services Deferral Account (the "ST" account)
- Account 179-72: Long-Term Peak Storage Services Deferral Account (the "LT" account)

On May 15, 2009, LPMA submitted that there were significant changes in the level of both revenues and costs used in the calculation of the net revenue figures shown in the ST and LT accounts (Attachments 1 & 2 of Exhibit B3.1).[2] FRPO, Kitchener, SEC, the CME, VECC, and Energy Probe generally reiterated the concerns expressed in LPMA's submissions.

[2] Union had filed a supplemental response to Exhibit B3.1 on May 14, 2009.

In their original submissions, intervenors attempted to compare 2008 data to 2007 data, and expressed concerns with the year-to-year increases and the explanation provided by Union in its evidence and interrogatory responses. Intervenors focussed on several key issues where further explanation was required:

- The $12 million of "imputed margin" in the ST account;
- Increased storage activity, and specifically the $4.6 million commodity cost increase in the ST account;
- The significant increase in asset-related costs in the LT account;
- Lack of clarity surrounding the accounting differences between the estimate provided in the Audited Financial Statements ("AFS") and Union's proposed deferral disposition amounts; and
- Lack of clarity around issues of methodology, assumption and cost allocation applicable to Union's deferral accounts.

Union's Reply Argument expanded significantly on Union's interrogatory responses, and on the issues above.

In supplemental submissions on the Storage Revenue Issue, intervenors did not raise further concerns regarding the first three points listed above. The Board views those issues as no longer being in dispute and accepts Union's proposals.

Certain matters involving the Storage Revenue Issue remained unresolved through the expanded discovery process, and were raised in supplemental submissions.

LPMA accepted the further clarification provided by Union, and accepted the balances in all accounts as filed by Union. Other parties did not.

SEC submitted the Operations & Maintenance ("O&M") costs charged to the LT account are too high. SEC alleged that the approximately $1 million increase to O&M costs, due to the deregulation of ex-franchise long-term storage assets, is "exactly analogous" to the Board's denial of an accounting tax liability in a previous disposition proceeding.[3] SEC submitted that costs should continue to be capitalized as if they were regulated assets until the phase out of the ratepayer share is completed. FRPO made similar submissions.

[3] EB-2007-0598 – Decision - Union's 2006 Deferral Account Disposition and Earnings Sharing Proceeding.

Union replied that the reduced capitalization of the O&M costs at issue here is an ongoing cost and is not at all comparable to the Board's decision on historical deferred taxes. Union submitted that the concerns of the parties regarding two prior deferral decisions[4,5] are completely misplaced. In EB-2008-0154 the Board clearly stated that, "Union can include ongoing costs associated with the unregulated storage business to calculate net revenues with the exception of deferred taxes."

The Board agrees with Union. The Board stated in EB-2008-0154 that Union is permitted to include ongoing costs associated with the unregulated storage business. Union has clearly shown that the reduced capitalization of the O&M costs is an ongoing cost associated with that line of business. The Board's denial of a deferred tax liability in the EB-2007-0598 proceeding concerned past liabilities, not ongoing costs. Accordingly, the Board does not accept SEC's argument that the two situations are somehow analogous.

CME, supported by FRPO and Kitchener, argued that the Board should approve for disposition the deferral balances as recorded in Union's 2008 Audited Financial Statements ("AFS"), as opposed to the adjusted balances presented by Union.

Union replied that no question has ever been raised about the practice of adjusting the deferral and variance accounts estimates in the AFS to reflect unaudited actuals.

The Board observes that there is no issue that either Union or ratepayers would benefit or be harmed in the long run from either method. The Board finds Union's approach reasonable as it is consistent with past practice and produces more recent data on account balances.

FRPO expressed concerns with the constrained time frame and process afforded in this proceeding in dealing with the disposition of account balances. FRPO submitted that the Board consider an expanded discovery phase for the 2009 account disposition.

The Board sees some validity to FRPO's concerns. The Board invites parties and Union to bring forward specific submissions on ways in which the hearing process might be improved, when Union files for its 2009 deferral and variance accounts disposition.

---

[4] Ibid.
[5] EB-2008-0154 – Decision on Motion to Review - Union's 2006 and 2007 Deferral Account Disposition and Earnings Sharing.

Order and Cost Awards

The Board orders that the amounts Union seeks to dispose of in this proceeding, as adjusted or otherwise directed by the Board, shall be recovered from or refunded to Union's ratepayers in accordance with the methodologies included in Union's application. The impacts which result from the adjustments shall be implemented on October 1, 2009 to align with other rate changes resulting from Union's next QRAM application.

A decision regarding cost awards will be issued at a later date. Intervenors eligible for cost awards shall file with the Board and forward to Union their respective cost claims by August 28, 2009. Union may file with the Board and forward these intervenors any objections to the claimed costs by September 4, 2009. Intervenors may respond to any objections by filing their responses with the Board and forwarding to Union by September 11, 2009. The cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*.

Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2009-0052, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at www.oeb.gov.on.ca. If the web portal is not available you may email your document to BoardSec@oeb.gov.on.ca.

DATED at Toronto, August 6, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 5

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

Storage Margin Sharing Changes

Ref: Exhibit A, Tab 1, pages 11 and 12, and Rate Order Working Papers, Schedule 14

Question:

Compared to the 2007 forecast amount of $21.405M, what are Union's actual 2007 storage revenues which are to be shared with ratepayers as a result of the Board's Decision on Motion dated October 23, 2008, in EB-2008-0154 rejecting Union's Motion to Review the Board's 2007 Deferral Account Decision in EB-2008-0034 dated June 3, 2008?

Response:

The actual 2007 long term peak storage revenues were $32.222 million compared to a $21.405 million forecast for a variance of $10.817 million. Of the $10.817 million variance, 75%, or $8.113 million, is a credit to ratepayers.

Following the Board's decision in EB-2007-0034, Union credited ratepayers $2.196 million in 2008. The remaining credit to ratepayers is $5.917 million as a result of the Board's Decision in EB-2008-0154. Union will dispose of this credit as part of its 2008 deferral account disposition.

Question: December 9, 2008
Answer: December 17, 2008
Docket: EB-2008-0220

UNION GAS LIMITED

Answer to Interrogatory from
Canadian Manufacturers and Exporters ("CME")

Storage Margin Sharing Changes

Ref: Exhibit A, Tab 1, pages 11 and 12, and Rate Order Working Papers, Schedule 14

Question:

Please revise Rate Order Working Papers Schedule 14 to show the storage premium that would be embedded in 2009 in-franchise rates if the individual line items leading to a total amount of $25.393M at Col (f), line 10 were to be revised to reflect actual revenues for 2007 for lines 1 to 10 inclusive of Rate Order Working Papers Schedule 14 rather than forecast 2007 revenues for each of those line items.

Response:

The purpose of Rate Order Working Papers Schedule 14 is to summarize the S&T transactional margin included in 2009 rates. Specifically, this schedule highlights the 2009 rate adjustment required to reflect the phase out of long term storage margin included in delivery rates. Updating Schedule 14 for actual 2007 revenues is not relevant to the determination of 2009 rates.

Question: December 9, 2008
Answer: December 17, 2008
Docket: EB-2008-0220

TAB 6

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2008-0220

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 just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas effective January 1, 2009.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

David Balsillie
Member

Paul Sommerville
Member

DECISION AND RATE ORDER

Union Gas Distribution Inc. ("Union") filed an Application on September 26, 2008 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009. The Board assigned file number EB-2008-0220 to the Application.

The Board issued its EB-2008-0220 Decision with Reasons ("2009 Rates Decision") on January 29, 2009, and directed that Union file a Draft Rate Order on February 5, 2009, which Union did. As ordered by the Board in its Decision with Reasons in EB-2008-

0304, an application brought by Union in anticipation of a reorganization (the "Reorganization Decision"), the Draft Rate Order reflected rates reduced by $1.3 million, the anticipated proceeds of the redemption of preferred shares which would occur as part of the reorganization.

A motion to vary the Reorganization Decision (the "Vary Motion" EB-2009-0022) was brought by Union. In the Vary Motion materials, the Applicant advised the Board that the reorganization would not be proceeding and sought to have the Board remove the requirement that the anticipated proceeds of the redemption be used to reduce rates.

On February 6, 2009, the Board issued its Decision and Order in the Vary Motion modifying the Reorganization Decision to read: "In the event the preference shares are not redeemed by January 1, 2009 the rate reduction will be deferred until such time as the preferred shares are redeemed..."

On February 12, 2009 Union filed an updated Draft Rate Order to reflect the decision in the Vary Motion. On February 13, 2009 the Board issued Procedural Order No. 2 which set new dates for the filing of intervenor comments on the updated Draft Rate Order and for Union's reply.

The Board received one letter of comment from Canadian Exporters and Manufacturers ("CME"). CME raised no concerns with the updated Draft Rate Order dated February 12, 2009.

The Board accepts the rates as filed based on the supporting working papers and schedules.

THE BOARD THEREFORE ORDERS THAT:

1. The rate changes set out in Appendix "A" and the rate schedules set out in Appendix "B" are approved effective January 1, 2009. Union shall implement these rates on the first billing cycle on or after April 1, 2009. Variances between rates charged to customers during the period January 1, 2009 to March 31, 2009 and the rates approved herein shall form part of the adjustment amount to be recovered from each rate class at the time new rates are implemented.

For General Service customers served under Rates 01, 10, M1 and M2, Union shall dispose of the adjustment amount in each of these rate classes through a temporary volumetric rate rider charge/(credit) in rates between April 1, 2009 and December 31, 2009 as set out in the temporary price adjustments identified at Appendix "G".

For customers taking service under in-franchise contract rates, Union shall dispose of the adjustment amount in each contract rate class, identified at Appendix "G", through a one time adjustment on customer bills based solely on actual volumes consumed in the period January 1, 2009 to March 31, 2009. This one time adjustment will be applied to May bills.

For ex-franchise rate classes, Union shall dispose of the adjustment amount in each rate class, identified at Appendix "G", through a one time adjustment applied to April bills.

2. The rates pursuant to all contracts for interruptible service under Rates M5A, M7, TI and R25 shall be adjusted by the amounts set out in Appendix "C". Union shall implement 2009 changes in rates on the first billing cycle after April 1, 2009.

3. The customer notices in Appendix "D" shall be given to all customers with the first bill or invoice reflecting the new rate.

4. Union shall charge the fees as set out in Appendix "E" for non-energy charges.

5. Union shall close the 2008 Federal and Provincial Tax Changes Deferral Account (No. 179-119) following the final disposition of the 2008 deferral balance in 2009.

6. Union shall maintain the following deferral accounts in accordance with Appendix "F":

    179-26 Deferred Customer Rebates/Charges
    179-70 Short-term Storage and Other Balancing Services
    179-72 Long-term Peak Storage Services
    179-75 Lost Revenue Adjustment Mechanism
    179-100 TCPL Tolls and Fuel - Northern and Eastern Operations Area
    179-102 Intra-Period WACOG Changes
    179-103 Unbundled Services Unauthorized Storage Overrun

179-105 North Purchase Gas Variance Account
179-106 South Purchase Gas Variance Account
179-107 Spot Gas Variance Account
179-108 Unabsorbed Demand Cost (UDC) Variance Account
179-109 Inventory Revaluation Account
179-111 Demand Side Management Variance Account
179-112 Gas Distribution Access Rule (GDAR) Costs
179-113 Late Payment Penalty Litigation
179-115 Shared Savings Mechanism
179-117 Carbon Dioxide Offset Credits
179-118 Average Use Per Customer

DATED at Toronto, February 24, 2009
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

UNION GAS LIMITED
Summary of S&T Transactional Margin Included In 2009 Rates

Line No.	Particulars ($ 000's)	Total Revenue (1) (a)	Allocated Cost (2) (b)	Total Margin (c) = (a - b)	Included in 2007 In-franchise Rates (d)	Included in 2008 In-franchise Rates (e)	Included in 2009 In-franchise Rates (f)	Change in Sharing of Forecast S&T Margin (g)=(e-f)
	Transportation & Exchange Services Acct. 179-69							
1	Transportation and Exchanges	4,000	1,417	2,583				
2	M12 Transportation Overrun	-	-	-				
3	Total Transportation & Exchanges	4,000	1,417	2,583	222	2,583 (3)	2,583	-
	Short Term Storage & Balancing Services Acct. 179-70							
4	Short Term Peak Storage	13,794	847	12,947				
5	Off Peak Storage, Balancing & Loans	4,092	1,285	2,807				
6	Enbridge LBA	75	-	75				
7	Total Short Term Storage & Balancing Services	17,961	2,132	15,829	14,246	11,254 (4)	11,254	-
8	Total Long Term Peak Storage Services Acct. 179-72	42,058	20,653	21,405	19,265	16,054 (5)	10,703 (5)	5,351
9	Other S&T Services Acct. 179-73	895	42	853	768	853 (6)	853	-
10	Total	64,914	24,244	40,670	34,501	30,744	25,393	5,351

Notes: (1) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (a)
(2) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (b)
(3) Includes In-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin
(4) EB-2005-0551, Decision with Reasons, Section 9.1.2
(5) EB-2005-0551, Decision with Reasons, Section 7.3
(6) Includes In-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin

TAB 7

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2009- 0275

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 just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas effective January 1, 2010.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Paul Sommerville
Member

DECISION AND RATE ORDER

INTRODUCTION

Union Gas Distribution Inc. ("Union") filed an Application on September 3, 2009 with the Ontario Energy Board ("Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Sched. B), as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009. The Board assigned file number EB-2009-0275 to the Application.

The Board issued its Decision and Order on this Application on November 9, 2009 and directed that Union file a Draft Rate Order within five working days of the issuance of the Board's Decision. Union filed the Draft Rate Order on November 11, 2009. Parties were given five working days to file comments on the Draft Rate Order.

The Board received letters of comment from the London Property Management Association, City of Kitchener and Canadian Manufacturers & Exporters. The letters supported Union's Draft Rate Order and confirmed that it was in accordance with the Settlement Agreement approved by the Board on November 9, 2009.

The Board accepts the rates as filed based on the supporting working papers and schedules.

THE BOARD ORDERS THAT:

1. The rate changes set out in Appendix "A" and the rate schedules set out in Appendix "B" are approved effective January 1, 2010. Union shall implement these rates on the first billing cycle on or after January 1, 2010.

2. The Monthly Charge in Rate M1 and Rate 01 shall increase from $18 to $19 effective January 1, 2010.

3. In accordance with the EB-2007-0606 Decision dated July 31, 2008, Union will pass on to ratepayers through a "Z factor" adjustment 50% of the tax reductions that will be applicable to Union during the Incentive Regulation term.

4. The rates pursuant to all contracts for interruptible service under Rates 25, M5A, M7, and T1 shall be adjusted by the amounts set out in Appendix "C". Union shall implement 2010 changes in rates on the first billing cycle after January 1, 2010.

5. The customer notices in Appendix "D" shall be given to all customers with the first bill or invoice reflecting the new rate.

6. Union shall charge the fees as set out in Appendix "E" for non-energy charges.

7. Union shall maintain the following deferral accounts in accordance with Appendix "F":

179-26 Deferred Customer Rebates/Charges
179-70 Short-term Storage and Other Balancing Services
179-72 Long-term Peak Storage Services
179-75 Lost Revenue Adjustment Mechanism
179-100 TCPL Tolls and Fuel - Northern and Eastern Operations Area
179-103 Unbundled Services Unauthorized Storage Overrun
179-105 North Purchase Gas Variance Account
179-106 South Purchase Gas Variance Account
179-107 Spot Gas Variance Account
179-108 Unabsorbed Demand Cost (UDC) Variance Account
179-109 Inventory Revaluation Account
179-111 Demand Side Management Variance Account
179-112 Gas Distribution Access Rule (GDAR) Costs
179-113 Late Payment Penalty Litigation
179-115 Shared Savings Mechanism
179-117 Carbon Dioxide Offset Credits
179-118 Average Use Per Customer

DATED at Toronto, November 25, 2009.

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Filed: 2009-11-11
EB-2009-0275
Rate Order
Working Papers
Schedule 14

UNION GAS LIMITED
Summary of S&T Transactional Margin Included in 2010 Rates

Line No.	Particulars ($ 000's)	Total Revenue (1) (a)	Allocated Cost (2) (b)	Total Margin (c) = (a - b)	Included in 2007 In-franchise Rates (d)	Included in 2008 In-franchise Rates (e)	Included in 2009 In-franchise Rates (f)	Included in 2010 In-franchise Rates (g)	Change in Sharing of Forecast S&T Margin (h)=(f-g)
	Transportation & Exchange Services Acct. 179-69								
1	Transportation and Exchanges	4,000	1,417	2,583					
2	M12 Transportation Overrun	-	-	-					
3	Total Transportation & Exchanges	4,000	1,417	2,583	222	2,583 (3)	2,583	2,583	-
	Short Term Storage & Balancing Services Acct. 179-70								
4	Short Term Peak Storage	13,794	847	12,947					
5	Off Peak Storage, Balancing & Loans	4,092	1,285	2,807					
6	Enbridge LBA	75	-	75					
7	Total Short Term Storage & Balancing Services	17,961	2,132	15,829	14,246	11,254 (4)	11,254	11,254	-
8	Total Long Term Peak Storage Services Acct. 179-72	42,058	20,653	21,405	19,265	16,054 (5)	10,703 (5)	5,351 (5)	5,351
9	Other S&T Services Acct. 179-73	895	42	853	768	853 (6)	853	853	-
10	Total	64,914	24,244	40,670	34,501	30,744	25,393	20,042	5,351

Notes:
(1) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (a).
(2) EB-2005-0520, Rate Order, Working Papers, Schedule 24, Column (b).
(3) Includes In-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin.
(4) EB-2005-0551, Decision with Reasons, Section 9.1.2.
(5) EB-2005-0551, Decision with Reasons, Section 7.3.
(6) Includes In-franchise impact of the proposed changes to the sharing of forecast S&T transactional margin.

TAB 8

BORDEN
LADNER
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By Electronic Filing and E-mail

November 17, 2009

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Union Gas Limited 2010 Rates Application
Board File No.: EB-2009-0275
Our File No.: 339583-000053

In our capacity as solicitors for Canadian Manufacturers & Exporters ("CME"), we have reviewed Union Gas Limited's ("Union") draft Rate Order circulated on November 11, 2009. We find Union's draft Rate Order to be in accordance with the Settlement Agreement that was filed with the Board on November 2, 2009, and which was subsequently approved by the Board on November 9, 2009.

CME requests its reasonable costs incurred in reviewing the Draft Rate Order.

If you have any questions or concerns, please do not hesitate to contact me at your convenience.

Yours very truly,

Vincent J. DeRose
VJD/kt

c. Chris Ripley (Union Gas Limited)
Interested Parties EB-2009-0275
Paul Clipsham (CME)

OTT01\3867963\1

EB-2009-0275

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, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998,* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2010.

COST CLAIM OF

CANADIAN MANUFACTURERS & EXPORTERS ("CME")

December 1, 2009

Vincent J. DeRose
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street
Suite 1100
Ottawa ON K1P 1J9

Telephone (613) 237-5160
Facsimile (613) 230-8842
Counsel for CME

FORM 3

AFFIDAVIT IN SUPPORT OF COST CLAIM

Board File No.:	EB-2009-0275
Party Name / Intervenor:	Canadian Manufacturers & Exporters ("CME")

Items Claimed excluding GST:

Legal / Consultant Fees	+	Disbursements	=	Net Sub-Total
$5,404.00		$ 190.00	=	$ 5,594.00
(Peter C.P. Thompson) (Vincent J. DeRose)		(Vincent J. DeRose)		

Goods and Services Tax:

..... Full Registrant (Claiming no GST)
..... Unregistered (Claiming GST at 5%)
X Other (Claiming GST at 5%)
..... Qualifying Non-Profit (Claiming GST at 2.5%)
..... Tax Exempt (Claiming no GST)

Total GST Claimed $ 279.70

BLG GST Registration No. 869096974
CME GST Registration No. 10807 5482 RT0001

Total of Cost Claim:

Net Sub-Total	+	Total GST Claimed	=	**Total Cost Claim**
$ 5,594.00		$ 279.70	=	**$ 5,873.70**

I, Vincent J. DeRose, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a representative of the above-noted party (the "party") and as such have knowledge of the matters attested to herein.
2. I have examined the above Cost Claim, and all of the documentation in support of it.
3. The above Cost Claim represents only costs incurred directly and necessarily by the party for the purpose of its intervention in the Ontario Energy Board process (the file number of which is set out above).
4. The above Cost Claim does not include any costs incurred for work done, or time spent, by employees or officers of the party as described in section 6.05 of the Board's *Practice Direction on Cost Awards.*

SWORN BEFORE ME at the City of Ottawa, in the Province of Ontario on the 1st day of December, 2009.

COMMISSIONER for taking Affidavits, etc.
André A. Ducasse

Vincent J. DeRose

DETAILED STATEMENT OF HOURS - Vincent J. DeRose			
Date	***Description of Services***	***Time***	***Allocation***
3-Sep-09	Reviewing Application	0.3	Prep
15-Oct-09	Reviewing evidence and drafting Interrogatories	4.6	Prep
16-Oct-09	Drafting Interrogatories (including review of previous DSM decisions)	1.4	Prep
23-Oct-09	Telephone call to Mr. Ripley	0.5	Prep
26-Oct-09	Exchange e-mails with Mr. Mondrow	0.3	Prep
27-Oct-09	Reviewing Interrogatory Responses and evidence re: 2010 rates in preparation for Settlement Conference	3.3	Prep
28-Oct-09	Prepare for Settlement Conference and attend (via teleconference) Settlement Conference	1.5	Prep
28-Oct-09	Drafting email to Ms Girvan	0.2	Prep
28-Oct-09	Telephone call to client re: Settlement Conference	0.2	Prep
28-Oct-09	Drafting email to Mr. Ripley	0.2	Prep
28-Oct-09	Telephone call to Ms Girvan re: Settlement Conference	0.4	Prep
29-Oct-09	Telephone call to Mr. Ripley	0.3	Prep
29-Oct-09	Reviewing and editing Agreement; telephone call to Mr. Ripley	1.0	Prep
29-Oct-09	Telephone call from Mr. Penny	0.3	Prep
29-Oct-09	Drafting comments and e-mail	0.8	Prep
30-Oct-09	Reviewing revised Settlement Agreement and e-mails to Intervenors and Union	1.0	Prep
3-Nov-09	Drafting e-mail to the Board; and responding to e-mails from Intervenors and Union	0.6	Prep
17-Nov-09	Reviewing Draft Rate Order	3.5	Prep
17-Nov-09	Telephone call to Mr. Aiken re: Draft Rate Order	0.2	Prep
17-Nov-09	Drafting letter to the Board	0.5	Prep
19-Nov-09	Reviewing Union response to comments	0.1	Prep
	TOTAL HOURS:	**21.2**	

TAB 9

EB-2011-0038

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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Crawford Smith (LSUC#: 42131S)
Tel: 416.865.8209

Alexander C.W. Smith (LSUC #: 57578L)
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Counsel for Union Gas Limited

TO: Ontario Energy Board
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Toronto, ON M4P 1E4

Tel: 416.481.1967
Fax: 416.440.7650

AND TO: All Intervenors

TAB 10

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2011-0038

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Sched. 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;

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER ON DRAFT RATE ORDER

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 has 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. The Board established various procedural steps in the process, including dates for a Settlement Conference and a Settlement Proposal. By letter dated August 9, 2011, Union advised the Board that no settlement had been reached with the intervenors.

On September 19-21 2011, the Board held a hearing on all matters in this proceeding. Arguments were heard in accordance with the schedule established at the hearing and the Board issued its Decision and Order on January 20, 2012.

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. The Draft Rate Order was filed on February 2, 2012. Submissions on the Draft Rate Order were to be filed on February 10, 2012.

The Canadian Manufacturers & Exporters ("CME"), London Property Management Association ("LPMA"), and the Federation of Rental-housing Providers of Ontario ("FRPO") requested that the Board establish a process for hearing argument regarding 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.

On February 13, 2012, the Board issued Procedural Order No. 5 which granted an extension to all parties until February 14, 2012 to file comments on the Draft Rate Order.

Comments on the Draft Rate Order

Board staff, CME, LPMA and the City of Kitchener ("Kitchener") were of the view that the Draft Rate Order accurately reflects the Board's findings in the proceeding, with one exception.

CME argued that the ratepayers' share of 2012 net short-term revenues should be $0.831 million. Board staff, LPMA, and Kitchener supported this position.

The noted parties argued that the 79% / 21% split that the Board directed Union to use to split margins on short-term storage transactions between in-franchise customers and the non-utility storage business was based on evidence at the time of the NGEIR proceeding that indicated Union could not and would not be able to link a short-term transaction to a specific slice of the storage space.

The parties noted that in this proceeding, the Board has found that the intent of the NGEIR Decision was to effect the one time separation of plant assets between Union's utility and non-utility businesses;[1] that Union plans resource optimization activities around non-utility storage assets only and tracks the use of its non-utility storage space for ex-franchise transactions;[2] and that the entire amount of utility storage above in-franchise customer needs is sold as short-term storage service and that all of the cost of this space are to be paid by in-franchise customers.[3]

The parties submitted that based on the above Board findings, it is no longer impossible to link a short-term transaction to a specific slice of storage space (i.e. utility or non-utility). The parties noted that the evidence on the record in this proceeding indicates that utility assets are used for short-term transactions and not for long-term transactions, while non-utility assets are used for long-term transactions and not for short-term transactions. The parties submitted that therefore there is no link between short-term transactions and non-utility assets and that this is a clear change from the way Union told the Board how its storage operations operated in the NGEIR proceeding. As a result, the parties submitted that all short-term transactions are based on utility assets and the 79% / 21% split is no longer justified.

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[1] See EB-2011-0038, Decision and Order, p. 6.
[2] See EB-2011-0038, Decision and Order, p. 16.
[3] See EB-2011-0038, Decision and Order, p. 20.

This position results in the sharing of 100% of the net short-term revenues in the Short-term Storage Account minus a 10% incentive payment to Union. The noted parties argued that the ratepayers' share of 2012 net short-term revenues should be increased to $0.831 million.

In its reply submission, Union noted that the Draft Rate Order reflects the Board's findings in its Decision and should be approved as filed.

Union noted that 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. Union indicated that 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.

Union submitted that the Board found that the credit balance in the Short-term Storage account was $0.657 million and that the position taken by the noted parties that the ratepayers' share of 2012 net revenues in the Short-term Storage account should be $0.831 million is procedurally misconceived. Union submitted that the preparation of a draft rate order is properly concerned with giving effect to a decision that the Board has already made, and is not the proper context for new and inventive arguments about matters not explicitly dealt with by the Board, particularly where the Board expressly dealt with the calculation of margin sharing in the Short-term Storage Account in its Decision.

Union submitted that the position taken by the parties listed above is inconsistent with existing rates. Union noted that current proceeding relates to the clearance of deferral accounts during the five-year incentive rate period. Union noted that base rates established subsequent to the NGEIR Decision reflect the 79% / 21% split in rate base between utility and non-utility. Union noted that it is currently in an incentive rate-making period and that, 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 noted that it has done so.

Union submitted that if the Board accepts the argument advanced by the noted parties 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. Union submitted that the logical consequence is that the categories of short-term and long-term storage should be abolished. Union noted that the Board found in the current proceeding that 100 PJ shall be reserved as the utility asset. The remainder is non-utility. Therefore, Union submitted that 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.

Board Findings

The Board finds that the ratepayers' share of 2012 net short-term revenues should be $0.831 million.

The Board agrees with CME, LPMA, Kitchener, and Board staff that the outcome of the findings in its Decision is the establishment of the ratepayer credit in the Short-term Storage Account of $0.831 million.

The Board's findings in the current proceeding effectively fix 100 PJs as the utility asset.[4] In addition, the Board's findings are informed by Union's ability to track what storage assets are being used for each type of storage transaction[5] and state that the entire amount of utility storage above in-franchise requirements is available for sale as short-term storage services (and all costs of this space is to be paid for by in-franchise customers).[6]

Although the Board was not explicit in its findings that $0.831 million is the amount that should be shared with ratepayers, it is a clear outcome of its findings. The Board's findings in this proceeding result in the sharing with ratepayers of all net revenues (minus a 10% incentive payment as set out in the NGEIR Decision[7]) in the Short-term Storage Account as it is a utility asset which is supporting these transactions.

[4] See EB-2011-0038, Decision and Order at p.6.
[5] See EB-2011-0038, Decision and Order at p. 16.
[6] See EB-2011-0038, Decision and Order at pp. 20-21.
[7] See EB-2005-0551, NGEIR Decision with Reasons at p.103.

The Board does not agree with Union's position that addressing this issue as part of the Draft Rate Order process is procedurally misconceived. This outcome is directly related to the Board's findings in its Decision and Order.

The Board notes that the background section on page 18 of the Board's Decision and Order contains a paragraph that describes a calculation used to derive the $0.657 credit balance. This paragraph is a description of Union's evidence and is footnoted as such. The Board accepts that additional clarity with regard to the context of the paragraph may have avoided the confusion that has apparently arisen.

The Board did not include the specific amount to be shared with ratepayers in its findings related to the Short-term Storage Account, however the Board has found as part of this Draft Rate Order process that the amount of $0.831 million is a clear outcome of its findings in the Decision and Order.

Union has submitted that accepting the argument advanced by CME, LPMA and others leads to the conclusion that there is no need to distinguish between short-term and long-term storage at all. The Board considers that if there is a need to deal with this issue it would be more properly addressed as part of Union's rebasing application

Implementation

The Board directs Union to file a revised Draft Rate Order which reflects the Board's findings in this Decision. The Board will review the revised Draft Rate Order to confirm that all the necessary changes have been made and will issue a Final Rate Order in due course. As directed in the Decision and Order on January 20, 2012, the Board will seek to have the resulting rate impact of this Decision implemented on April 1, 2012 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") proceeding.

Cost Awards

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will issue a Decision on Cost Awards after the steps set out below have been completed.

THE BOARD THEREFORE ORDERS THAT:

1. Union shall file a Draft Rate Order reflecting the Board's findings in this proceeding on March 7, 2012.

2. Eligible intervenors shall file with the Board and forward to Union their respective cost claims within 14 days of the date of this Decision.

3. Union shall file with the Board and forward to the intervenors any objections to the claimed costs of the intervenors within 21 days from the date of this Decision.

4. If Union objects to the intervenor costs, intervenors shall file with the Board and forward to Union any responses to any objections for cost claims within 28 days of the date of this Decision.

5. Union shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

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, 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. If the web portal is not available you may email your document to the 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 with an electronic copy of all comments and correspondence related to this case.

DATED at Toronto, February 29, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 11

Filed: 2012-03-02
EB-2011-0038
Rate Order
Appendix C
Schedule 2
Updated

UNION GAS LIMITED
Details of Balances in Storage Deferral Accounts
($ Millions)

Line No.		2010 Short term (179-70) (a)	2010 Long term (179-72) (b)	2010 Total (c)	
1	Storage revenue	20.887	111.941	132.828	
	Operating costs				
2	Cost of gas	1.873	(1.282)	0.591	
3	O&M	2.261	11.078	13.339	
4	Depreciation	-	8.645	8.645	
5	Property & capital taxes	-	1.661	1.661	
6		4.134	20.102	24.236	
7	Interest, return and income taxes	-	21.940	21.940	
8	Net margin	16.753	69.899	86.652	
9	Board approved	15.829	21.405	37.234	
10	Excess	0.924	48.494	49.418	
11	Sharing %	90%	25%		/u
12	Deferral balance	0.832	12.124		/u

TAB 12

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2011-0038

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15, Sched. 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;

BEFORE: Ken Quesnelle
Presiding Member

Cathy Spoel
Member

RATE ORDER

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 has assigned file number EB-2011-0038 to the Application.

A Notice of Application and Procedural Order No. 1 was issued on May 13, 2011. The Board established various procedural steps in the process, including dates for a Settlement Conference and a Settlement Proposal. By letter dated August 9, 2011, Union advised the Board that no settlement had been reached with the intervenors.

On September 19-21 2011, the Board held a hearing on all matters in this proceeding. Arguments were heard in accordance with the schedule established at the hearing and the Board issued its Decision and Order on January 20, 2012. The Board directed Union to file a Draft Rate Order which reflected the Board's findings in its 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. Union filed its Draft Rate Order on February 2, 2012.

The Board received submissions from parties contesting Union's Draft Rate Order with respect to the Short-Term Storage and Other Balancing Services Deferral Account ("Short-Term Storage Account"). The Board issued its Decision and Order on the Draft Rate Order on February 29, 2012, directing Union to file a revised Draft Rate Order reflecting the Board's determination on the matter. The Board noted that it would review the revised Draft Rate Order to confirm that all the necessary changes were made and would subsequently issue a Final Rate Order. The Board noted that it would seek to have the resulting rate impact of the findings in this proceeding implemented on April 1, 2012 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") proceeding.

Union filed a revised Draft Rate Order on March 2, 2012. The Board has determined that the revised Draft Rate Order accurately reflects the Board's findings in this proceeding.

THE BOARD THEREFORE ORDERS THAT:

1. The rate changes set out in Appendix "A" and the rate schedules set out in Appendix "B" are approved effective April 1, 2012. Union shall implement these rates on the first billing cycle on or after April 1, 2012.

2. The deferral account balances totalling $7.905 million payable to ratepayers as set out in Appendix "C", including interest up to April 1, 2012, are approved for disposition.

3. The earnings sharing amount totalling $3.496 million payable to ratepayers as set out in Appendix "C", including interest up to April 1, 2012, is approved for disposition.

4. The 2010 Market Transformation Incentive amount of $0.509 million recoverable from ratepayers as set out in Appendix "C", including interest up to April 1, 2012, is approved for disposition.

5. The 2010 Federal and Provincial Tax Change Amount of $0.583 million payable to ratepayers as set out in Appendix "C", including interest up to April 1, 2012, is approved for disposition.

6. The 2010 Taxable Capital Base Changes of $1.671 million recoverable from ratepayers as set out in Appendix "C", including interest up to April 1, 2012, is approved for disposition.

7. Union shall combine the 2010 Deferral account balances, the 2010 Market Transformation Incentive amount, the Federal and Provincial Tax Change Amount, the Taxable Capital Base Changes and the earnings sharing amount for disposition. For General Service rate classes M1, M2, Rate 01 and Rate 10, Union shall dispose of the total balance prospectively for each of these rate classes through a temporary rate adjustment between April 1, 2012 and September 30, 2012 as set out in Appendix "D". For all other rate classes, Union shall apply the unit rates as a one-time adjustment as set out in Appendix "D".

8. Union shall monitor for and maintain records of all future utility storage space encroachments and provide such information in its rebasing application.

9. Union shall include evidence on transportation services for non-utility storage operations in its rebasing application.

10. Union shall pay the Board's costs of, and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, March 8, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

TAB 13

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2012-0048

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 closure of Deferral Account 179-121 and Deferral Account 179-122 as of April 1, 2012.

BEFORE: Marika Hare
Presiding Member

Paul Sommerville
Member

DECISION AND ORDER
DATED: March 28, 2012

Background

Union Gas Limited ("Union") filed an application dated January 30, 2012 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 approving closure of Deferral Account 179-121 – Cumulative Under-Recovery – St. Clair Transmission Line and Deferral Account 179-122 – Impact of Removing St. Clair Transmission Line from Rates (together the "St. Clair Line Deferral Accounts") (the "Application"). The Board assigned file number EB-2012-0048 to the Application.

Union noted that, with the cancellation of the Dawn Gateway Pipeline project and the related cancellation of the sale of the St. Clair Transmission Line (the "St. Clair Line") to Dawn Gateway LP ("DGLP"), Union will not be disposing of the balances in the St. Clair Line Deferral Accounts. Union indicated that the entries in the St. Clair Line Deferral Accounts have been reversed, the balances are now zero, and Union has requested that the noted deferral accounts be closed.

The Board issued the Notice of Application and Procedural Order No. 1 on February 7, 2012. In the Notice of Application and Procedural Order No.1, the Board adopted the intervenors in EB-2008-0411, EB-2010-0039, EB-2011-0038 and EB-2011-0025 as intervenors in the proceeding. The Board also noted that intervenors that were eligible for costs in any of the above listed proceedings are deemed eligible for costs in this proceeding. The Board also set out the timeline for interrogatories and submissions.

The Board received submissions from Board staff, the Buildings Owners and Managers Association ("BOMA"), the Canadian Manufacturers and Exporters ("CME"), the Federation of Rental-housing Providers of Ontario ("FRPO") and reply argument from Union.

Closure of Deferral Account 179-121 – Cumulative Under-Recovery – St. Clair Transmission Line and Deferral Account 179-122 – Impact of Removing the St. Clair Transmission Line from Rates

All parties agreed that both Deferral Account 179-121 – Cumulative Under-Recovery – St. Clair Transmission Line and Deferral Account 179-122 – Impact of Removing the St. Clair Transmission Line from Rates can be closed. Parties took positions on the rate base reinstatement value of the St. Clair Line and the amount that should be disposed of to ratepayers to prevent what some suggested would be unfair consequences of Union's proposal.

Rate Base Reinstatement Value of the St. Clair Line

In response to Board staff interrogatories, Union noted the following:

a) The costs associated with the St. Clair Line are included in Union's 2007 Board approved cost allocation study, which underpins Union's delivery rates during the 2008 to 2012 Incentive Regulation ("IR") term. Union's delivery rates were not adjusted during IR to reflect the removal of the St. Clair Line from rate base. In lieu of adjusting rates, two deferral accounts were established. Deferral account 179-121 recorded the cost of removal for the St. Clair Line to be equal to the amount of cumulative under-recovery of the St. Clair Line from 2003 to February

28, 2010. Deferral account 179-122 recorded the impact of removing the St. Clair Line from rates effective March 1, 2010.[1]

b) The revenue requirement impact of the removal of the St. Clair Line from rate base has been excluded from earnings as well as the earnings sharing calculation as demonstrated through the accumulated balance in Deferral Account No. 179-122.[2]

c) Union plans to return the St. Clair Line to rate base at its approximate net book value of $5.2 million.[3] Union noted that actual net book value of the St. Clair at December 31, 2009 (when it was taken out of rate base) was $5,182,879.48.[4]

Board staff submitted that the Board's intention in establishing the St. Clair Line Deferral Accounts was to protect ratepayers from harm arising from Union's proposed sale of the St. Clair Line.

Board staff submitted that the principle that the Board should be seeking to achieve in its Decision is to create a "status quo" situation where ratepayers are in the same position as they would have been had the St. Clair Line never been removed from rate base (and the St. Clair Line Deferral Accounts had never been established). The creation of a status quo situation ensures that ratepayers are protected from any harm arising from Union's decision to not go forward with the sale of the St. Clair Line.

Board staff submitted that, to achieve a status quo situation, the Board should direct Union to incorporate the St. Clair Line back into rate base in its rebasing proceeding (EB-2011-0210) at the net book value of the line calculated as if the asset was never transferred to "Assets Held for Sale" and had continued to depreciate normally during the period that it was removed from rate base. Board staff submitted that the Board should direct Union to file a revised net book value of the St. Clair Line (reflecting the depreciation that would have been recorded to the asset had it continued to be included

[1] See EB-2012-0048, Interrogatory Responses, Ex. A1.4 (c).
[2] See EB-2012-0048, Interrogatory Responses, Ex. A1.2 (e) iii.
[3] See EB-2012-0048, Interrogatory Responses, Ex. A1.3 (e).
[4] See EB-2012-0048, Interrogatory Responses, Ex. A3.2 (b).

in rate base) for inclusion in rate base in its rebasing proceeding.[5] BOMA[6] and CME[7] took similar positions in their submissions.

Union agreed with the conclusions of Board staff to the effect that the St. Clair Line should be returned to rate base at the net book value as if the asset had never been transferred to "Assets Held for Sale". Union agreed that it will incorporate the St. Clair Line back into rate base in the EB-2011-0210 proceeding at the net book value less depreciation for the period that it was removed from rate base.[8]

Consequences for Ratepayers of a "No Sale" Outcome under Union's Proposal and Proposed Remedy

CME noted that as a "no sale" scenario has emerged, the issue of whether Union has some accountability for the cost consequences for ratepayers of this outcome needs to be determined. CME noted that the question that the Board has yet to determine is whether the management of Union breached any obligations they owed to Union's ratepayers; and, if so, have Union's ratepayers sustained a loss as a result of those actions. Based on the points of argument that follow, CME submitted that Union has some accountability for the cost consequences for ratepayers of the "no sale" outcome. CME submitted that this accountability is a factor that should be recognized in the Board's response to the explicit and implicit relief Union requests in this proceeding.

CME submitted that based on the evidence that was before the Board in the EB-2010-0039 proceeding, it is common ground that, under its initial binding shipper Precedent Agreement ("PA") with DGLP, Union had a right to call on DGLP to construct the Dawn Gateway Pipeline, regardless of what other shippers wished and regardless of any rights Union had against DGLP under their Agreement of Purchase and Sale with respect to the St. Clair Line. CME noted that if DGLP did not honour the commitments it made to Union under that binding PA, then Union could seek remedies from DGLP. Conversely, DGLP had the unfettered right to build the pipeline and to require the PA shippers to pay the agreed upon demand charges over the entire duration of the long-term contracts that each PA shipper had executed.

[5] See EB-2012-0048, Board Staff Submission, pp. 2-3.
[6] See EB-2012-0048, BOMA Submission, pp. 5-7.
[7] See EB-2012-0048, CME Submission, pp. 11-12.
[8] See EB-2012-0048, Union Reply Submission, pp. 11-12.

CME noted that the evidence in the EB-2010-0039 proceeding revealed that Union management did not insist on retaining Union's right, as a single shipper, to call on DGLP to comply with the provisions of its PA with Union. Rather, Union management gave up Union's right, as a single shipper, to call on DGLP to honour its commitments and, in effect, allowed the other DGLP shippers, either separately or in combination, to exercise that right. Union gave up this right notwithstanding the material benefits that the Dawn Gateway Pipeline would bring to the entire commodity market in Ontario.

CME noted that an exercise by Union management of Union's initial right to call on DGLP to construct the pipeline or, in the alternative, its ability to seek breach of contract remedies from DGLP, if it refrained from constructing the pipeline, would benefit Union's ratepayers by forcing DGLP to either complete the Dawn Gateway Pipeline or be exposed to contractual claims for failing to honour that commitment. CME submitted that an exercise by Union, by itself, of its initial rights against DGLP could cause Union's parent considerable harm in that Union's parent would likely have to absorb the lion's share of the approximate $10 million of benefits that the Board had determined would accrue to Union's ratepayers in a completed sale scenario. CME noted that Union would also be responsible for the 10-year demand charge commitment it had made to DGLP in the PA. Moreover, construction of the Dawn Gateway Pipeline, without the support of the other PA committed shippers, could reduce the returns Union's parent might reasonably anticipate as an indirect co-owner of the pipeline.

CME submitted that when faced with a conflict between the interests of its owner and the interests of its ratepayers, Union chose the interests of its owner. CME submitted that the decision by Union to resolve the conflict of interest situation in which it found itself by preferring the interests of its owner to the interests of its ratepayers is a factor that needs to be considered when determining its accountability for the consequences of the "no sale" outcome that has materialized and the conditions, if any, that should attach to the relief that Union seeks in this proceeding. CME submitted that the actions of Union's management, in preferring the interests of Union's owner over the interests of its ratepayers, were partially causative of the "no sale" scenario that has materialized.

CME submitted that to remedy this situation, the Board should condition its order permitting the closure of the St. Clair Line Deferral Accounts on a requirement that all actual St. Clair Line revenues for the period January 1, 2010 to December 31, 2012, that are incremental to the $120,000 already embedded in Base Rates are not to be

credited to Union's shareholder under the auspices of the Earnings Sharing Mechanism ("ESM") formula, as proposed by Union. CME submitted that, instead, these amounts should be brought forward in Union's 2013 Cost of Service proceeding (EB-2011-0210) for crediting to ratepayers. CME noted that the result of its proposal is essentially the same as the result that would occur with the removal of the entire St. Clair Line asset from the ambit of the IR regime from December 31, 2009 (when Union removed the St. Clair Line from its utility operations), until December 31, 2012 (the termination date of Union's 5-year incentive regulation term).[9] BOMA[10] and FRPO[11] took similar positions to CME.

FRPO argued that, at a very minimum, the Board should order Union to compensate ratepayers an amount equal to the revenue requirement of the St. Clair Line while it was used as a non-utility asset (approximately $2.2 million). FRPO submitted that this approach would correct a potential omission in the design of relief for an asset that was held (and used) outside of utility operations during the IR term. FRPO submitted, as a more comprehensive approach, the Board could order that both the revenue requirement (FRPO's submission) and the incremental revenues through until December 31, 2012 (CME's submission) be returned in aggregate to ratepayers as part of Union's 2013 Cost of Service Proceeding.[12]

In its reply argument, Union submitted that no compensation is warranted. Union noted that the positions of CME, BOMA, and FRPO are inconsistent with the Board's Decision in EB-2010-0039, are not based on fact, and that there is no harm to ratepayers of the "no sale" scenario.[13]

Union noted that in EB-2010-0039, the Board considered whether some consideration should be given, in closing the Deferral Accounts and returning the St. Clair Line to rate base, to the fact that the line had, historically, been underutilized. The Board stated: "nothing in this Decision shall be construed so as to prevent or inhibit parties from asserting that some remedy or consideration arising from the underutilization of the

[9] See EB-2012-0048, CME Submission, pp. 3-11.
[10] See EB-2012-0048, BOMA Submission, pp. 4-6.
[11] See EB-2012-0048, FRPO Submission, pp. 1-9.
[12] See EB-2012-0048, FRPO Submission, pp. 7-9.
[13] See EB-2012-0048, Union Reply Submission, pp. 12-18.

assets may be considered by the Board in subsequent cost of service rate proceedings."[14]

Union noted that there are two conclusions that can be drawn from the above noted passage from the EB-2010-0039 Decision. First, contrary to the very thrust of intervenor submissions which hinge on allegations of misconduct by Union, the Board did not find fault with any aspect of Union's conduct in relation to the Dawn Gateway Pipeline project. The Board was focused on the question of utilization, nothing more. Second, the Board indicated that the proper proceeding in which to address the question of utilization was not this proceeding, but Union's next cost of service proceeding.

In response to CME's argument that Union favoured the interests of its shareholder at the expense of ratepayers because it gave up a right to force DGLP to construct the Dawn Gateway Pipeline, Union submitted that neither Union nor any other Shipper had a right under the PAs to call for construction of the Dawn Gateway Pipeline. Union noted that under its initial PA, it had no ability to demand service on the Dawn Gateway pipeline. Union's PA, like all others, contained conditions precedent in favour of each of Spectra and DTE including conditions that sufficient firm capacity subscription exist at acceptable rates, as determined by them in their sole discretion and that all necessary Canadian and US regulatory approvals had been received. Union submitted that there can be no dispute that these conditions were never satisfied.

Union submitted that CME's suggestion that Union was motivated by concern for its shareholder disregards the evidence in the EB-2010-0039 proceeding. Union noted that the evidence in that proceeding was that Union was concerned about its own longstanding business relationship with the other DGLP shippers, through the purchase of gas for system sales customers and the sale of regulated services, and that it was for this reason that it was prepared to accept a unanimous decision by the DGLP shippers to delay the Dawn Gateway project.[15]

Union submitted that even if there were evidence that Union had preferred the interests of its shareholder over ratepayers, that behaviour could not have had any impact on the sale of the St. Clair Line. Union noted that even if Union had a right to call for

[14] EB-2010-0039, Decision and Order, p. 11.
[15] EB-2010-0039, Transcripts, April 6, 2011, p. 80.

construction of the Dawn Gateway Pipeline (which it did not), and even if it had sought a remedy to enforce that right (which it could not), no action by Union could have forced the sale of the St. Clair Line. Union noted that the Purchase and Sale Agreement ("PSA") between Union and DGLP is specific as to the circumstances necessary for closing to occur. Union submitted that closing is conditional on, among other things, receipt by Union of notice from DGLP that the conditions precedent in Article. 3.1 of the PSA, all of which are for DGLP's exclusive benefit, have been satisfied, complied with or waived. Union submitted that that notice was never given.

Union agreed that the cancellation of the sale of the St. Clair Line means that certain benefits will not accrue to ratepayers. However, other benefits, including the opportunity to earn revenues on the St. Clair Line, have been reinstated. Union submitted that ratepayers should be indifferent between the sale and no sale of the St. Clair Line scenarios. Had the sale gone ahead, the ratepayers would have been harmed, but compensated. Now that the sale is not proceeding, there is no harm and no basis for compensation. Union submitted that both of those scenarios represent a situation that the Board has deemed to be fair to ratepayers.

In response to CME's position that as compensation for Union's alleged wrongful conduct, ratepayers should, at minimum, be entitled to all revenue in excess of the Board-approved level earned on the St. Clair Line for the years 2010 – 2012, Union submitted that any allegation of wrongful conduct is incorrect. Union noted, that at a minimum, these allegations are incompatible with the evidence in the EB-2010-0039 proceeding. Union noted that the evidence in that proceeding is to the effect that it never had a right to force the sale of the St. Clair Line, it never had a right to force construction of the Dawn Gateway Pipeline, it was motivated by concern for its ongoing relationship with the other Shippers on the proposed Dawn Gateway Pipeline and the Dawn Gateway Pipeline project was cancelled because of unfavourable market conditions.

On the basis of this evidence, Union noted that there can be no possible basis for proposing a change to the terms of Union's Incentive Rate Mechanism and ESM. If the St. Clair Line had never been proposed for sale, revenues on the St. Clair Line would have continued to be subject to ESM. Union noted that it is proposing to include actual 2011 and 2012 revenue from the St. Clair Line in utility earnings subject to sharing,

consistent with the approach that would have been followed had the sale of the asset never been proposed.[16]

Union noted that it is not the case that Union's shareholder has retained all revenues earned while the St. Clair Line was held for sale. For the year 2011, while the St. Clair Line continued to be held for sale, the utility earnings calculation did not include the associated revenue requirement components (O&M, depreciation, interest, return, and taxes). Union noted that the associated revenue from the reversal of the Deferral Account balances was also excluded from the earnings sharing calculation. However, the excess revenues on the St. Clair Line are included in the utility earnings calculation for sharing with the ratepayer.[17] The impact of this will be known once the evidence for Union's 2011 earnings sharing is filed.

Union noted that the 2010 earnings sharing filing was submitted and approved while the St. Clair Line was still being held for sale. Union excluded the revenue requirement of the removal of the St. Clair Line from rate base from its 2010 earnings sharing calculation as the St. Clair Line was still being held for sale. As a result, Union's actual approach to 2010 earning sharing differs from the approach that would have been adopted if the St. Clair Line had never been proposed for sale. Union noted, in agreement with Board staff's submission, there is no precedent or principled basis for adjusting earnings sharing with the benefit of hindsight.[18]

Future Entitlement of Ratepayers for Compensation for Under-Recovery on the St. Clair Line

BOMA submitted that the harm to ratepayers related to the under-recovery on the St. Clair Line continues and has asked that the Board acknowledge that compensation for the under-utilization of the St. Clair Line will be an issue in Union's 2013 Cost of Service proceeding (EB-2011-0210).

Union submitted that BOMA's comments reflect a misapprehension of the compensation that the Deferral Accounts were intended to provide. Union stated that the purpose of the Deferral Account was to compensate ratepayers for the lost

[16] See EB-2012-0048, Interrogatory Responses, Ex. A4.1.
[17] See EB-2012-0048, Interrogatory Responses, Ex. A4.1.
[18] See EB-2012-0048, Board Staff Submission, pp. 3.

opportunity to recoup past subsidy for under-recovery of the St. Clair Line through future revenues.

Union submitted that, with the cancellation of the sale of the St. Clair Line, ratepayers now have the opportunity to offset past under-recovery with future revenues on the St. Clair Line. There no longer exists any harm for which ratepayers are entitled to be compensated.

Board Findings

The Board finds that Deferral Account 179-121 – Cumulative Under-Recovery – St. Clair Transmission Line and Deferral Account 179-122 – Impact of Removing the St. Clair Transmission Line from Rates can be closed.

The Board finds that the St. Clair Line shall be returned to rate base in the EB-2011-0210 proceeding at the net book value of the St. Clair line less depreciation for the period that it was removed from rate base as agreed to by Union in its reply submission.

The Board notes that the St. Clair Line Deferral Accounts were created to protect ratepayers from harm as described in the EB-2008-0411 Decision and Order:

> The Board concludes that the transaction does result in harm to ratepayers. The harm is the inability of ratepayers to recoup the cumulative past subsidy since 2003 through future revenues. The harm arises because Union intends to do outside the utility what it originally intended to do within the utility. The asset is not being sold to be used for an entirely different purpose; it is being sold to a utility and will continue to be used for utility service – the very service it was originally expected to provide.
>
> The Board further finds, however, that this harm can be mitigated through an appropriate allocation to ratepayers upon completion of the transaction based on a fair market value for the asset.[19]

The Board notes that the St. Clair Line Deferral Accounts were designed to compensate ratepayers for the harm caused by the sale of the St. Clair Line as ratepayers would no longer have the opportunity to recover the past under-recovery of the St. Clair Line

[19] See EB-2008-0411, Decision and Order, pp. 23-24.

through future revenues. However, with the sale of the St. Clair Line cancelled, the Board finds that there is no harm to be addressed and therefore no compensation is due to ratepayers.

In addition, the Board notes that there was much discussion of Union's perceived accountability for causing the "no sale" scenario. The Board is of the view that Union did not act inappropriately in its negotiations with DGLP or the other shippers regarding the Dawn Gateway Pipeline project. Therefore, there is no basis for the Board to find Union accountable to provide ratepayers with compensation for the fact that the Dawn Gateway Pipeline project and the sale of the St. Clair Line have been cancelled (or for any other reason).

The Board notes the issue of under-utilization of the St. Clair Line is within the scope of Union's 2013 Cost of Service Proceeding (EB-2011-0210) and may be raised in that proceeding should parties wish to do so.

Cost Awards

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will issue a Decision on Cost Awards after the steps set out below have been completed.

THE BOARD THEREFORE ORDERS THAT:

1. Union shall close Deferral Account 179-121 – Cumulative Under-Recovery – St. Clair Transmission Line effective April 1, 2012.

2. Union shall close Deferral Account 179-122 – Impact of Removing the St. Clair Transmission Line from Rates effective April 1, 2012.

3. Union shall return the St. Clair Line to rate base, effective January 1, 2013, at the net book value of the St. Clair line (less depreciation for the period that it was

removed from rate base). The necessary evidence shall be filed by Union as part of the EB-2011-0210 proceeding.

4. Intervenors shall file with the Board and forward their respective cost claim to Union within 14 days from the date of this Decision.

5. Union shall file with the Board and forward to the intervenors any objections to the claimed costs of the intervenors within 21 days from the date of this Decision.

6. If Union objects to the intervenor costs, intervenors shall file with the Board and forward to Union any responses to any objections for cost claims within 28 days of the date of this Decision.

7. Union shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2012-0048**, be made through the Board's web portal at 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. If the web portal is not available you may email your document to the 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 with an electronic copy of all comments and correspondence related to this case.

DATED at Toronto, March 28, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary