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By Electronic Filing and Email

May 18, 2012

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

Dear Ms Walli,

Union Gas Limited ("Union")
Calculation of Margin Sharing Related to Deferral Account 179-70
– Short-Term Storage and Other Balancing Services
Board File No.: EB-2012-0206
Our File No.: 339583-000104

Introduction

This letter contains the supplementary submissions of Canadian Manufacturers & Exporters ("CME") and is being provided pursuant to the provisions of the Board's Notice of Motion to Review, Notice of Motion Hearing and Procedural Order No. 1 dated May 2, 2012.

The Board commenced this review proceeding on its own motion pursuant to Rule 43.01 of its *Rules of Practice and Procedure* (the "*Rules*"). The purpose of the proceeding is to review the Board's February 29, 2012 Decision and Order on the Draft Rate Order (the "Decision and Order"), and its Final Rate Order issued on March 8, 2012 (the "Final Rate Order") with respect to the calculation of short-term storage margin sharing.

Since the Board has incorporated as submissions in these proceedings the exchange of letters between counsel for CME and Union dated March 27, April 5, April 16 and April 19, 2012, the focus of these supplementary submissions is to provide a summary of the rationale for our position that the portion of actual 2010 short-term storage margins of $16.753 million to be shared with ratepayers should be calculated in the amount of $3.824 million, and that the Decision and Order and Final Rate Order should be varied to require this amount to be paid to ratepayers.

CME notes that its submissions with respect to this important issue are now supported by the submissions from Board Staff circulated on May 14, 2012. This is comforting and reinforces the conclusions that are described in the sections of this letter that follow.

The Decision and Order and Its Intent

In the Decision and Order, the Board described the submissions made by CME, London Property Managers Association ("LPMA") and Board Staff, with respect to the Draft Rate Order that Union had circulated, at pages 3 and 4 as follows:

> *"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.*
>
> *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 2010 net short-term revenues should be increased to $0.831 million."*

After describing Union's reply submissions, the Board stated its findings at pages 5 and 6 of the Decision and Order as follows:

> *"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.* (emphasis added)
>
> *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."*

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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.
[7] See EB-2005-0551, NGEIR Decision with Reasons at p. 103.

In our letters of March 27 and April 16, 2012, we indicated that our calculation of the $0.831 million amount stemmed from the figure of $0.924 million contained in Union's evidence in this proceeding, and our mistaken assumption as to the amount embedded in 2010 rates. Only afterwards did we realize that the $0.831 million amount did not reflect all of the short-term storage revenues that would have been streamed to Union's shareholder under the auspices of the 79/21% split feature of the NGEIR Decision.

For the reasons we have outlined in our previous letters, we submit that the Board Panel that rendered the Decision and Order was unaware that a substantially larger amount of $3.824 million would be payable to Union's ratepayers if the 79/21% feature of the NGEIR Decision were to be set aside. We submit that when rendering the Decision and Order, the Board Panel believed that the entire amount of 2010 actual margins that would previously have been streamed to Union's shareholder, after deducting the 10% incentive payment, was $0.831 million and not $3.824 million.

In these circumstances, we submit, by making the foregoing findings, the Board intended to stream to Union's ratepayers the entire amount of 2010 actual margins that would previously have been streamed to Union's shareholder.

The $0.831 million amount is an "error of fact" in that it does not reflect all of the 2010 short-term storage revenues that would previously have been streamed to Union's shareholder under the auspices of the 79/21% split feature of the NGEIR Decision. As a matter of fact, the amount of $3.824 million is the entire amount of 2010 actual margins that would previously have been streamed to Union's shareholder after deducting the 10% incentive payment to Union.

There is an "Error of Fact" in the Decision and Order

We say that an "error of fact" has occurred because the Board was actually unaware of the $3.824 million amount when it rendered the Decision and Order.

On the other hand, Union says that there is no "error of fact". Union contends that the Board was actually aware of the $3.824 million amount by virtue of two sentences it included in paragraph 10 of its February 17, 2012 Reply Submissions. Union contends that these two sentences disclose to the Board the $3.824 million amount consisting of a $2.992 million amount in the 2007 forecast of $15.829 million and an additional $0.832 million being 90% of the $0.924 million by which 2010 actuals of $16.753 million exceed the 2007 base year forecast of $15.829 million.

We say that the two sentences in paragraph 10 of Union's February 17, 2012 Reply Submissions failed to actually inform the Board that the portion of the 2010 actual margins that would have previously been streamed to Union ratepayers was $3.824 million with the result that the Decision and Order and the Final Rate Order are based on an "error of fact".

The Board is Fully Empowered to Vary the Orders to Reflect their Intent

We submit that the Board is fully empowered under Rule 43.01 to vary the Decision and Order and Final Rate Order to reflect what was intended, namely to require that all 2010 actual short-

term revenues that would previously have been streamed to Union's shareholder under the 79/21% feature of the NGEIR Decision, being the sum of $3.824 million, be instead paid to Union's ratepayers.

The 79/21% Feature of the NGEIR Decision is Reversible and has been Set Aside

The further ground upon which Union relies to support its position that its shareholder is to be paid $2.992 million of actual 2010 short-term storage revenues, in addition to the 10% incentive payment, is that the $2.992 million amount is a payment to its shareholder that is embedded in base rates and, as such, is irreversible during the term of Union's five-year Incentive Regulation Mechanism ("IRM") Plan.

For the reasons that we have described in our previous letters, this contention lacks merit and should be rejected. We submit that the Board already rejected this argument in the Decision and Order when it disagreed with Union's argument "...that addressing this issue as part of the Draft Rate Order process is procedurally misconceived". Moreover, the $2.992 million amount was not embedded in Union's 2007 test year Base Rates. It only became an item for consideration in connection with the sharing of short-term storage revenues as a result of Union's implementation of the NGEIR Decision in 2008 being year 1 of Union's five-year IRM Plan. The 21% share of short-term revenues for Union's shareholder was added for the purposes of 2008 being year 1 of Union's five-year IRM Plan. As a result of the Decision and Order, this share of short-term revenues for Union's shareholder has been reversed for the purposes of determining margin sharing for 2010 being year 3 of that Plan.

The Decision and Order reversed the implementation of the 79/21% feature of the NGEIR Decision for the purposes of calculating 2010 actual short-term storage revenues to be paid to ratepayers on the basis of findings that Union was not in fact operating its integrated storage assets in a manner that supported the 79/21% feature of the NGEIR Decision. Union's shareholder cannot continue to realize a $2.992 million benefit at the expense of ratepayers for a method of operating its integrated storage assets that does not exist.

The Appropriate Margin Sharing Calculation

The credit amount that is embedded in Union's 2010 franchise rates is $11.254 million, and that is the amount that is to be reflected in the calculation of the portion of actual 2010 short-term revenues that are to be shared with ratepayers. The calculation of the ratepayers' share is as follows:

Actual short-term storage revenues	$16.753 million
Less 10% incentive payment	$ 1.675 million
Subtotal	$15.078 million
Less amount embedded in in-franchise rates	$11.254 million
Amount to be paid to ratepayers	$3.824 million

Conclusion

For all of these reasons, we respectfully submit that, pursuant to Rule 43.01, the Decision and Order and Final Rate Order should be varied to assure that, after deducting the 10% incentive amount of $1.675 million from actual 2010 short-term storage revenues of $16.753 million, all of the $3.824 million balance in excess of the $11.254 million credit amount embedded in in-franchise rates is paid to ratepayers.

Costs

CME respectfully requests that it be awarded all of its reasonably incurred costs of bringing this important issue to the Board's attention.

Yours very truly,

Peter C.P. Thompson, Q.C.

PCT/kt/slc
c. Chris Ripley (Union)
Intervenors in EB-2011-0038
Paul Clipsham (CME)

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