

Peter C.P. Thompson, Q.C.
T 613.787.3528
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1100
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



By electronic filing and by e-mail

July 9, 2012

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

Dear Ms Walli,

Union Gas Limited ("Union")
2013 Rebasing Application
Board File No.: EB-2011-0210
Our File No.: 339583-000123

We are writing to alert the Board to the fact that there is an issue with respect to the admissibility of certain statements made by Union in Technical Conference Undertaking JT1.55 and the evidence of Drs. Kolbe and Vilbert, being Exhibit E2, Tabs 1 and 3 in Union's EB-2005-0520 case which Union filed as Attachments to Exhibit JT1.55.

In Article 4.3 of the EB-2005-0520 Settlement Agreement dated May 15, 2006, Union agreed as follows:

"Union agrees that, in any future proceedings before the Board, it will not use the after tax weighted average cost of capital ("ATWACC") methodology to support any changes it proposes to either the Board's Draft Guidelines on a Formula-Based Return on Common Equity for Regulated Utilities or Union's capital structure."

It is our position that the opinion evidence of Drs. Kolbe and Vilbert that are expressed in the text of Exhibit JT1.55 clearly stems from an application of the ATWACC methodology. We submit that reliance on those conclusions in the Undertaking Response is a contravention by Union of the provisions of Article 4.3 of the EB-2005-0520 Settlement Agreement.

By letter dated June 22, 2012, we asked counsel for Union to remove Tabs 1 and 3 of the Attachment to Exhibit JT1.55 and to eliminate statements referring to the conclusions of that evidence in the Undertaking Response. A copy of our letter to that effect is attached.

Counsel for Union telephoned me on July 5, 2012, and followed up with a letter today indicating that Union would not withdraw the material. The grounds for the position that Union takes are set out in that letter, a copy of which is also attached.

If Union is not relying on the ATWACC methodology to support the undertaking response, then the evidence of Drs. Kolbe and Vilbert attached to the Undertaking Response is inadmissible. Moreover, if Union is not relying on the ATWACC methodology, then the conclusions expressed in the Undertaking Response based upon the evidence of Drs. Kolbe and Vilbert are without foundation. Statements in the Undertaking Response linked to the evidence of Drs. Kolbe and Vilbert should be ruled to be inadmissible.

We seek a ruling from the Board with respect to the compatibility of Union's response in Exhibit JT1.55 with the EB-2005-0520 Settlement Agreement and request that the Board set some time aside to deal with our request before the witnesses with respect to capital structure testify.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Peter Thompson", with a long horizontal flourish extending to the right.

Peter C.P. Thompson, Q.C.

PCT\slc
enclosures

c. Chris Ripley (Union)
Crawford Smith (Torys)
Intervenors EB-2011-0210
Paul Clipsham (CME)

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Peter C.P. Thompson, Q.C.
T 613.787.3528
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St. Suite 1100
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



By email

June 22, 2012

Crawford Smith
Torys LLP
Suite 3000
79 Wellington Street West
Box 270, TD Centre
Toronto, ON M5K 1N2

Dear Mr. Smith,

Union Gas Limited ("Union")
2013 Rebasing Application
Board File No.: EB-2011-0210
Our File No.: 339583-000123

We are writing to request Union to withdraw the filing of Tabs 1 and 3 of the material attached to Technical Conference Undertaking Exhibit JT1.55 because the filing of the material contravenes the provisions of Article 4.3 of the EB-2005-0520 Settlement Agreement dated May 15, 2006.

The provisions of Article 4.3 state as follows:

"Union agrees that, in any future proceedings before the Board, it will not use the after tax weighted average cost of capital ("ATWACC") methodology to support any changes it proposes to either the Board's Draft Guidelines on a Formula-Based Return on Common Equity for Regulated Utilities or Union's capital structure."

The opinions expressed by Drs. Kolbee and Vilbert with respect to capital structure, that are expressed in the text of Undertaking Response Exhibit JT1.55, clearly stem from an application of the ATWACC methodology.

We submit that reliance on those conclusions in the Undertaking Response is a clear contravention of Union's express agreement not to use the ATWACC methodology to support any changes it proposes to its capital structure.

Please remove Tabs 1 and 3 from the record and eliminate the statements in the Undertaking Response that refer to that evidence and its conclusions. The items to be removed are the last

sentence of the first paragraph and the whole of the second paragraph of the Undertaking Response.

Our hope is that you will agree to this request so that we can avoid having to raise the issue of Union's non-compliance with the provisions of the Settlement Agreement during the course of the 2013 Rebasing proceeding.

It is with that hope in mind that we are, at this time, confining the distribution of this letter to representatives of Union and our client.

Yours very truly,



Peter C.P. Thompson, Q.C.

PCT\slc

c. Mark Kitchen and Chris Ripley (Union)
Paul Clipsham (CME)
Vince DeRose (BLG)

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Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

Crawford Smith
Tel 416.865.8209
csmith@torys.com

July 9, 2012

Peter C.P. Thompson, Q.C.
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street
Suite 1100
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

**Re: Union Gas Limited
2013 Rebasing Application
EB-2011-0210**

We are writing further to your letter dated June 22, 2012 and our conversation of July 5, 2012.

Your letter asks that Union withdraw Tabs 1 and 3 from its answer to Technical Conference Undertaking Exhibit JT1.55 on the basis that the filing of the Tabs contravenes the provisions of Article 4.3 of the EB-2005-0520 Settlement Agreement dated May 15, 2006. The material at Tabs 1 and 3 is the evidence of Drs. Kolbe and Vilbert of the Brattle Group. At Tab 2 is Dr. Carpenter's evidence, also of the Brattle Group.

As set out in the Settlement Agreement in this proceeding, and as separately communicated to you, Union is not seeking to apply the ATWACC methodology to determine its deemed capital structure, nor was the material at Tabs 1 and 3 filed for that purpose.

On the contrary, the material was filed in direct response to the undertaking given during the Technical Conference. The question asked Union to confirm if it accepts that its financial and business risk have either remained unchanged or have declined since last analyzed by Dr. Carpenter. However, Dr. Carpenter was not the only member of the Brattle Group who analyzed Union's financial and business risk. As reflected in the material, his evidence was part of a larger analysis which included the work done by Drs. Kolbe and Vilbert. Given this structure and the reference to Dr. Carpenter's evidence, it is appropriate that the entirety of the evidence be placed on the record.

We trust this responds to your concerns. Should you have any questions, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Crawford Smith', with a stylized flourish at the end.

Crawford Smith

Tel 416.865.8209
csmith@torys.com

CS/lp

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