

September 5, 2012

BY RESS & Courier

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Union Gas Limited (“Union”)  
Thunder Bay Pipeline Project  
Board File # EB-2012-0226\EB-2012-0227**

Further to the Board Staff interrogatories of August 23, 2012, please find attached two copies of Union’s responses.

Sincerely,

[original signed by]

Mary Jane Patrick  
Administrative Analyst, Regulatory Projects  
:mjp  
Encl.

cc: Neil McKay, Manager Facilities Applications  
Zora Crnojacki, Project Advisor  
All Intervenors

UNION GAS LIMITED  
Response to Interrogatory  
from Board Staff

1. Reference: Prefiled Evidence/ page 3/paragraph 11 and page 3-4/ paragraphs 16-19

- a) Please provide status on the execution of all of the agreements to be entered with the OPC in order for the proposed project to be constructed and operated, including commissioning phase of the gas supply.
- b) Please file copies of executed agreements with the Board in response to this interrogatory. If the agreements have not been executed yet, please file forms of the agreements that will be executed.

**Response:**

- a) Union has executed a Rate 20 distribution contract with OPG. This contract includes the appropriate contractual elements for the construction, operation, and commissioning of the facility.
- b) Please find attached as Appendix 1, a copy of the Rate 20 distribution contract for this project.

Contract ID	14260
Contract Name	OPGI Thunder Bay WDA
DUNS#	

This Northern GAS DISTRIBUTION CONTRACT ("**Contract**"), made as of the 4th day of April, 2012

BETWEEN:  
UNION GAS LIMITED  
("**Union**")

- and -

ONTARIO POWER GENERATION INC.  
("**Customer**")

**WHEREAS**, Union proposes to build certain facilities (the "**Expansion Facilities**") to serve the gas conversion project at the Thunder Bay Generating Station (the "**Power Plant**");

**AND WHEREAS**, Union also proposes to build for its own needs certain replacement facilities to serve other customers in Thunder Bay (the "**Distribution System Replacement Facilities**")

**AND WHEREAS**, the parties hereto acknowledge that for a portion of the route of the Expansion Facilities, the Distribution System Replacement Facilities and Expansion Facilities shall be one pipeline;

**AND WHEREAS**, Customer has requested and Union has agreed to provide Customer with services as specified in Schedule 1 (the "**Services**");

**AND WHEREAS**, Customer and Union have executed a letter of indemnity dated October 19, 2010, as may be amended from time to time, ("**LOI**") which terminates upon the execution of this Contract;

**AND WHEREAS**, Customer will be responsible for supplying gas to Union at the Point(s) of Receipt as specified in Schedule 1;

**AND WHEREAS**, Union will distribute Gas to Customer's Point(s) of Consumption under this Contract as specified in Schedule 1;

**IN CONSIDERATION** of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **INCORPORATED DOCUMENTS**

The following are hereby incorporated in and form part of this Contract:

(a) The General Contract Parameters as contained in Schedule 1; and

- (b) Union's Northern Distribution Service Terms and Conditions (to be referred to as Schedule 2); and
- (c) Union's General Terms and Conditions, (to be referred to as Schedule 3); and
- (d) The form of Monthly Status Report as contained in Schedule 4; and
- (e) Union's standard Letter of Credit as contained in Schedule 5; and
- (f) The economic analysis provided by Union as contained in Schedule 6; and
- (g) Rate Schedule R20 as amended from time to time and as approved by the Ontario Energy Board; and
- (h) Thunder Bay Project Cost Sharing Proposals, as contained in Schedule 7.

## 2. **CONDITIONS PRECEDENT**

The obligations of Union to provide Services hereunder are subject to the following conditions precedent (a) through (e) inclusive, which are for the sole benefit of Union and which may be waived or extended in whole or in part in the manner provided in this Contract:

- (a) Union shall have obtained, in form and substance satisfactory to Union, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders and authorizations, that are required to:
  - i) provide the Services; and
  - ii) construct the Expansion Facilities; and,
- (b) Union shall have obtained all internal approvals that are necessary or appropriate to
  - i) provide the Services; and
  - ii) construct the Expansion Facilities; and,
- (c) Union shall have completed and placed into service the Expansion Facilities; and,
- (d) Union shall have received from Customer the requisite financial assurances as may be required by Section 10 (which in total shall be no greater than the Budget Amount); and,
- (e) Customer shall have complied with Customer's obligations pursuant to Section 6 and Section 7 to the extent such obligations are to be performed prior to the Day of First Delivery.

Union and Customer shall each use commercially reasonable efforts to satisfy and fulfill conditions (a), (c), (d), and (e). Union shall notify Customer forthwith in writing of the satisfaction or waiver of each condition precedent.

Notwithstanding the provisions of Section 3 of Schedule 3, if Union concludes, acting in a commercially reasonable manner, that any of the conditions precedent (a) (b) or (c) has not or will not be satisfied or waived by Union, Union shall promptly deliver written notice to Customer, terminating this Contract subject to Section 8.

Notwithstanding the provisions of Section 3 of Schedule 3, if Union concludes, acting in a commercially reasonable manner, that either of the conditions precedent (d) or (e) has not or will not be satisfied by Customer or waived by Union, Union shall promptly deliver written notice to

Customer, requiring Customer to take action to ensure the satisfaction of the condition precedent. If Customer does not, in the sole and unfettered discretion of Union, complete all necessary action to ensure the satisfaction of the condition precedent within 5 (five) Business Days, Union may, upon notice, terminate this Contract subject to Section 8.

### 3. **CONTRACT TERM**

This Contract shall be effective from the date first written above. However, the Services and Union's obligations to provide the Services under Section 4 shall only commence on the later of (such later date being the "**Day of First Delivery**"): (i) November 1, 2013; and (ii) the date that the last condition precedent as set out in Section 2 is satisfied or waived by Union. This Contract shall continue for a period of 20 (twenty) Contract Years (the "**Initial Term**"), and continuing thereafter on a year to year basis unless written notice to terminate is provided by one party to another at least 90 days prior to the expiration of the then current term. "**Contract Year**" means, with respect to the first year, the period beginning on the Day of First Delivery and ending on December 31 of the subsequent calendar year, and with respect to each year thereafter, a calendar year.

### 4. **SERVICES PROVIDED**

Union agrees to provide Services as specified in Schedule 1 and Customer agrees to pay for such Services pursuant to terms and conditions as set out in this Contract, including the referenced incorporated documents, and the rate(s) referenced in Schedule 1.

### 5. **EXPANSION FACILITIES**

Union will use commercially reasonable efforts to construct the Expansion Facilities to serve the Power Plant. Construction of the Expansion Facilities shall be in accordance with all applicable laws and regulations. The target date for completion of these facilities is November 1, 2013. Union will provide written notice to Customer when such facilities are complete and placed into service.

Union and Customer agree that Union shall not be obligated to construct any portion of the Expansion Facilities between December 15 of any year and March 31 of the subsequent calendar year.

### 6. **CONTRIBUTION IN AID OF CONSTRUCTION SCHEDULE OF PAYMENT**

Customer will be required to pay to Union a contribution in aid of construction to Union, of \$23,625,000 (the "**Aid Amount**"). Customer shall pay the Aid Amount as per the following:

	Payment Amount (in \$CAD)	Invoice Date	Due Date
Payment 1	[REDACTED]	Oct. 31, 2012	Nov. 26, 2012
Payment 2	[REDACTED]	Mar. 29, 2013	Apr. 25, 2013
Payment 3	[REDACTED]	Jun. 28, 2013	Jul. 25, 2013
Payment 4	[REDACTED]	Sep. 30, 2013	Oct. 25, 2013

Approximately 18 months after the Day of First Delivery, Union will compare the actual cost of construction of the Expansion Facilities plus the Distribution System Replacement Facilities (the sum of those two costs being the "**Actual Construction Cost**") with the Pre-Construction Overall Estimate as defined in Section 11. The Actual Construction Cost will be the amount reported to the Ontario Energy Board in the post-construction report by Union. The Aid Amount shall be recalculated by Union using the Actual Construction Cost, and in consideration of any increase in Rate 20T rates as described herein. Such recalculation shall occur within 30 days of the filing of the post-construction report, to create a new amount (such new amount to be known as the "**Revised Aid Amount**"). Should the terms of the applicable Union distribution rates for Rate 20T approved by the Ontario Energy Board in effect at the time of the recalculation create a revenue stream which exceeds the revenue stream currently in Schedule 6, by greater than 6%, then any percentage amount above the 6% shall be applied in the recalculation of the Aid Amount. For example, if the increase in the revenue stream is 8%, then 2% shall be applied in the recalculation. Only if the revenue stream increase is greater than 6%, will the revenue stream in Schedule 6 be updated and replaced to include the revised calculation, otherwise the revenue stream will not be updated and only the Actual Construction Cost will be used to determine the Revised Aid Amount. If the Revised Aid Amount is different from the Aid Amount, Customer will be billed pursuant to Section 17 or reimbursed accordingly. Union's Capital Allocation (as defined in Section 11 and set out in Schedule 7 to this Contract) shall not change as a result of this calculation. For greater certainty, it is the intention of the parties that Customer bears the entire risk and receives the entire benefit if the Actual Construction Costs exceeds or is less than the Pre-Construction Overall Estimate.

## 7. TCPL FACILITIES

If for any reason TransCanada Pipelines Limited ("TCPL") requires Union to pay any costs in relation to the modified connection between TCPL and Union to serve the Power Plant, Customer will reimburse said costs to Union. Union shall notify Customer of such requirement in writing as soon as practicable after becoming aware of such requirement from TCPL. Union shall invoice Customer for such costs (on a pass through basis) and such invoices shall be payable pursuant to Section 17. Such costs shall be as determined by a backstopping agreement between Union and TCPL, and without limiting the duties of Customer to pay such invoices, Union agrees to use commercially reasonable efforts to utilize the terms and conditions of the backstopping agreement as may be available to it to minimize said costs to the Customer. Union will provide a copy of the backstopping agreement between Union and TCPL, as soon as practicable.

## 8. TERMINATION PRIOR TO COMPLETION OF EXPANSION FACILITIES

Customer shall have the right to terminate this Contract at any time prior to the Day of First Delivery, by giving written notice, subject to the terms hereof.

Union shall have the right to terminate this Contract at any time prior to the Day of First Delivery, pursuant to Section 2, by giving written notice hereof, subject to the terms hereof.

(a) If this Contract is terminated by either party at any time prior to the Day of First Delivery, then:

(i) Upon such termination, this Contract shall be of no further force and effect and each of the parties shall be released from all further obligations hereunder, provided that any rights or remedies that a party may have for breaches of this Contract prior to such termination and any liability that a party may have incurred prior to such termination, and the parties' obligations under this Section 8, shall not thereby be released;

(ii) Customer shall reimburse Union for all Project Costs (to the extent not previously paid by Customer to Union under Section 6); and

(iii) Customer shall reimburse Union for all cancellation costs, fees or other amounts paid under contracts entered into by Union to support the satisfaction of the conditions precedent set out in Section 2 ("**Cancellation Costs**"); and

(b)(i) If this Contract is terminated by either Customer or Union the Customer shall, in addition to the payments required under Sections 8(a)(ii) and 8(a)(iii), also pay Union a payment ("**Liquidated Damages**") based on the following formula:

Liquidated Damages = [REDACTED] plus an additional [REDACTED] each month starting on the 1<sup>st</sup> day of April 2012 and every first day of each month thereafter, but subject to a maximum being [REDACTED].

(ii) Notwithstanding Section 8(b) (i), Liquidated Damages shall not be payable by the Customer in the event this Contract is terminated by Customer or by Union as a result of one of the following:

(1) Any of the conditions precedent described in Sections 2(a), 2(b), and 2(c) have not or will not be satisfied, provided that Customer has complied with all of the terms of this Contract.

(2) If Union makes an assignment in bankruptcy, is a party against whom a receiving order is made, or for whom a receiver or monitor has been appointed under a security agreement or by a court or any similar action under any law.

(iii) For greater clarity, any Liquidated Damages that are payable under the terms of this Contract, will be payable by Customer if Customer terminates this Contract prior to the Day of First Delivery, provided that Union has complied with all of the terms of this Contract.

Customer shall pay amounts owing under Sections 8 (a) (ii), 8 (a)(iii) and 8(b) pursuant to Section 17. Union may invoice amounts under this Section from time to time, with the expectation that there will be an invoice rendered within 30 days of termination, and subsequent invoices as additional amounts payable hereunder are incurred from time to time. Upon receiving notice of termination, Union will use commercially reasonable efforts to cease incurring Project Costs and to mitigate Cancellation Costs upon such termination. In no event shall Union invoice Customer for any Cancellation Costs or Project Costs not previously invoiced by Union after 12 months from the termination date. Without limiting the foregoing, Customer shall have the right to audit at Customer's expense the costs claimed for reimbursement by Union for a period of 6 months after each invoice is issued.

## 9. EARLY TERMINATION PROVISION – INITIAL TERM

During the Initial Term, Customer may provide written notice (the “**Early Termination Notice**”) to Union at least 90 days prior to an Early Termination Date irrevocably and unconditionally:

(a) electing to terminate this Contract either as of the end of a Contract Year or, for each Contract Year after the second Contract Year, as of June 30 of a Contract Year (such termination date being referred to as the “**Early Termination Date**”), pursuant to this Section. For greater certainty in Contract Year 1 and Contract Year 2 Customer may only terminate at the end of the Contract Year; and

(b) agreeing to pay the Early Termination Amount in accordance with this Section.

In the event such Early Termination Notice is delivered:

(i) Union shall determine the Early Termination Amount (as defined below) and deliver written notice of such amount to Customer within 15 days of receipt of the Early Termination Notice;

(ii) effective as of Early Termination Date, this Contract will be terminated and of no further force and effect and each of the parties shall be released from all further obligations hereunder (provided that any rights or remedies that a party may have for breaches of this Contract prior to such termination and any liability a party may have incurred prior to such termination shall not thereby be released); and

(iii) Customer shall pay the Early Termination Amount to Union as of Early Termination Date. The “**Early Termination Amount**” shall be determined as follows: (A) if the Early Termination Date is at the end of a Contract Year, the Early Termination Amount shall be calculated as an amount equal to the entry shown in the row in Schedule 6 labeled “NPV by Year” for the Contract Year in which this Contract is terminated divided by an amount equal to one minus the then current provincial and federal tax rate expressed as a decimal; and (B) if the Early Termination Date is on June 30th of a Contract Year, the Early Termination Amount shall be the arithmetic average of the entry shown in the row in Schedule 6 labeled “NPV by Year” for the Contract Year in which this Contract is terminated and the entry shown in the row in Schedule 6 labeled “NPV by Year” for the prior Contract Year divided by an amount equal to one minus the then current



provincial and federal tax rate expressed as a decimal. All amounts calculated shall be rounded to the nearest whole dollar. For example, if Customer wishes to cancel this Contract effective the end of the 6th Contract Year and assuming the then current total provincial and federal tax is 25%, then based on Schedule 6, the amount Customer would be required to pay to Union would be  $\$14,158,000 / (1 - 0.25) = \$18,877,333$  on December 31st of that Contract Year and if Customer wishes to cancel this Contract effective June 30th of the 7th Contract Year, then based on Schedule 6, the amount Customer would be required to pay to Union would be calculated as  $(\$14,158,000/2 + \$12,739,000/2) / (1 - 0.25) = \$17,931,333$  on June 30th of that Contract Year. In all cases, the entry shall be interpreted as a positive number despite the presence of brackets around the entries in Schedule 6.

## 10. FINANCIAL ASSURANCES

In addition to and not in substitution for the credit provisions of Section 5.04 of the General Terms and Conditions, the following shall apply, starting upon the execution of this Contract and throughout the Initial Term and any renewal or extension thereof: No Letter of Credit shall be required from Customer for so long as it maintains a credit rating of at least "BBB-" as reported by Standard and Poor's. If Customer's credit rating is downgraded below "BBB-", or its credit is no longer rated, then Union may send a notice to Customer to provide a Letter of Credit in form and substance satisfactory to Union (a standard form of which is attached hereto as Schedule 5). Within five Business Days following receipt of such notice from Union, Customer shall provide to Union an irrevocable and payable on demand Letter of Credit to Union, to secure performance of Customer. This Letter of Credit will be in an amount equal to the Budget Amount, but is subject to reduction by Union to reflect (i) Aid Amounts paid in accordance with Section 6 and (ii) to reflect the then current "NPV by Year" pursuant to Schedule 6 divided by an amount equal to one minus the then current provincial and federal tax rate expressed as a decimal. Union may call on the Letter of Credit at any time to satisfy Customer's obligations to make any payment after it has become due and payable or to satisfy any judgement or award of damages against Union arising from this Contract or any other contract with Customer. Union shall notify the issuer of the Letter of Credit (with a copy to the Customer) as to the amount by which it may be reduced from time to time.

If Customer regains a rating of at least "BBB-", Customer may request Union to notify the issuer of the Letter of Credit (with a copy to Customer) that the Letter of Credit is no longer required and may be cancelled, reserving the right of Union to require a new Letter of Credit at a later date.

If, as a result of an assignment of this Contract by Union, there is a transfer fee associated with any Letter of Credit, Union shall be liable for the first \$500.00 and Customer shall be liable for any excess over \$500.00.

11. **DEFINITIONS**

Capitalized terms shall be defined in Union's General Terms and Conditions, unless specifically defined herein.

The following terms shall have the meaning ascribed thereto:

**"Budget Amount"** means \$ 24,513,000.

**"Pre-Construction Overall Estimate"** means \$ 62,924,000.

**"Project Costs"** means any and all reasonable costs (including litigation costs, cancellation costs, carrying costs, and third party claims) expenses, losses, demands, damages, obligations, or other liabilities (whether of a capital or operating nature, and whether incurred or suffered before or after the date of this Contract) of Union including amounts paid to affiliates in accordance with the Affiliate Relationship Code as established by the Ontario Energy Board) in connection with or in respect of development and construction of the Expansion Facilities (including without limitation the construction and placing into service of the Expansion Facilities, the obtaining of all governmental, regulatory, and other third party approvals, and the obtaining of rights of way) except for costs that have arisen from the gross negligence, fraud, or willful misconduct of Union.

**"Union's Capital Allocation"** means \$ 14,786,000.

12. **NOTICES**

Notices shall be delivered pursuant to the Notices of Section of General Terms and Conditions and delivered to the addresses as referenced in Section 6 of Schedule 1.

13. **CONTRACT SUCCESSION**

This Contract replaces and terminates the LOI between Union and Customer, and any other letters, contracts, understandings or other agreements between the parties relating to the subject matter hereof.

14. **MONTHLY REPORTING**

During the period up to and including the date Union has completed the Expansion Facilities, Union will provide Customer with a monthly update in the form as attached as Schedule 4 hereof. Union will provide such reports to Customer by the end of the second business week of the month following the monthly activity to be reported on. In addition, Union will provide a separate report to Customer fifteen (15) days prior to Union entering into any commitment or obligation that would result in the Customer owing to Union under the terms of this Contract an amount in excess of \$4,000,000.

**15. LATE PAYMENT CHARGES**

Any amounts due and payable by Customer to Union arising under Sections 6, 7, 8 or 9 of this Contract shall, if not paid by the due date thereof, be subject to late payment charges equal to 1.5% per month (for a nominal rate of 18% per annum compounded monthly) on any unpaid balance including previous arrears.

**16. ASSIGNABILITY**

Notwithstanding Section 12.02 of the General Terms and Conditions, either party may assign the Contract to an affiliate or to an entity acquiring all or substantially all of the assets of that party or for the purpose of securing indebtedness, but no such assignment shall release the assigning party from the obligation to perform the Contract unless the other party consents thereto in a signed document.

**17. BILLING AND PAYMENT OF CERTAIN CHARGES**

For charges arising under the last paragraph of Section 6 (and specifically excluding the table in Section 6), or from Section 7, 8 (a) (ii), 8 (a) (iii) or 8(b), after the end of each calendar month, Union shall provide Customer with a notice (the "Invoice") setting forth the total amount owing to Union, supported by documentation (provided that for charges arising under Section 8(b), no supporting documentation shall be required) together with such other amounts as may be owing from one party to another hereunder. Such notice will be delivered within the first fifteen (15) days of the following calendar month and the amounts payable under such notice shall be due and payable on the latter of the twenty-fifth day of such following month or ten days following receipt of the notice (the "Due Date") (and if the Due Date is not a Business Day, the immediately following Business Day).

IN WITNESS WHEREOF this Contract has been duly executed by the parties hereto as of the date first written above.

ONTARIO POWER GENERATION INC.

Per: Bruce Boland

Name: BRUCE BOLAND  
Title: SR VP, CORP AFFAIRS

UNION GAS LIMITED

Per: Gregory L. Esel

Name: Gregory L. Esel  
Title: President & CEO  
Spectra Energy Corp.

ONTARIO POWER GENERATION INC.
approved as to content
name <u>M. Lalum</u>
department <u>Contract Admin</u>
date <u>April 16, 2012</u>
name <u>C. S. S. S. S.</u>
department <u>Fuels</u>
date <u>April 16, 2012</u>
approved as to legal form
signature <u>[Signature]</u>
date <u>April 13, 2012</u>

APPROVED FOR EXECUTION
<u>DRJ</u>
<u>[Signature]</u>

Contract ID	14260
Contract Name	OPGI Thunder Bay WDA
DUNS#	

## Schedule 1

### Northern Gas Distribution Contract General Contract Parameters

#### 1. **DATES**

Day of First Delivery and Contract Year shall be as defined in Section 3 of the Contract.

#### 2. **POINT OF RECEIPT FOR T-SERVICE**

Gas under this Contract will be received by Union for Service at the following Point of Receipt:

- Western Delivery Area.

#### 3. **TYPE OF SERVICE**

Service under this Contract shall be a combination of Firm and Interruptible service in the quantity and for the Point(s) of Consumption specified in this Schedule 1.

##### a) Distribution Parameters:

Service	Daily Contract Demand (10 <sup>3</sup> m <sup>3</sup> /Day)
Firm Transportation Service (Rate 20T)	0.0 Day of First Delivery to December 31, 2013 then 1880.0 thereafter
Interruptible Transportation Service (Rate 25T)	2256.0 Day of First Delivery to December 31, 2013 then 376.0 thereafter
Interruptible Sales Service (Rate 25)	Only by request and Authorization

##### b) Balancing Service

Service	Minimum Tolerance (GJ)	Maximum Tolerance (GJ)
Customer Balancing Service (CBS)	0 November 1 to March 31	10,000 November 1 to March 31
	0 April 1 to October 31	10,000 April 1 to October 31

### c) T-Service Storage

#### T-Service Storage Parameters:

<b>T-Service Storage Service</b>	<b>Contracted Daily Storage Injection/Withdrawal Entitlement (GJ/Day)</b>	<b>Maximum Storage Quantity Entitlement (GJ)</b>
Firm Storage Service (Rate 20T)	0	0

## 4. RATES FOR SERVICE

#### Rate 20 Firm Transportation Service:

To be invoiced according to the applicable Rate Schedule

#### Rate 25 Interruptible Service Rates:

<b>Service</b>	<b>Delivery Charge</b>	<b>Gas Supply Charge</b>
Interruptible Service (Rate 25)	Not Available	Not Available
Interruptible Service (Rate 25T)	\$ 25.00 / 10 <sup>3</sup> m <sup>3</sup>	Not Available

## 5. DELIVERY PRESSURE AND POINTS OF CONSUMPTION

#### Point(s) of Consumption

<b>Meter Number</b>	<b>Location Description</b>	<b>Maximum Hourly Volume (m<sup>3</sup>/hour)</b>	<b>Delivery Gauge Pressure</b>	<b>Notice Period for Interruption (hours)</b>
TBD	Thunder Bay Generating Station	94,000	620 kpa	4

Firm Hourly Quantity ("FHQ") means the maximum quantity of natural gas that may flow during any hourly period when an interruption in Rate 25 Sales Service, CBS withdrawals and Rate 25 Transportation Service becomes effective within a Gas Day. The FHQ is 94,000 m<sup>3</sup> per hour.

## 6. MINIMUM VOLUMES

The Firm Minimum Annual Volume starting January 1, 2014 is 34,310,000 m<sup>3</sup>.

In each Contract Year, Customer shall consume or, in any event, pay for the Firm Minimum Annual Volume (“**FMAV**”), as adjusted in the formula herein. The payment required for the FMAV not consumed in any Contract Year (that volume being the “**Firm Deficiency Volume**” or “**FDV**”) shall be calculated by multiplying the FDV by the least-expensive block Monthly Commodity Charge identified in the Rate Schedule for Rate 20 in effect at the end of the Contract Year. This payment shall only apply if the FDV is greater than zero.

$$FDV = [FMAV \times [(U - DF)/U]] - [FV - (F + O)]$$

**U** = number of days in Contract Year

**DF** = number of days in the Contract Year where Service is curtailed below the Firm Contract Demand then in effect

**FV** = total firm volume distributed to Customer in the Contract Year

**F** = Volumes distributed to the Points of Consumption during Force Majeure

**O** = total Authorized and/or Unauthorized gas distributed to Customer in the Contract Year

The Interruptible Minimum Volume from the Day of First Delivery to December 31, 2013, shall be 4,000,000 m3 and zero thereafter. Customer shall consume or, in any event, pay for the Interruptible Minimum Volume (“**IMV**”). The payment required for the IMV not consumed prior to December 31, 2013 (that volume being the “**Interruptible Deficiency Volume**” or “**IDV**”) shall be calculated by multiplying the IDV by the least-expensive block Monthly Commodity Charge identified in the Rate Schedule for Rate 20 in effect as of December 31, 2013. This payment shall only apply if the IDV is greater than zero.

## 7. CONTACT LIST FOR NOTICES

### **Notice for Nominations:**

Logistics Coordinator  
700 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario M5G 1X6  
Phone: (416) 592-3777  
Fax: (416) 592-5431

Union Gas Limited  
Manager, Gas Management Services  
50 Keil Dr. N. Chatham, Ontario N7M 5M1  
Phone: (519) 436-4545  
Fax: (519) 436-4635

### **Notices for Invoices and Payments:**

Senior Fossil Fuels Payment Advisor  
700 University Avenue, 9<sup>th</sup> Floor C1  
Toronto, Ontario M5G 1X6  
Phone: (416) 592-4537  
Fax: (416) 592-8180

Union Gas Limited  
Team Lead, Billing and Operational Support  
50 Keil Dr. N. Chatham, Ontario N7M 5M1  
Phone: (519) 352-3100  
Fax: (519) 436-5320

### **Notices for Interruptions/Force Majeure**

Toronto Control Room  
  
Phone: (416) 592-1581  
Fax: (416) 592-1600

### **Notices for All Other Matters:**

Director, Trading and Origination  
700 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario M5G 1X6  
Phone: (416) 592-5585  
Fax: (416) 592-4627

Union Gas Limited  
Manager, Contracting & Customer Support  
50 Keil Dr. N. Chatham, Ontario N7M 5M1  
Phone: (519) 352-3100  
Fax: (519) 436-4645



**SCHEDULE “2”**  
**Terms And Conditions**  
**Northern Gas Distribution Contract**

**1. UPSTREAM TRANSPORTATION CAPACITY AND COSTS**

Where Customer contracts for T-service and Customer accepts an assignment of a portion of Union’s upstream capacity with TCPL (“Temporary Transportation Contract Assignment Agreement(s)” or “Assignment Agreement(s)”), the Assignment Agreement(s) shall continue in full force and effective for each Contract Year until notice to terminate the Assignment Agreement(s) is provided by either Union or Customer. Such Notice must be delivered not less than 7 months prior to the end of the Assignment Agreement(s). Customer agrees to execute any renewals of the Assignment Agreement(s) as required by either Union or TCPL.

**2. RECEIPT AND DISTRIBUTION**

**2.01 Receipt**

Where Customer contracts for T-service, Union agrees to receive a quantity of Gas at the Point of Receipt identified in Schedule 1. However, Union is not obligated to accept quantities of Gas that exceed any of the following:

- a) the sum of the receipts as confirmed by Union with the upstream transporter, for that Day;
- b) an amount that would result in Customer exceeding the CBS Maximum Tolerance;
- c) an amount that would result in Customer exceeding the Maximum Storage Quantity Entitlement, if applicable;
- d) an amount that would result in Customer exceeding the Contracted Daily Storage Injection/Withdrawal Entitlement, if applicable.

**2.02 Distribution to Point(s) of Consumption**

Subject to the Maximum Hourly Volume parameters, Union agrees to distribute a quantity of Gas to the Point(s) of Consumption, not to exceed the sum of Firm Contract Demand and Interruptible Contract Demand for the applicable Point of Consumption. On any Day during the Contract Year, Customer’s Gas usage shall be deemed as follows:

First Gas used	Gas up to the Firm Daily Contract Demand then in effect and, if applicable, prorated between contracted Firm services based on Daily Contract Demand
Next Gas used	Interruptible T-service, if applicable and available
Next Gas used	Rate 25a sales service, if applicable and available
Next Gas used	Rate 25 sales service, if applicable and available
Next Gas Used	Overrun, whether authorized or unauthorized

When Customer contracts for T-service, quantities consumed by Customer will be applied to T-service parameters based on the quantity of Gas delivered by Customer. Gas delivered by Customer includes Gas withdrawn from Customer's CBS account.

### **2.03 Type Of Distribution Service**

The type of Distribution Service herein shall be a combination of Firm and Interruptible Service for each Point of Consumption as identified in Schedule 1.

The Interruptible Daily Contract Demand at a Point of Consumption is subject to interruption by Union. Union shall provide Customer notice of interruption not less than the Notice Period for Interruption for each Point of Consumption, as identified in Schedule 1.

### **2.04 Overrun**

If, on any day, Customer consumes Gas in excess of the quantities Union is obligated to distribute, such excess shall be deemed overrun and shall be deemed to be purchased from Union by Customer as either Authorized or Unauthorized Overrun. If Union specifically provides prior written authorization to Customer to exceed the quantities identified in Section 3 of Schedule 1, such excess shall be Authorized Overrun and Customer shall incur charges as identified below. Unless Union specifically provides prior written authorization to exceed the quantities identified in Section 3 of Schedule 1, any excess shall be Unauthorized Overrun and, in addition to any other remedies Union may pursue, Customer shall incur charges as identified below.

#### **Authorized Overrun**

If Customer contracts for Firm Service only and has consumed in excess of the Firm Daily Contract Demand then Customer shall be charged the 100% load factor rate for distribution service plus the gas supply charge.

If Customer contracts for Interruptible Service or for a combined Firm and Interruptible Service and has consumed gas in excess of total Daily Contract Demand in Schedule 1, then Customer shall be charged a rate equivalent to 100% of the maximum delivery charge identified in the Rate 25 Rate Schedule plus the highest spot cost at Dawn on the day the overrun was authorized, as published in the Canadian Gas Price Reporter ("CGPR") plus all costs associated with transporting such overrun to the appropriate Delivery Area.

In addition, if Customer contracts for T-service and consumes in excess of the sum of their deliveries to Union and their Rate 25 Sales Service Contract Demand, then such excess shall be deemed overrun and Customer shall be charged a rate equivalent to 100% of the maximum delivery charge identified in the Rate 25 Rate Schedule plus the highest spot cost at Dawn on the day the overrun was authorized, as published in the Canadian Gas Price Reporter ("CGPR") plus all costs associated with transporting such overrun to the appropriate Delivery Area.

#### **Unauthorized Overrun**

If Customer contracts for Firm Service or a combined Firm and Interruptible Service and has consumed in excess of the Daily Contract Demand in Schedule 1, then Customer shall be charged a rate equivalent to 150% of the maximum delivery charge identified in the Rate 25 Rate Schedule plus the higher of the spot cost at Dawn in the month that the overrun occurs or the month following, as published in the Canadian Gas Price Reporter ("CGPR") plus all costs associated with transporting such overrun to the appropriate Delivery Area.

In addition, if Customer contracts for T-service and consumes in excess of the sum of their deliveries to Union and their Rate 25 Sales Service Contract Demand, then such excess shall be

deemed overrun and Customer shall be charged a rate equivalent to 150% of the maximum delivery charge identified in the Rate 25 Rate Schedule plus the highest of the spot cost at Dawn in the month the overrun occurs or the month following, as published in the Canadian Gas Price Reporter ("CGPR") plus all costs associated with transporting such overrun to the appropriate Delivery Area.

### **3. CUSTOMER BALANCING SERVICE ("CBS")**

If Customer contracts for T-service, Customer shall also contract for CBS service.

#### **3.01 Customer Balancing Service Account**

The CBS Account shall mean the account used to accumulate the daily differences arising between the quantities of Gas received by Union (excluding fuel and including storage withdrawal) at the Receipt Point from Customer and the quantity of Gas distributed by Union to Customer's Point(s) of Consumption. Where the quantities received by Union exceed the quantities distributed by Union, the resulting change in the CBS Account balance shall be positive. Where the quantities delivered by Union exceed the quantities received by Union, the resulting change in the CBS Account balance shall be negative.

Unless authorized by Union, the CBS Account balance cannot exceed the Maximum Tolerance or the Minimum Tolerance defined in Schedule 1.

The CBS is an interruptible service. When injections into the CBS Account are interrupted, any quantities injected by Customer shall be treated the same as quantities that exceed the Maximum Tolerance. When withdrawals to the CBS Account are interrupted, any quantities withdrawn by Customer shall be treated the same as quantities that exceed the Minimum Tolerance.

#### **3.02 Operation Within Tolerances**

Operational constraints may impact the ability for Union to provide CBS Services. If, in Union's opinion, CBS services are not available and if the CBS Account balance is positive, upon notification from Union, Customer must remove the balance within 5 days. If the CBS Account balance remains positive at the end of the 5 days, upon 3 days notice from Union, the positive balance will be forfeited to Union without recourse.

If, in Union's opinion, CBS services are not available and if the CBS Account balance is negative, upon notification from Union, Customer must replace the balance within 5 days. If the CBS Account balance remains negative at the end of the 5 days, the negative balance will be purchased by Customer at the Rate 25 price currently in effect, or the Rate 30 price if in effect and available.

#### **3.03 Operation in Excess of Tolerances**

If the CBS Account balance exceeds the Maximum Tolerance, any quantities in excess of the Maximum Tolerance shall immediately be charged the maximum cumulative balancing fee as defined in TCPL's tariffs. In addition, upon 3 days notice from Union, any balance in excess of the Maximum Tolerance will be forfeited to Union without recourse.

The CBS Account balance will not be less than the Minimum Tolerance.

### **3.04 Disposition of Gas at Contract Termination**

If this Contract terminates or expires and Customer does not have a contract for Storage Services with Union then, unless otherwise agreed to by Union, any positive CBS account balance shall be immediately forfeited to Union without recourse.

Unless otherwise agreed to by Union, any negative CBS account balance as of the date of termination or expiry shall be deemed to have been purchased by Customer at the Rate 25 price currently in effect, or the Rate 30 price if in effect and available.

### **3.05 Termination of Service**

If the balancing agreement between Union and TCPL used to facilitate this service terminates, the CBS service may also be terminated by Union on the same date.

### **3.06 CBS Charges**

CBS charges are tiered and are determined depending upon the daily opening balances of the Customer's CBS account. The associated rates are posted on Union's website.

### **3.07 Energy Conversion**

Balancing of receipt by Union with distribution to Customer is calculated in energy. The distribution to Customer is converted from volume to energy using Union's standard practices.

## **4. T-SERVICE STORAGE SERVICE**

If a R20 or R100 Customer contracts for T-service storage service, the injection, storage and withdrawal of Gas for Customer by Union will be subject to Union's agreements as amended from time to time for storage and transportation services with TCPL and the constraints imposed by virtue of those agreement(s) and the operational procedures and constraints on Union's system.

Further, should the OEB change the methodology used to determine storage parameters, any resulting changes to Customer's storage parameters would be reflected effective November 1 of the next Contract Year.

### **4.01 Storage Injection**

Union agrees to inject a quantity of Gas to storage, provided Union is not obligated to inject a quantity of Gas that exceeds the Contracted Daily Storage Injection/Withdrawal Entitlement or exceeds the Maximum Storage Quantity Entitlement.

### **4.02 Storage Withdrawal**

Union agrees to withdraw a quantity of Gas from storage, provided Union is not obligated to withdraw a quantity of Gas that exceeds the Contracted Daily Storage Injection/Withdrawal Entitlement or exceeds the quantity of gas remaining in Customer's Maximum Storage Quantity Entitlement. If the total quantity of gas remaining in Customer's storage is less than 20% of Customer's Maximum Storage Quantity Entitlement, Customer's withdrawal entitlement will be reduced to 67% of the Contracted Daily Storage Injection/Withdrawal Entitlement.

#### **4.03 Storage Overrun**

Unless Union specifically provides written authorization to exceed contract parameters, any excess shall be unauthorized overrun and, in addition to any other remedies Union may pursue, Customer shall incur charges as referenced in the applicable Rate Schedule.

#### **4.04 Renewal of Storage Service**

Unless otherwise agreed to by Union, the availability of storage will be determined by Union each year. Customer must request storage as part of the annual renewal process as provided for in Section 3 of the Contract.

#### **4.05 Survival of Gas Storage Obligations**

Upon the termination of this Contract, Customer shall have until the storage service end date, as set out in Section 3(c) of Schedule 1, to withdraw all Gas remaining in Customer's storage account. Any Gas remaining in the Customer's storage account, after the storage service end date, shall immediately be forfeited to Union without any recourse. The provisions of this section 4.05 shall survive the termination of this Contract.

### **5. CHANGES TO CONTRACT PARAMETERS (SCHEDULE 1)**

Any changes to End Use locations, consumption patterns, or upstream supply may have a corresponding change to the parameters in Schedule 1 as determined by Union. If there is a change, Customer will receive a revised Schedule 1 from Union prior to the effective date of the change. If Customer does not acknowledge and agree to the revised Schedule 1 in writing at least 25 days prior to the effective date of the change then the Contract will be terminated.

## GENERAL TERMS AND CONDITIONS

<b>1</b>	<b>NOMINATION REQUIREMENTS FOR IN-FRANCHISE CONTRACTED SERVICES.....</b>	<b>3</b>
1.01	NOMINATION CYCLE TIMELINES.....	3
1.02	NOMINATION DEADLINE FOR SERVICES REQUIRING UNION TO NOMINATE ON OTHER PIPELINES	3
1.03	NOMINATION QUANTITIES (UNITS).....	3
1.04	COMPRESSOR FUEL .....	3
1.05	UNION’S ACCEPTANCE OF NOMINATIONS .....	4
1.06	CONFIRMATION PROCESS.....	4
1.07	SCHEDULING PROCESS .....	4
1.08	SUBSEQUENT NOMINATIONS.....	4
1.09	PARKWAY CALL .....	4
<b>2</b>	<b>FORCE MAJEURE .....</b>	<b>5</b>
2.01	FORCE MAJEURE NOT AVAILABLE .....	5
2.02	FORCE MAJEURE DECLARED BY UNION.....	6
2.03	FORCE MAJEURE DECLARED BY CUSTOMER.....	6
2.04	APPLICABILITY TO CONTRACTUAL ANNUAL QUANTITY REQUIREMENTS .....	6
<b>3</b>	<b>TERMINATION AND SUSPENSION.....</b>	<b>6</b>
3.01	TERMINATION OF CONTRACT AND SUSPENSION OF SERVICE .....	6
3.02	EFFECT OF TERMINATION .....	7
<b>4</b>	<b>NOTICE .....</b>	<b>7</b>
<b>5</b>	<b>BILLING.....</b>	<b>8</b>
5.01	MONTHLY BILLING .....	8
5.02	RIGHT OF EXAMINATION.....	8
5.03	PAYMENTS .....	8
5.03-1	<i>Payment Date.....</i>	8
5.03-2	<i>Remedies For Non-Payment .....</i>	8
5.03-3	<i>Adjustment of Underpayment or Overpayment.....</i>	8
5.04	FINANCIAL ASSURANCE.....	9
5.05	NON-PAYMENT REMEDY .....	9
<b>6</b>	<b>QUALITY .....</b>	<b>10</b>
6.01	NATURAL GAS QUALITY.....	10
6.02	FREEDOM FROM OBJECTIONABLE MATTER.....	10
6.03	PARTIES’ RESPONSIBILITIES.....	10
<b>7</b>	<b>MEASUREMENT.....</b>	<b>10</b>
7.01	DETERMINATION OF VOLUME AND ENERGY .....	10
7.02	METERING BY UNION, CHECK MEASURING EQUIPMENT.....	10
7.03	OBSERVATION OF MEASUREMENT WORK .....	11
7.04	CALIBRATION AND TEST OF METERS .....	11
7.05	CORRECTION OF METERING ERRORS - FAILURE OF METERS .....	11
<b>8</b>	<b>POSSESSION OF AND RESPONSIBILITY FOR GAS .....</b>	<b>11</b>
8.01	POINT OF RECEIPT AND POINT OF CONSUMPTION CONTROLS .....	11

8.02	TITLE TO THE GAS.....	12
8.03	COMMON CARRIER AND INSURANCE .....	12
8.04	RIGHT TO COMMINGLE THE GAS.....	12
<b>9</b>	<b>FACILITIES AT CONSUMPTION POINT .....</b>	<b>12</b>
9.01	CONSTRUCTION, MAINTENANCE AND ENTRY .....	12
9.02	PROPERTY, EASEMENTS, UTILITIES.....	12
<b>10</b>	<b>INDEMNITY .....</b>	<b>13</b>
<b>11</b>	<b>REPRESENTATIONS AND WARRANTIES BY AGENT.....</b>	<b>13</b>
<b>12</b>	<b>MISCELLANEOUS PROVISIONS.....</b>	<b>14</b>
12.01	INTERPRETATION .....	14
12.01-1	<i>Definitions and Industry Usage .....</i>	<i>14</i>
12.01-2	<i>Expanded Meaning .....</i>	<i>14</i>
12.01-3	<i>Inconsistency.....</i>	<i>14</i>
12.01-4	<i>Currency .....</i>	<i>14</i>
12.01-5	<i>Time.....</i>	<i>14</i>
12.02	ASSIGNABILITY .....	14
12.03	PROPER LAW OF CONTRACT .....	15
12.04	SUCCESSORS AND ASSIGNS.....	15
12.05	ENTIRE CONTRACT .....	15
12.06	CONFIDENTIALITY .....	15
12.07	PRIORITY OF SERVICE .....	15
12.08	WAIVER AND FUTURE DEFAULT .....	15
12.09	LAWS, REGULATIONS AND ORDERS .....	15
12.10	RIGHT TO CONTRACT .....	16
12.11	SURVIVING OBLIGATIONS.....	16
12.12	JOINT AND SEVERAL LIABILITY .....	16
12.13	INVALIDITY OF PROVISIONS .....	16
12.14	SERVICE CURTAILMENT.....	16
12.15	UNAUTHORIZED USE OF SERVICES.....	16
12.16	CONSEQUENTIAL CLAIMS OR DAMAGES .....	17
12.17	FURTHER ASSURANCES.....	17
12.18	AMENDMENT .....	17
12.19	COUNTERPARTS .....	17
<b>13</b>	<b>DEFINITIONS .....</b>	<b>17</b>

## GENERAL TERMS AND CONDITIONS

### **1 NOMINATION REQUIREMENTS FOR IN-FRANCHISE CONTRACTED SERVICES**

Customers with contracted Services requiring Nominations to Union must submit Nominations to Union in accordance with Union's nomination provisions. These Nominations must be submitted to Union via fax or Unionline where available for Nominations.

Union follows the North American Energy Standard Board (NAESB) timeline standards providing for 4 available nomination cycles for each Gas Day. Each of the nomination cycles follows the same process sequence: Nomination, acceptance, confirmation and scheduling.

#### **1.01 Nomination Cycle Timelines**

The table below identifies the deadlines for each of the 4 standard nomination cycles. All times are identified as Eastern Clock Time ("ECT")

Nomination Cycle	Fax Deadline	Unionline Deadline (where available)	Scheduling Deadline	Effective Flow
Timely (Cycle 1)	1130 hours	1230 hours	1730 hours	1000 hours
Evening (Cycle 2)	1800 hours	1900 hours	2300 hours	1000 hours

Intra-Day Nominations can be used to modify nominated quantities on the current Gas Day.

Nomination Cycle	Fax Deadline	Unionline Deadline (where available)	Scheduling Deadline	Effective Flow
Intra-Day 1 (Cycle 3)	1000 hours	1100 hours	1500 hours	1800 hours
Intra-Day 2 (Cycle 4)	1700 hours	1800 hours	2200 hours	2200 hours

#### **1.02 Nomination Deadline for Services requiring Union to Nominate on Other Pipelines**

The Nomination deadline for any contracted services (ie. exchanges) requiring Union to nominate on upstream pipelines is 1030 hours ECT. These services are only offered on the Timely Nomination Cycle. If nominated after 1030 hours ECT and before the close of the Timely Nomination Cycle deadline Union will attempt to accommodate on a reasonable efforts basis. Union does not accept changes to the nominated quantities for these services after the close of the Timely Nomination Cycle deadline.

#### **1.03 Nomination Quantities (Units)**

All Services are required to be nominated in whole Gigajoules (GJ's)

#### **1.04 Compressor Fuel**

For Services requiring Customer to provide Compressor Fuel in kind, the nominated fuel requirements will be calculated by rounding to the nearest whole GJ.



### **1.05 Union's Acceptance of Nominations**

Union will accept Nominations for contracted Services on each of the 4 standard nomination cycles. The Nomination will be rejected if the activity on the Nomination does not properly balance or if the nominated quantities violate Customer's contractual entitlements.

If a Nomination is not received prior to the nomination deadline it will be held for scheduling in the subsequent nomination cycle for the Gas Day.

### **1.06 Confirmation Process**

The confirmation process validates nominated quantities to flow between interconnecting pipelines to ensure Customers have nominated identical quantities to both pipeline operators. In the case where there is a discrepancy between the nominated quantities and the discrepancy cannot be resolved with Customer, then the lower quantity will be the confirmed scheduled quantity.

### **1.07 Scheduling Process**

During the scheduling process Union compares all of the Nominations to the physical capacity available for the Gas Day in question.

If there is insufficient capacity available to meet all of the nominated quantities Union will complete scheduling reductions of nominated Interruptible Services.

If Union is unable to completely schedule an Interruptible Service, Customer will be advised of its scheduled quantities no later than the close of the scheduling deadline for the applicable Nomination cycle. Once notified, Customer is, within 30 minutes, required to submit a revised Nomination to meet the scheduled quantity for the Interruptible Service. In order to be accepted, this Nomination must be properly balanced and the nominated quantities must not violate Customer's contractual entitlements. If a revised Nomination is not submitted, Union will, using the contracted Services Customer has available, re-balance the Nomination to match the scheduled quantities.

Scheduling of Firm Services must be nominated on the Timely Nomination Cycle. Nominations for increasing quantities for Firm Services after the Timely Nomination Cycle will be treated as Interruptible Services and will only be scheduled if there is sufficient capacity available.

### **1.08 Subsequent Nominations**

All scheduled Nominations for Services will remain in effect until a new Nomination is provided by Customer.

The Unbundled Service requires a valid daily Nomination.

### **1.09 Parkway Call**

This Section 1.09 is only applicable to Services taken under Rates U2, U5, U7 and U9. Union shall advise Customer of the Parkway Call requirement on or before 1730 hours ECT on the day immediately preceding the Gas Day for which the Parkway Call is required.

After being notified by Union, but no later than 1900 hours ECT on the same day, Customer shall provide a revised Nomination to Union, which shall include the entire Parkway Call. If a revised Nomination acceptable to Union is not provided by 1900 hours ECT or does not include the entire Parkway Call, a Failure to Deliver will be deemed to have occurred, and the Failure to Deliver section in Schedule 2 of this Contract shall apply.

## **2 FORCE MAJEURE**

In the event that either Customer or Union is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Contract then, subject to the provision of this Section 2, the obligations (other than the obligations to make payment of money then due) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.

The party claiming Force Majeure shall give Notice, with full particulars of such Force Majeure, to the other party as soon as possible after the occurrence of Force Majeure.

The party claiming Force Majeure shall also give Notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.

Force Majeure means:

- a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
- b) freezing or failure of wells or lines of pipe; curtailment of firm transportation and/or firm storage by Transporters;
- c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;
- d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- f) any other similar causes not within the control of the party claiming Force Majeure and which by the exercise of due diligence such party is unable to prevent or overcome.

The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

### **2.01 Force Majeure Not Available**

A party claiming Force Majeure shall not be entitled to the benefit of the provisions of Force Majeure if any one or more of the following circumstances prevail:

- a) the Force Majeure was caused by the negligence of the party claiming Force Majeure;
- b) the party claiming Force Majeure failed to make all reasonable efforts (not including litigation, if such remedy would require litigation) to remedy the Force Majeure;
- c) the Force Majeure was caused by lack of funds;
- d) the party claiming Force Majeure did not give Notice required, as soon as reasonably possible after the Force Majeure occurred.

## **2.02 Force Majeure Declared by Union**

During a Force Majeure declared by Union, Customer will be responsible for commodity charges and will only be relieved of the demand charges applicable to that part of the Services not available to Customer as a result of the Force Majeure. Union will not be responsible for any Transporter charges.

## **2.03 Force Majeure Declared by Customer**

During a Force Majeure declared by Customer, all demand charges and all commodity charges otherwise payable under this Contract will continue to be payable. Where this Contract includes an Obligation to Deliver Gas, such Obligation to Deliver Gas shall not be relieved under Force Majeure. Union will not be responsible for any Transporter charges.

## **2.04 Applicability to Contractual Annual Quantity Requirements**

- a) The number of days of Force Majeure will proportionally reduce any minimum annual quantity upon which any minimum bills are determined, and such reduced minimum annual quantity will not be limited to the minimum quantity required to qualify for the applicable Rate Schedule.
- b) Services taken during the period of Force Majeure will be deemed not to have been taken for purposes of determining the applicable minimum annual quantity.

# **3 TERMINATION and SUSPENSION**

## **3.01 Termination of Contract and Suspension of Service**

In the event of a breach, misrepresentation, non-observance or non-performance by any party to this Contract of any covenant, provision, representation, condition, continuing condition, restriction or stipulation contained in this Contract (including, without limiting the generality of the foregoing, any failure to pay, any failure to provide financial assurances when required pursuant to the terms of this Contract, or any Failure to Deliver), the party not in default may give written Notice to the defaulting party requiring it to remedy such default. If the defaulting party fails to fully remedy the party not in default for all consequences of such default within a period of ten (10) Business Days from receipt of such Notice, then:

- (a) this Contract may be terminated by Notice from the party not in default; and/or

(b) if the Customer is the defaulting party, Union may suspend Services under this Contract. Such suspension shall not relieve Customer from paying any charges payable under this Contract.

If either party makes an assignment in bankruptcy, is a party against whom a receiving order is made, or for whom a receiver or monitor has been appointed under a security agreement or by a court or any similar action under any law, the other party may terminate this Contract immediately, except where not permitted by such law.

(c) The rights set forth in this Section 3.01 shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

### **3.02 Effect of Termination**

Notwithstanding the termination of this Contract, each party shall continue to be liable to pay on the terms herein specified any amount accrued and payable up to the time of termination. Termination will be without waiver of any other remedy to which the party not in default may be entitled including breaches of contract, for past and future damages, and losses.

## **4 NOTICE**

All Notices required hereunder (each a "Notice"), except for those in Section 1 (Nominations) of these General Terms and Conditions shall be in writing and shall be sufficiently given and received if personally delivered or sent by mail, Unionline, fax or e-mail to the address of the party specified in Schedule 1 to this Contract.

Personally served Notice is deemed to be received when actually delivered.

Notice sent by mail, Unionline, or e-mail is deemed to have been received when actually received.

Notice sent by fax is deemed to have been received on the date of receipt of the transmission.

Notwithstanding the above, with the exception of Notice of interruption of Interruptible Services or Force Majeure, any Notice received after 5:00 pm or on a weekend or a statutory holiday is deemed to be received on the next Business Day.

The addresses of Customer and Union for receipt of Notices are as set out in Schedule 1 and such addresses may be changed by Notice given in accordance with this Section 4.

## **5 BILLING**

### **5.01 Monthly Billing**

Each Month, Union shall render a bill for Services and any other charges for the preceding Month. Charges may be based on estimated quantities. If based on an estimate, Union shall provide, in a future Month's billing, an adjustment based on any difference between actual quantities and estimated quantities.

### **5.02 Right of Examination**

Both Union and Customer shall have the right to examine at any reasonable time, copies of the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, chart or computation made under or pursuant to the provisions of this Contract.

### **5.03 Payments**

#### **5.03-1 Payment Date**

Payment date is identified in the applicable Rate Schedule. If payment date is not identified in a Rate Schedule, it will be as identified on the invoice.

#### **5.03-2 Remedies For Non-Payment**

In the event that Customer fails to pay Union when payment is due, late payment charges as identified in the applicable Rate Schedule and the termination and suspension provisions in Section 3 will apply.

#### **5.03-3 Adjustment of Underpayment or Overpayment**

If a Customer in good faith disputes a bill or any portion thereof, Customer shall pay the undisputed portions of the bill. Together with such payment, Customer shall provide written Notice to Union setting out the portions of the bill that are in dispute, an explanation of the dispute and the amount that Customer believes is the correct amount.

If it is subsequently determined that a bill or any portion thereof disputed by Customer is correct, then Customer shall pay the disputed portions of the bill with Interest within thirty (30) days after the final determination.

If it is subsequently determined that Customer has been overcharged and Customer has actually paid the bill(s) containing the overcharge then, within thirty (30) days after the final determination, Union shall refund the amount of any such overcharge with Interest.

If it is subsequently determined that Customer has been undercharged, Customer shall pay the amount of any such undercharge within thirty (30) days after the final determination.

Customer and Union each expressly disclaims and waives any claim or dispute (including those related to amounts charged for Services or quantities of Gas distributed, stored, or transported) that relate to a period that is earlier than 12 Months prior to the date written Notice to the other party of such claim or dispute is asserted. This applies to the extent allowed under law and whether such claim or dispute is related to a billing error or measurement error or any other error or circumstance whatsoever.

#### **5.04 Financial Assurance**

If at any time during the term of this Contract, Union has reasonable grounds to believe that Customer's creditworthiness under this Contract has become unsatisfactory, then Union may by written Notice request financial assurances from Customer in an amount determined by Union in a commercially reasonable manner. Upon receipt of such written Notice, Customer shall have 14 days to provide such financial assurances.

The financial assurances requested by Union will not exceed the sum of the following:

- a) an amount equal to 60 days of all Services; and,
- b) if Customer holds a temporary capacity assignment from Union of a third party asset (for example, upstream pipeline capacity), an amount equal to the higher of 60 days of all charges for the third party asset, or security equivalent to that which may be required by the third party asset provider as if Customer held the asset directly; and,
- c) if Customer supplies their own Gas, an amount equivalent to the value, as determined by Union, of any current or projected negative Banked Gas Account balance.

Customer may provide Union such financial assurances in the form of cash, letters of credit, guarantees or such other form as may be agreed upon between Customer and Union.

In the event that Customer fails to provide financial assurances as set out above, the termination and suspension provisions in Section 3 shall apply.

Where Customer has provided financial assurances to Union, and the grounds for requesting such financial assurances have been removed so that Customer's creditworthiness under this Contract has become satisfactory, then Customer may request the return of such financial assurances from Union by written Notice. Upon receipt of such written Notice Union shall have 14 days to return such financial assurances to Customer.

#### **5.05 Non-Payment Remedy**

If Customer shall be indebted (whether past, present, or future, liquidated or unliquidated) to Union, under this Contract, Union has the right to reduce any amount payable by Union to Customer under this Contract by an amount equal to the amount of such indebtedness to Union.

As part of this remedy, Union may take title to any or all of Customer's Gas in Union's possession. Such Gas shall be valued at the day price for Gas at Dawn as listed in Canadian Gas Price Reporter for the day of non-payment.

## **6 QUALITY**

### **6.01 Natural Gas Quality**

In any Month, the minimum average gross heating value of the Gas received by Union from Customer and delivered to Customer by Union shall be thirty-six (36) Megajoules per Cubic Metre. Gas shall not contain more than twenty-three (23) milligrams of hydrogen sulphide per Cubic Metre nor four hundred and sixty (460) milligrams of total sulphur per Cubic Metre of Gas, as determined by standard methods of testing.

### **6.02 Freedom from Objectionable Matter**

The Gas received by Union and delivered to Customer hereunder shall be free (at prevailing pressure and temperature in Union's pipeline at the Point of Receipt or Point of Consumption, as the case may be) from dust, or other solids or liquids which cause injury to, or interfere with proper operation of the lines, regulators, or meters through which it flows.

### **6.03 Parties' Responsibilities**

If the Gas being received by Union from Customer or delivered by Union to Customer fails at any time to conform to any of the specifications set forth in this Section 6, the party receiving such Gas shall notify the delivering party of such deficiency and thereupon the party receiving the Gas may, at its option, refuse to accept receipt of Gas pending correction by the party delivering the Gas. Neither party is responsible for any loss, damage, or injury resulting from such party's delivery of Gas that does not conform to any specifications set forth in Section 6 except to the extent any such loss, damage or injury arises as a result of such party's gross negligence or wilful misconduct.

## **7 MEASUREMENT**

### **7.01 Determination of Volume and Energy**

- a) The volume and energy amounts shall be determined in accordance with the Electricity and Gas Inspection Act, R.S.C. 1985 c. E-4 (the "Act") and the Electricity and Gas Inspection Regulations, S.O.R 86/131 (the "Regulations"), and any documents issued under the authority of the Act and Regulations and any amendments thereto. Where there is no site specific energy measurement, Union's Average Heat Value will be used to convert volumes to energy.
- b) The supercompressibility factor shall be determined in accordance with either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with American Gas Association Transmission Measurement Committee Report No. 8, Nov. 1992, at Union's discretion.

### **7.02 Metering by Union, Check Measuring Equipment**

Union will install and operate meters and related equipment in accordance with the Act and the Regulations referenced in these General Terms and Conditions.

Customer may install, maintain, and operate, such check measuring equipment as desired, and shall be so installed as not to interfere with the operation of Union's measuring equipment at

or near the Consumption Point. This check measuring equipment will be downstream of the Consumption Point and at Customer's own expense.

Where Union has installed heat value measuring equipment at Customer's end use location, the heating value properly measured at this site will be used to convert volume to energy for Gas delivered by Union to Customer.

### **7.03 Observation of Measurement Work**

Union and Customer shall have the option to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment. Each party shall provide reasonable notification to the other party in connection with testing, calibrating or adjusting measuring equipment, to enable the other party to be present if desired.

### **7.04 Calibration and Test of Meters**

The accuracy of Union's measuring equipment shall be verified by Union at reasonable intervals.

If Customer notifies Union that it desires a special test, the expense of any such test shall be borne by Customer if the measuring equipment tested is found to be in error by two per cent (2%) or less. In this event, previous recordings shall be considered accurate, but such equipment shall be adjusted to record as near to absolute accuracy as possible. If the special test shows a percentage of inaccuracy greater than two percent (2%), the expense of the test will be borne by Union and the financial adjustment shall be calculated in accordance with the Act and Regulations thereunder, and any successor statutes and regulations. Union shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

### **7.05 Correction of Metering Errors - Failure Of Meters**

In the event a meter is out of service, or registered inaccurately, the volume or quantity of Gas shall be determined by Union as follows:

- a) by using the registration of any check meter or meter, if installed and accurately registering; or, in the absence of (a) then;
- b) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or in the absence of both (a) and (b), then;
- c) by estimating the quantity of Gas delivered during periods under similar conditions when the meter was registering accurately.

## **8 POSSESSION OF AND RESPONSIBILITY FOR GAS**

### **8.01 Point of Receipt and Point of Consumption Controls**

As between Union and Customer, control, responsibility, and possession of all Gas received and/or delivered and transported hereunder shall pass from the delivering party to the receiving party at the Points of Receipt and the Points of Consumption as applicable.



## **8.02 Title to the Gas**

Each party warrants that it owns or controls, or has the right to deliver or have delivered to the other party, Gas that is free and clear of any lien, mortgage, security interest or other encumbrance whatsoever. The delivering party shall indemnify and hold harmless the receiving party from all claims, actions, or damages arising from any adverse claims by third parties claiming an ownership or an interest in such Gas.

## **8.03 Common Carrier and Insurance**

To further clarify the relationship between Union and Customer, Union is not a common carrier and Union is not an insurer of Customer's Gas.

## **8.04 Right to Commingle the Gas**

Union shall have the right to commingle and use the Gas received under this Contract with Gas owned by Union or others and deliver such commingled Gas to Customers.

# **9 FACILITIES AT CONSUMPTION POINT**

## **9.01 Construction, Maintenance and Entry**

Union may construct on Customer's property (whether owned by Customer or any other party), at each Point of Consumption the metering stations and facilities required by Union. Union employees or agents may at any reasonable time, with notification to Customer (except in cases of emergency where no notification is required), enter Customer's property provided that in all cases Union's employees or agents agree to abide by Customer's facility security policies and procedures and health and safety policies provided that they are reasonable and provided by Customer to Union's employees or agent prior to entry to the property.

## **9.02 Property, Easements, Utilities**

Customer agrees that all stations and facilities installed by Union, including the meter station, are the property of Union whether the facilities are on property belonging to Customer or some other party.

Customer grants to Union on such non-financial commercial terms and conditions as may be agreed upon any required easements or agreements and undertakes to obtain or execute and deliver to Union such required easements or agreements to allow Union to have the related use of Customer's land interests which may be reasonably required by Union to facilitate Construction.

In the event that the station at the Point of Consumption requires electrical power circuitry, exclusive telecommunications and/or telecommunications lines, or other utility supply apparatus ("Equipment"), at each or any meter in the station, for telemetry; in addition to telemetry; or for purposes unrelated to telemetry, Customer agrees to provide and pay for all such Equipment and all utilities required (including power and telephone service as specified by Union) for the purpose of serving the Equipment. The exclusive telephone line for each meter must not employ a manual switchboard.

## **10 INDEMNITY**

Each party (the "Indemnifying Party") hereby agrees to indemnify and save the other party (the "Indemnified Party") harmless from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be brought against the Indemnified Party or which Indemnified Party may suffer or incur as a result of, in respect of, or arising out of any of the following:

- a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Indemnifying Party contained in this Contract;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Indemnifying Party contained in this Contract or contained in any document given pursuant to this Contract;
- c) *(Subsection 10(c) is only applicable to Agent or Customer as the Indemnifying Party)* the failure of the Indemnifying Party to satisfy its obligations to End Use locations listed in Schedule 3 (where a Schedule 3 is included in this Contract);
- d) *(Subsection 10(d) is only applicable to Agent as the Indemnifying Party)* any dispute arising out of any aspect of the relationship between the Agent and Customer;
- e) any negligence or wilful misconduct of the Indemnifying Party;
- f) all costs and expenses including, without limitation, legal fees, incidental to or in respect of the foregoing.

This indemnity shall survive the termination or expiration of this Contract.

## **11 REPRESENTATIONS AND WARRANTIES BY AGENT**

Agent hereby represents and warrants to Union as follows and confirms that Union is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Contract by Union and the acceptance of its rights and obligations hereunder:

- a) Agent is the duly appointed agent of Customer and, in such capacity, is entitled to enter into this Contract on behalf of Customer and to act on its behalf hereunder;
- b) Union is entitled to rely on anything done or any document signed by Agent on behalf of Customer, in respect of this Contract as if the action had been taken or the document had been signed by Customer; and
- c) payments made by Customer to Union pursuant to invoices shall be made without any right of deduction or set-off regardless of any rights Customer may have against Agent or any rights Agent may have against Customer.
- d) Agent shall be the only person to deliver or receive all Notices, invoices, and payments. Any Notice, invoice, or payment made to Union by Agent will be deemed to be received

from Customer. Any Notice, invoice, or payment made by Union to Agent will be deemed to be received by Customer. Union shall not be responsible to communicate to End Users any such Notice, invoice, or payment from or to Agent.

## **12 MISCELLANEOUS PROVISIONS**

### **12.01 Interpretation**

#### **12.01-1 Definitions and Industry Usage**

Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in these General Terms and Conditions, Schedules and/or Rate Schedule. Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the exploration, production, transmission, storage, and distribution or sale of natural gas in Canada have an accepted meaning shall have that meaning.

#### **12.01-2 Expanded Meaning**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- a) words importing the singular shall include the plural and vice versa;
- b) words importing the gender shall include the masculine, feminine and neuter genders; and
- c) references to any statute shall extend to any orders in-council or regulations passed under and pursuant thereto, of any amendment or re-enactment or such statute, orders-in-council or regulations, or any statute, orders-in-council or regulations substantially in replacement thereof.

#### **12.01-3 Inconsistency**

In the event of a conflict among the terms of the (i) Rate Schedules; (ii) the body of the Contract; (iii) Schedules to the Contract; and, (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority as listed.

#### **12.01-4 Currency**

Unless otherwise indicated, all reference to dollars in this Contract shall mean Canadian dollars.

#### **12.01-5 Time**

All references to time in this Contract shall be stated in Eastern Clock Time.

### **12.02 Assignability**

Neither the rights nor the obligations of Customer under this Contract shall be assignable without the prior written consent of Union. Union's consent may not be unreasonably withheld or delayed.

### **12.03 Proper Law of Contract**

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario, and the parties to this Contract exclusively attorn to the jurisdiction of the Courts of Ontario.

### **12.04 Successors and Assigns**

The Contract shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted and lawful assigns.

### **12.05 Entire Contract**

This Contract constitutes the entire agreement between the parties pertaining to the subject matter hereof. This Contract supersedes any prior agreements, understandings, negotiations or discussions, whether oral or written, between the Parties in respect of the subject matter hereof.

### **12.06 Confidentiality**

Except for credit purposes, unless the Parties to this Contract otherwise expressly agree in writing, the terms of this Contract will remain strictly confidential except as otherwise required by applicable law or by any competent regulatory body or court of competent jurisdiction.

### **12.07 Priority of Service**

Despite any other provision of this Contract, when the use of Gas or Service is curtailed or restricted, by order of any authorized government agency, or by Force Majeure, Customer shall, in accordance with the direction of Union, curtail or discontinue use of Gas or Service during the period in which such Gas or Service is so jeopardized. Union shall not be liable for any loss of production or for any damages whatsoever by reason of such curtailment or discontinuance or because of the length of advance Notice given directing such curtailment or discontinuance. However, Union shall use its reasonable efforts to provide Notice as soon as possible to Customer, of such curtailment or discontinuance of Gas or Service as aforesaid.

### **12.08 Waiver and Future Default**

No waiver by either Union or Customer of any one or more defaults by the other in the performance of any provisions of this Contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

### **12.09 Laws, Regulations and Orders**

This Contract and the respective rights and obligations of the Parties hereto are subject to all present and future valid laws, statutes, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction. This Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency, which affects any of the provisions of this Contract.

#### **12.10 Right to Contract**

Customer hereby represents and warrants to Union that it or its Agent has the sole right to enter into this Contract for each of the Points of Consumption, for the term of this Contract.

#### **12.11 Surviving Obligations**

Despite the termination or expiry of this Contract, the following defined provisions shall remain in full force and effect in accordance with their terms and shall survive termination or expiry. The term of the survival shall be for the period referenced in this section.

- a) confidentiality as outlined in Section 12.06
- b) liability and Gas balancing obligations to the extent any liabilities and Gas balancing obligations have accrued prior to the date of termination or expiry of this Contract, and may continue as a result of an event occurring prior to the termination or expiry of this Contract (for the period until all liabilities and Gas balancing and reconciliations have been completed)
- c) Settlement of accounts; rights to set off; calling any Letter of Credit; collecting on any security (for the period until all accounts have been settled).

#### **12.12 Joint and Several Liability**

In the event that Customer is more than one person the obligations of all of such persons shall be joint and several and Union shall not be required to exhaust its rights and remedies against any one person prior to exercising its rights and remedies in respect of any other person.

#### **12.13 Invalidity of Provisions**

If any of the provisions of this Contract are invalid, illegal or unenforceable in any respect, the validity or legality of enforceability of the remaining provisions shall not in any way be affected.

#### **12.14 Service Curtailment**

Union may be required from time to time to perform Construction to its facilities, which may impact Union's ability to meet Customer's requirements. In such event, Union shall have the right to suspend any Service in whole or in part but will use reasonable efforts to determine a mutually acceptable period during which such Construction will occur and also to reasonably limit the extent and duration of any impairments. Union shall provide at least fifteen (15) days Notice (except in cases of emergency, in which event it may be done immediately with Notice provided as soon as reasonably possible afterwards) to Customer of the extent that Union's ability to provide Service may be impaired. During any such curtailment, Customer will be relieved of the demand charges for Services directly related to the said curtailment, but commodity and proportionate demand charges for Services available to Customer will be payable.

#### **12.15 Unauthorized Use of Services**

If Customer exceeds the Contract parameters (including Service parameters, after notification of interruption of Interruptible Service or curtailment resulting from a Force Majeure), in

addition to charges identified in the Rate Schedules, Customer shall also be responsible for any direct damages resulting from exceeding the Contract parameters and/or not complying fully with any Notice.

If Customer uses Interruptible Services, in breach of notification of interruption, Union will have the right to change Customer from Interruptible Service to Firm Service or increase its Firm Service, by an amount equivalent to the quantity of such excess Interruptible Service used on any day effective on the first Day of any Month following such breach.

#### **12.16 Consequential Claims or Damages**

Neither party shall be responsible for any consequential, incidental, special or indirect damages whatsoever, including, without limitation, loss of profits, loss of earnings, business interruption losses, cost of capital or loss of business opportunities. This provision shall survive the termination or expiration of this Contract.

#### **12.17 Further Assurances**

Each party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents, and assurances as may reasonably be requested for the carrying out and performance of this Contract.

#### **12.18 Amendment**

Union may from time to time incorporate updates to Schedule 2 to this Contract and/or these General Terms and Conditions which are intended to be applicable to all of Union's customers on non-discriminatory basis. Union will notify Customer not less than 60 days prior to the effective date of the update and post the update on Unionline. Union will notify Customer again not less than 30 days prior to the effective date of the update. If 10 Business Days prior to the effective date, Customer has not provided Notice to Union objecting to the update, then Customer will be deemed to have accepted the revised Schedule 2 to this Contract and/or these General Terms and Conditions, as the case may be, which shall, as of the effective date, apply to this Contract. If Customer has provided Notice objecting to the update, the revision shall not apply to this Contract.

#### **12.19 Counterparts**

This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original. Such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

### **13 DEFINITIONS**

Except where this Contract expressly states another meaning, the following definitions, when used in these General Terms and Conditions or in this Contract, shall have the following meanings:

**"Agent"** means such person as appointed by Customer as its agent to enter into the Contract on behalf of the Customer and to act on Customer's behalf hereunder.

**“Average Heat Value”** means the average forecasted heating value of all Gas to be received by Union for the applicable Delivery Area for the applicable period.

**“Authorization Notice”** means the written approval provided by Union in response to Customer’s request for a short-term amendment to certain contract parameters or additional Services. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.

**“Business Day”** means any day upon which Union's head office in Chatham, Ontario, is normally open for business.

**“Bundled Service”** means a Service provided by Union under the Gas Distribution Contract and/or the Bundled T Gas Contract without daily Nominations at the Consumption Point.

**“Bundled T”** means the Bundled T Gas Contract with Union under which Customer receives Receipt Services.

**“Compressor Fuel”** means an amount of Gas specified by Transporter to be supplied by a shipper as a fuel source for Transporter’s pipeline compressors.

**“Construction”** means constructing, maintaining, removing, operating and/or repairing Union’s facilities for the purpose of commencing, maintaining, or discontinuing deliveries of Gas to Customer.

**“Contract”** means the contract entered into between Union and Customer to which these General Terms and Conditions, Rate Schedules and Schedules apply, and into which they are incorporated by reference.

**“Contract Demand”** (“CD”) means the maximum volume or quantity of Gas that Union is obliged to deliver in any one day to a Customer under all Services or, if the context so requires, a particular Service at the Consumption Point.

**“Contract Year”** means a period of twelve (12) consecutive Months beginning on the day of First Delivery and each anniversary date thereafter unless mutually agreed otherwise.

**“Cubic Metre”** (“m<sup>3</sup>”) means the volume of Gas which occupies one cubic metre when such Gas is at a temperature of 15 degrees Celsius, and at an absolute pressure of 101.325 kilopascals.

**“Customer”** shall have the meaning as defined in this Contract.

**“Daily Contract Quantity”** (“DCQ”) means that portion of the daily parameters as set out in Schedule 1, being a quantity of Gas which Customer must deliver to Union on a Firm basis. The DCQ (GJ/day) is equal to 12 months of consumption of end-use locations underlying the direct purchase contract / 365 days \* heat value (GJ/m<sup>3</sup>). If this Contract has a term greater than 12 months, the DCQ is calculated by dividing the historical consumption for the term of this Contract by the number of Days in this Contract term. The consumption of general service end-use locations is weather normalized.

**“Day of First Delivery”** means the date the Service, obligations, terms and conditions of the Gas Distribution Contract commence, as set out in its Schedule 1.

**“Day of First Receipt”** means the date the Service, obligations, terms and conditions of the Bundled T commence, as set out in its Schedule 1.

**“Delivery Area”** means the receipt zone(s) of Union (Manitoba, Western, Northern, Sault Ste. Marie, Central, North Central or Eastern Delivery Areas) which are defined as the delivery zone(s) of TCPL for service under its applicable toll schedules.

**“Delivery Service”** means the transportation of Gas by Union to storage or the Consumption Points.

**“Distribution Service”** means any combination of Delivery Service and Storage Service.

**“End User”** means the ultimate user of the Gas in Union’s franchise area.

**“Failure to Deliver”** means the circumstance where Customer is obligated to deliver a quantity of Gas to Union, and all or a portion of the said quantity is not received by Union at the Points of Receipt.

**“Firm”** means any Services not subject to interruption or curtailment except under sections titled Force Majeure; Service Curtailment; and Priority of Service of these General Terms and Conditions.

**“Firm Entitlements”** means the quantity of Gas as set out in Schedule 1 of the Unbundled Service contract which Customer will nominate and deliver to Union and Union shall receive at each contracted Receipt Point.

**“Gas”** means Gas as defined in the Ontario Energy Board Act, 1998, as amended, supplemented or re-enacted from time to time, which may be commingled supplies.

**“Gas Day”** means a period of twenty-four (24) consecutive hours beginning at 10:00 a.m. in the Eastern Time Zone. The reference date for any day shall be the calendar date upon which the twenty-four (24) hour period shall commence.

**“Interruptible”** means any Services subject to interruption, after being notified by Union.

**“Interest”** means the minimum commercial lending rate of Union’s principal banker for the relevant period.

**“Joule”** (J) means the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force. The term “Megajoule” (MJ) shall mean 1,000,000 Joules. The term “gigajoule” (GJ) shall mean 1,000,000,000 Joules.

**“Month”** means a period beginning at 10:00 a.m. (Eastern Clock Time) on the first day of the calendar month and ending at the same hour on the first day of the next succeeding



calendar month.

**“Nomination”** means a request to Union for a Service in accordance with Union’s nomination provisions.

**“Non-Obligated”** means any quantities of Gas that are not committed to be delivered by Customer on a Firm basis and which Union will receive on a Firm basis when delivered by Customer.

**“Obligated”** means that quantity of Gas which Customer is committed to deliver to Union on a Firm basis at the Points of Receipt.

**“Points of Consumption” or “Consumption Points”** means, unless otherwise specified in this Contract, the outlet side of the Union measuring equipment located at Customer’s or End User locations as specified in Schedule 1 or Schedule 3, as applicable.

**“Rate Schedule”** means the Ontario Energy Board approved rate schedule applicable to the Service being provided, (including schedules attached thereto), or such other replacement rate schedule as approved by the Ontario Energy Board from time to time.

**“Receipt Service”** means the approved receipt of Gas from Customer to Union at the Points of Receipt.

**“Receipt Point” or “Points of Receipt”** shall mean the points listed on Schedule 1 of this Contract where Union may receive Gas from Customer.

**“Schedules”** means the schedules attached to and forming part of this Contract.

**“Seasonal”** means any Service that is available during a specified period of the Year.

**“Service(s)”** means Receipt, Delivery or Storage Service as defined herein.

**“Storage Service”** means the space and deliverability service for storage under either Bundled Service or Unbundled Service.

**“TCPL”** means TransCanada PipeLines Limited.

**“Transporter”** means the transmission company that transports the Gas to the Receipt Point.

**“Unbundled Service”** means a Service provided by Union under which Customer will nominate and balance daily for Receipt, Storage and Delivery Services.

**“Unionline”** means Union’s electronic web based system for Customer and Union to interact electronically, including but not limited to nominating and information exchange.

**“When Available”** means any interruptible Service that is available based on Union’s sole discretion after Firm and Interruptible Services have been exhausted and is priced at the interruptible rate in the applicable Rate Schedule.

**"Western"** means the points of receipt on the TCPL system where Union is able to receive Gas.

**"Year"** means a period of 365 days; provided, however, that any such Year, which contains a date of February 29, shall consist of 366 days.

## **SCHEDULE 4**

### **Union Gas, OPG Thunder Bay Lateral Project**

#### **Monthly Progress Report – August 2011**

##### **Category:**

- 1) First Nations & Metis Consultations
- 2) Design and Engineering
- 3) Environmental Assessment
- 4) OEB Facilities Application
- 5) Material Procurement
- 6) Station Construction
- 7) Pipeline Construction
- 8) Other

## Forecast Cash Flows for 2011 and 2012

(\$000's)

2011	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Thunder Bay OPG</b>													
Regulatory													
Lands													
Design													
Environment													
Miscellaneous													
Monthly Total													
Cumulative Total													

2012	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Thunder Bay OPG</b>													
Contracts													
Material													
Regulatory													
Lands													
Design													
Environment													
Miscellaneous													
Monthly Total													
Yr Cumulative Total													
Proj Cumul Total													

Schedule 5 to the Northern Gas Distribution Contract between Union Gas Limited and Ontario Power Generation Inc. dated April 4, 2012 for the Thunder Bay Generating Station

IRREVOCABLE AND TRANSFERABLE STANDBY LETTER OF CREDIT

Letter of Credit No: \_\_\_\_\_ Date of Issue: \_\_\_\_\_ 20\_\_

Date of Expiry: \_\_\_\_\_ 20\_\_

Beneficiary: Union Gas Limited

Applicant: [Applicant name and address]

Issuer: [Name of Bank]

Issuer hereby establishes this irrevocable and transferable standby letter of credit in favor of Beneficiary for the account of Applicant for the aggregate amount of up to [dollar amount] available to Beneficiary by presenting sight draft(s) to Issuer when accompanied by a signed and dated statement by a purported officer of Beneficiary certifying one or more of the following, as applicable:

1. "The amount drawn herein is to satisfy obligations of Applicant between Beneficiary and Applicant. Wherefore, the undersigned Beneficiary does hereby demand payment of \$\_\_\_\_\_. Beneficiary further certifies that supporting documents when required were presented to Applicant and that Applicant has not satisfied its obligations." ; or,
2. "This Letter of Credit will expire in less than thirty (30) days and Beneficiary has not received an extension of said Letter of Credit or other acceptable replacement collateral from Applicant and the obligations of the Applicant have not yet been fulfilled. Wherefore, the undersigned Beneficiary does hereby demand payment of \$\_\_\_\_\_. Upon timely receipt of an amendment extending this Letter of Credit, this drawing is to be considered automatically rescinded." ; or
3. "Issuer no longer has one of the following: an individual rating of at least "A-" from Fitch Investor Service, Inc., or a long-term senior unsecured debt rating of at least "A-" by Standard & Poor's Rating Group, or a long-term senior unsecured debt rating of at least "A3" by Moody's Investor Services, Inc., and Applicant has not caused a replacement Letter of Credit from an alternate financial institution acceptable to Beneficiary to be issued to Beneficiary. Wherefore, the undersigned Beneficiary does hereby demand payment of \$\_\_\_\_\_."

## SPECIAL TERMS AND CONDITIONS

1. Partial and multiple drawings are allowed hereunder. The amount that may be drawn by Beneficiary under this Letter of Credit shall be automatically reduced by the amount of any payments made through Issuer referencing this Letter of Credit.
2. This Letter of Credit shall automatically extend without amendment for periods of one year each from the present or any future expiry date unless Issuer notifies Beneficiary in writing at least sixty (60) days prior to such present or future expiry date, as applicable, that Issuer elects not to further extend this Letter of Credit.
3. This Letter of Credit is transferable without charge any number of times, but only in the amount of the full unutilized balance hereof and not in part and with the approval of Applicant which consent shall not be unreasonably withheld, conditioned or delayed.
4. The term "Beneficiary" includes any successor by operation of law of the named beneficiary to this Letter of Credit, including, without limitation, any liquidator, any rehabilitator, receiver or conservator.
5. Presentations for drawing may be delivered in person, by mail, or by express delivery.
6. All Bank charges are for the account of Applicant.
7. Issuer shall honour Beneficiaries demand for payment without inquiring whether Beneficiary has a right between itself and Applicant to make such a demand.
8. This letter of credit may be cancelled prior to the expiry date upon receipt by Issuer of the original letter of credit and Beneficiary's signed letter addressed to Issuer requesting cancellation of the letter of credit. Such cancellation shall be effective on the date of receipt by Issuer.
9. Issuer hereby agrees with Beneficiary that documents presented for drawing in compliance with the terms of this Letter of Credit will be duly honored upon presentation at Issuer's counters if presented on or before the expiry date.
10. Unless otherwise expressly stated herein, this Letter of Credit is subject to International Standby Practice 98 ("ISP98") as published by the International Chamber of Commerce. Matters not covered by this standard shall be governed and construed in accordance with the laws of the Province of Ontario.
11. THIS STANDBY LETTER OF CREDIT IS TRANSFERABLE IN ITS ENTIRETY, BUT NOT IN PART, SUBJECT TO OUR PRIOR APPROVAL.

WE SHALL NOT RECOGNIZE ANY TRANSFER OF THIS CREDIT UNTIL A TRANSFER REQUEST IN THE FORM OF EXHIBIT 'A' ATTACHED IS FILED WITH US, EXECUTED BY THE THEN EXISTING BENEFICIARY, AND OUR TRANSFER CHARGES HAVE BEEN PAID. ANY FEES AND EXPENSES CHARGED BY THE TORONTO-DOMINION BANK RELATING TO TRANSFER OF THIS STANDBY LETTER OF CREDIT SHALL BE PAID BY THE BENEFICIARY. THE ORIGINAL LETTER OF CREDIT AND ANY ORIGINAL AMENDMENT(S) MUST ACCOMPANY THE TRANSFER FORM.

REGARDLESS OF DOCUMENTARY COMPLIANCE AND PRIOR TO EFFECTING ANY PAYMENT OR TRANSFER, THE ISSUING BANK IS OBLIGATED TO VERIFY ALL PARTIES UNDER THIS LETTER OF CREDIT, AND RESERVES THE RIGHT NOT TO HONOUR A PRESENTATION OR TRANSFER THAT IS NOT IN COMPLIANCE WITH ANY APPLICABLE LEGAL SANCTIONS OR ANTI-TERRORISM AND ANTI-MONEY LAUNDERING LAWS AND REGULATIONS. THE ISSUING BANK IS PROHIBITED FROM EFFECTING ANY PAYMENTS OR TRANSFERS TO ANY ENTITY OR PERSON TO WHOM PAYMENT OR TRANSFER IS PROHIBITED PURSUANT TO SANCTIONS ISSUED OR IMPLEMENTED BY ANY REGULATORY AUTHORITY.

Issuer Signature: \_\_\_\_\_

Exhibit A

(TO BE ISSUED ON BENEFICIARY'S LETTERHEAD)

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NO. GXXXXXX ISSUED BY THE TORONTO-DOMINION BANK, TRADE FINANCE GROUP.

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY IRREVOCABLY TRANSFERS TO:

\_\_\_\_\_  
(NAME OF TRANSFEREE)

\_\_\_\_\_  
(ADDRESS OF TRANSFEREE)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE MENTIONED IRREVOCABLE STANDBY LETTER OF CREDIT IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS OF BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE OF THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF THE LETTER OF CREDIT IS RETURNED HERewith, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF AND FORWARD IT DIRECTLY TO THE SECOND BENEFICIARY WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

ENCLOSED IS THE REMITTANCE OF USD250.00 IN PAYMENT OF YOUR FEE COMMISSION AND IN ADDITION THERETO WE AGREE TO PAY YOU ON DEMAND ANY EXPENSES THAT MAY BE INCURRED BY YOU IN CONNECTION WITH THIS TRANSFER.

YOURS TRULY,

\_\_\_\_\_  
AUTHORIZED SIGNATURE(S) OF BENEFICIARY

SIGNATURE AUTHENTICATED BY: (NAME AND TITLE)

\_\_\_\_\_  
(AUTHORIZED SIGNATURE AND NO.)

\_\_\_\_\_  
NAME OF BANK

(TRANSFERRED IN ITS ENTIRETY ALL AMENDMENTS, INCLUDING INCREASE AND EXTENSIONS APPLICABLE TO TRANSFEREE)



**UNION GAS LIMITED**  
**THUNDER BAY FACILITIES EXPANSION PROJECT**  
**DCF Analysis**

**Schedule 6**  
**Page 1 of 2**

[illegible]

Schedule 6

**UNION GAS LIMITED**  
**THUNDER BAY FACILITIES EXPANSION PROJECT**  
**DCF Analysis**

**Schedule 6**  
**Page 2 of 2**

<b>Project Year</b>	<b>(\$000's)</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>
<b>Cash Inflow</b>											
Revenue		2,815	2,815	2,815	2,815	2,815	2,815	2,815	2,815	2,815	469
Expenses:											
O & M Expense		(145)	(145)	(145)	(145)	(145)	(145)	(145)	(145)	(145)	(145)
Municipal Tax		(290)	(290)	(290)	(290)	(290)	(290)	(290)	(290)	(290)	(290)
Income Tax		(516)	(529)	(542)	(554)	(566)	(577)	(587)	(596)	(605)	118
Net Cash Inflow		<u>1,864</u>	<u>1,851</u>	<u>1,838</u>	<u>1,826</u>	<u>1,814</u>	<u>1,803</u>	<u>1,793</u>	<u>1,784</u>	<u>1,775</u>	<u>153</u>
<b>Cash Outflow</b>											
Incremental Capital:											
Total Capital Costs											
Contribution in Aid of Construction											
Net Incremental Capital		-	-	-	-	-	-	-	-	-	-
Change in Working Capital		-	-	-	-	-	-	-	-	-	-
Cash Outflow		<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Cumulative Net Present Value</b>											
Cash Inflow		17,771	18,777	19,730	20,631	21,484	22,291	23,056	23,781	24,468	24,524
Cash Outflow		<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>	<u>24,523</u>
NPV By Year		<u>(6,753)</u>	<u>(5,746)</u>	<u>(4,794)</u>	<u>(3,893)</u>	<u>(3,040)</u>	<u>(2,232)</u>	<u>(1,467)</u>	<u>(743)</u>	<u>(56)</u>	<u>0</u>
<b>Project NPV</b>											
<b>Profitability Index</b>											
By Year PI		0.7246	0.7657	0.8045	0.8413	0.8760	0.9090	0.9402	0.9697	0.9977	1.0000
Project PI											

Schedule 7

Final Revision February 27, 2012

**THUNDER BAY PROJECT**  
**Cost Sharing Proposals**  
**Between OPG and UGL System Integrity**

(\$000's)	Combined	Portion Attributed		Balance
	Project	to OPG		Attributed
	<u>Totals</u>	<u>%</u>	<u>Amount</u>	<u>to Integrity</u>
	(a)		(b)	(c)
<b><u>Pipeline Length (KM)</u></b>				
UGL/OPG Combined			18.6	18.6
OPG Alone - NPS 12 Bellrose-Plant			<u>13.1</u>	
			31.7	
<b><u>Total Project Capital Cost</u></b>				
<b><u>UGL/OPG Combined</u></b>				
Land Rights (NPS 16)	261	50.0%	130	131
Pipeline				
Distribution Work 2012	2,353	50.0%	1,177	1,176
Pipeline (NPS 16)	<u>26,958</u>	50.0%	<u>13,479</u>	<u>13,479</u>
Total Shared Pipeline Spend	<u>29,311</u>	50.0%	<u>14,656</u>	<u>14,655</u>
Sub-Total	<u>29,572</u>		<u>14,786</u>	<u>14,786</u>
<b><u>OPG Standalone - Bellrose-Plant</u></b>				
Land Rights (NPS 12)	1,836	100.0%	1,836	-
Pipeline (NPS 12)	19,618	100.0%	19,618	-
Customer Stations	<u>11,898</u>	100.0%	<u>11,898</u>	-
Sub-Total	<u>33,352</u>	100.0%	<u>33,352</u>	-
<b>Total Capital Cost</b>	<u>62,924</u>		<u>48,138</u>	<u>14,786</u>

**Capital Summary by Plant Classification**

	LR Ave %	94%	6%
Land Rights	2,097	1,966	131
Pipeline	48,929	34,274	14,655
Measure & Regulating Stations	11,898	11,898	-
Total	62,924	48,138	14,786

**Total Estimated Operating Costs**  
**(Before Income Taxes)**

O&M Expenses	151	145	6
Property Taxes	337	290	47
Total Operating Costs Before Tax	488	435	53

UNION GAS LIMITED  
Response to Interrogatory  
from Board Staff

2. Reference: Prefiled Evidence/ pages 18-20/ paragraphs 90-105

Please provide detailed updates on negotiations for the following:

- a) Road crossing permits with Municipalities, Conservation Authority, railways and other utilities along the pipeline route;
- b) Fee simple purchase of the land in vicinity of Belrose Station;
- c) Permanent and temporary easement agreements for both replacement and new section of the proposed pipelines;
- d) Work Permit required by the MNR.

**Response:**

- a) Union is currently collecting information and preparing documentation to support all its applications and proposes to submit these starting in Fall 2012 and anticipates all applications to be submitted by early 2013, the year of construction.
- b) Union no longer requires any additional fee simple lands adjacent to the Belrose Station. Union has reviewed the current design of the Belrose Station, and has determined that both the existing and proposed facilities can be located on land which Union currently owns.
- c) For the replacement section of pipeline Union has reached agreement with 62 landowners. For the new section of pipeline Union has reached agreement with eight landowners. Union continues to work with the unsigned landowners and hopes to have all necessary agreements signed by early 2013.
- d) Please refer to response in (a) above.

UNION GAS LIMITED  
Response to Interrogatory  
from Board Staff

3. Reference: Prefiled Evidence / page 20/ paragraph 103

Pursuant to section 97 of the OEB Act the applicant “has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.”

Please confirm that the form of the easement agreement provided in Schedule 19 has been offered or will be offered to all of the private landowners from whom the easements are required.

**Response:**

Confirmed.

UNION GAS LIMITED  
Response to Interrogatory  
from Board Staff

4. Reference: Prefiled Evidence/page 25/paragraph 13

During consultation with the First Nations and Métis several issues were identified and Union proposed to address these issues by working with the Economic Development departments of FWFN, MNO, Union's pipeline contractors and to work with RSMIN on a proposal to conduct a Traditional study of the pipeline route on McKellar and Mission Islands.

- a) Please provide a strategy and a plan for the proposed activities and explain the scope of the Traditional study of the pipeline route on McKellar and Mission islands.
- b) What is the time-line of these activities in relation to construction schedule?
- c) How will the results of these activities be implemented by Union?

**Response:**

- a) On May 23, 2012, Union arranged a Community meeting with the Fort William First Nation community people, its businesses and its leadership to review the project and opportunities for supplying labour, goods and services. Union's two Alliance pipeline contractors were present to discuss the various opportunities. The contractors and the Economic Development Department of the Fort William First Nation are exchanging upcoming opportunities and names of local businesses that could participate. The Alliance contractors are also working with the local union halls to discuss hiring Fort William First Nation's qualified personnel.

The Thunder Bay Council of the Métis nation has declined to participate in a similar meeting.

Union has met with the RSMIN on several occasions to discuss the project and the Traditional Study. The scope of the Study will be focused on the pipeline that crosses McKellar and Mission Islands. RSMIN provided Union with a proposal and costing for the study which Union has agreed to pay for. The Traditional Study is to be completed by the end of August, 2012.

- b) The inclusion of Fort William First Nation businesses into the construction will be firmed up prior to the start of construction at a pre-construction meeting scheduled by Union.

The Traditional Study completed by RSMIN is to be completed by the end of August, 2012.

- c) Union will monitor the use of Fort William First Nation businesses and local labour usage throughout the project life cycle and will maintain an ongoing summary of goods and services and manpower utilized.

The Traditional Study report's recommendations will be reviewed and construction drawings or installation practices will reflect where practical these recommendations.

UNION GAS LIMITED  
Response to Interrogatory  
from Board Staff

5. Please comment on the attached Board staff draft conditions of approval. Please note that these conditions are standard conditions and are a draft version subject to additions or changes depending Board staff's further review of the evidence in this case.

**Board Staff Proposed Draft  
Conditions of Approval**

**1 General Requirements**

- 1.1 Union Gas Limited ("Union") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2012-0226 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2013, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Union shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.
- 1.5 Within 15 months of the final in-service date, Union shall file with the Board Secretary a Post Construction Financial Report. The Report shall indicate:
- a) the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.
  - b) the actual capital costs for the project borne by Union and the actual costs contributed towards construction by the OPG, including the method and the actual cost inputs used to determine the final amount of the contribution by the OPG.

**2 Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Union shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be



responsible for the fulfillment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.

- 2.3 Union shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Union shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Union shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Union shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

### **3 Monitoring and Reporting Requirements**

- 3.1 Both during and after construction, Union shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Union shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Union's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

### **4 Other Approvals and Agreements**

- 4.1 Union shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

**Response:**

Union accepts Board Staff draft Conditions of Approval.