

**RP-2006-0014**

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

**AND IN THE MATTER OF** an application by Union Gas  
Limited for approval of the parties to, the period of, and the  
storage that is the subject of a long term gas storage contract,  
identified as Contract No. LST049, between Union Gas  
Limited and Gaz Metro Limited Partnership.

**BEFORE:** Bob Betts  
Presiding Member

### **DECISION AND ORDER**

On January 19, 2006, Union Gas Limited ("Union") applied for approval of the parties to, the period of, the volumes under, and the terms of a long-term gas storage contract between Union and Gaz Metro Limited Partnership ("GMI") (the "Contract").

The Contract would, subject to Board approval, provide up to 4,415,580 GJ (4.1 Bcf) of firm storage space to GMI from April 1, 2006 to March 31, 2011. The Contract is dated December 22, 2005 and is designated LST049.

According to the application, the volumes covered by the Contract will offset a previously approved reduction in the storage volume provided to GMI under Long Term Storage Contract LST014 (see proceeding RP-2005-0017/EB-2005-0258). Therefore, approval of the application will not increase GMI's total storage under all of its contracts with Union for the years 2004, 2005 and 2006 beyond the total of 22,644,000 GJ previously approved by the Board

Union's application was made pursuant to section 39(2) of the *Ontario Energy Board Act, 1998* (the "Act"), which allows the Board to give approval either with or without a hearing. Union requested that the application be disposed of without a hearing on the grounds that no person will be adversely affected by the outcome of the matter. Union also requested that certain commercial terms in the Contract be held in confidence in accordance with the Board's *Rules of Practice and Procedure* on the basis that those terms contain information that is commercially sensitive and may harm the contracting parties' competitive positions. The confidential information pertains largely to pricing under the Contract.

The Board assigned Board File No. EB-2006-0014 to the application. A Notice of Application was issued on February 6, 2006 and was served on the participants in the Natural Gas Forum, the Natural Gas Electricity Interface Review ("NGEIR"), and the natural gas 2006 rates hearings. The Notice invited interested parties to file written submissions on the issue of whether the application should be disposed of without a hearing, including identification of the nature of the material adverse effect being asserted in this regard.

### **Submissions by Parties**

The Board received submissions from GMi, the Industrial Gas Users Association ("IGUA"), Nexen Marketing ("Nexen") and the Vulnerable Energy Consumers Coalition ("VECC").

The submissions of GMi, IGUA and Nexen all supported both the application and its approval without a hearing. IGUA also requested that it be awarded its costs in relation to the preparation of its submissions.

VECC noted that the Board is about to begin a fundamental review of storage regulation in Ontario (the "Storage Review") and therefore it would not be appropriate to proceed with the approval of any long-term storage agreements at this time.

In response to VECC's submission, Union asserted that VECC did not address whether or how the outcome of the proceeding will materially adversely affect its constituents, and that it made no submission regarding the merits of the application, but did submit that approval should be deferred until the outcome of the Storage Review component of NGEIR.

Union also noted, in its reply submissions, that it currently manages a significant portfolio of ex-franchise storage that can be used to accommodate the growth in in-franchise storage needs, and that the Board's approval of the application will not affect Union's ongoing ability to meet future growth in storage requirements for its in-franchise customers. Union also submitted that current business requirements should be governed by current Board policy. Delaying the longstanding regulatory approval process pending the NGEIR Storage Review will increase regulatory uncertainty. While storage related issues will be addressed in NGEIR, this application will in no way undermine the Storage Review or its possible outcomes.

### **Board Findings**

Under section 39(2) of the Act, the Board can dispose of an application for approval of a gas storage contract without a hearing. Having considered Union's evidence, and the submissions of parties that responded to the Notice of Application, the Board has determined that no person would be adversely affected in a material way by the outcome of this matter, and that a hearing is not required.

The Board notes that approval of the application will not change GMI's storage volume under its contracts with Union. The Board accepts Union's submission that the Contract will not affect Union's ability to meet future gas storage needs for its in-franchise customers. The Board is also satisfied that its ability to consider the issues which will be subject to the Storage Review or NGEIR will not be impaired by approval of Union's application.

Therefore, the Board approves Union's application. The Board has also determined that the pricing information that is the object of Union's confidentiality request shall not be placed on the public record.

The Board notes that IGUA was the only party that requested it be awarded costs for this proceeding and indicated that it should be able to resolve the amount of its claim with Union without requiring the intervention of the Board's Assessment Officer. The Board will not award costs for this hearing due to its simple and straightforward nature.

**THE BOARD ORDERS THAT:**

1. The parties to, the period of, and the storage space that is the subject of the gas storage contract between Union Gas Limited and Gaz Metro Limited Partnership, dated December 22, 2005 and designated LST049, is approved. A redacted non-confidential version of the contract is attached as Appendix A to this Decision and Order.
2. Union shall promptly file original signed or certified copies of the executed contract with the Board.
3. The unredacted confidential version of the contract shall not be placed on the public record.

DATED AT Toronto, March 16, 2006

ONTARIO ENERGY BOARD

*Original signed by*

Peter H. O'Dell  
Assistant Board Secretary

**APPENDIX "A" TO  
BOARD DECISION AND ORDER  
IN THE MATTER OF EB-2006-0014**

Being a redacted, non-confidential version of a contract for storage between Union Gas Limited and Gaz Metro Limited Partnership, identified as Contract No. LST049.

**UNION MASTER  
COPY**

**Contract No. LST049**

**STORAGE CONTRACT**

**BETWEEN**

**UNION GAS LIMITED**

**AND**

**GAZ METRO LIMITED PARTNERSHIP**

**DATED December 22, 2005**

**Schedule "A" Pricing Provisions**

STORAGE CONTRACT

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**THIS STORAGE CONTRACT** dated as of the 22nd day of December, 2005,

**BETWEEN:**

**UNION GAS LIMITED**, a company incorporated under  
the laws of the Province of Ontario,  
(hereinafter referred to as "Union")

**PARTY OF THE FIRST PART**

- and -

**GAZ METRO LIMITED PARTNERSHIP**, a Limited  
Partnership under the laws of the Province of Quebec,  
(hereinafter referred to as "Shipper")

**PARTY OF THE SECOND PART**

WHEREAS, Union owns and operates a natural gas storage system in southwestern Ontario, through which Union offers "Storage Services", as defined in Article V herein;

AND WHEREAS, Shipper wishes to retain Union to provide such Storage Services, as set out herein, and Union has agreed, subject to the terms and conditions of this Contract, to provide the Storage Services requested;

AND WHEREAS, Shipper agreed to purchase and contract for such Storage Services, and Union agreed to provide such Storage Services as approved by the Ontario Energy Board ("OEB") on \_\_\_\_\_, 2006, subject to the terms contained herein;

NOW THEREFORE, this Contract witnesses that, in consideration of the mutual covenants and agreements herein contained and the exchange of one (\$1.00) dollar between the parties hereto, the payment and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:



## ARTICLE I - INTERPRETATION AND DEFINITIONS

- 1.01 Divisions, Headings and Index: The division of this Contract into Articles, Sections and Subsections, and the insertion of headings and any table of contents or index provided are for convenience of reference only, and shall not affect the construction or interpretation hereof.
- 1.02 Industry Usage: Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the transportation, storage, and distribution or sale of natural gas have an accepted meaning shall have that meaning.
- 1.03 Extended Meaning: Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. The words "herein" and "hereunder" and words of similar import refer to the entirety of this Contract, including the Schedules incorporated into this Contract, and not only to the Section in which such use occurs.
- 1.04 Conflict: In the event of any conflict between the provisions of this Contract and those of Schedule "A" attached to it, Union's C1 and/or M12 Rate Schedules, as defined below, the provisions of Schedule "A" shall prevail over the provisions of this Contract, and the provisions of Union's C1 and/or M12 Rate Schedules Contract shall prevail over those of this Contract.
- 1.05 Measurements: Units set out in Imperial measurement in parentheses beside their SI (metric) equivalent are for reference only and in the event of a conflict between SI (metric) and Imperial measurement herein, SI (metric) shall prevail.
- 1.06 Currency: All reference to dollars in this Contract shall mean Canadian dollars, unless stated otherwise.
- 1.07 Schedules: Refers to the schedules attached hereto which are specifically included as part of this Contract, and include:  
Schedule "A" - Pricing Provisions
- 1.08 (a) "Union's C1 Rate Schedule" or the "C1 Rate Schedule" or "C1" shall mean Union's C1 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.
- (b) "Union's M12 Rate Schedule" or the "M12 Rate Schedule" or "M12" shall mean Union's M12 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.
- 1.09 Definitions: Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in Schedule "A" attached hereto and/or Union's C1 Rate Schedule, General Terms & Conditions and Nominations, unless the context hereof otherwise clearly requires. The following definitions shall be read and interpreted as though included in the aforementioned:

(a) "Authorized Quantity" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule;

(b) "Contract Year" shall have the meaning as defined in Union's C1 Rate Schedule, General Terms & Conditions beginning on April 1, of each year, except for the first Contract Year which shall commence on the date as specified in Section 4.01 herein, and end on March 31, 2007;

(c) "Delivery Point" shall mean the point where Union shall deliver gas to Shipper, each described as follows:

Dawn (TCPL) : At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities): Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(d) "Maximum Storage Balance" shall mean the quantity of storage space held available by Union for Shipper's utilization;

(e) "Receipt Point" shall mean the point where Union shall receive gas from Shipper, each described as follows:

Dawn (TCPL): At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities) : Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(f) "Storage Account" shall mean the gas balance held by Union for Shipper and shall equal the quantity of gas received by Union for Shipper's account minus the quantity of gas delivered to Shipper by Union. Where the Storage Account is zero or a positive number, Union is deemed to be providing a Storage Service for Shipper; and, where the Storage Account is a negative number, Union is deemed to be providing a Loan Service for Shipper. Where a Loan Service is being provided, Shipper shall be charged pursuant to Schedule "A" for "Drafted Storage Balance"; and,

(g) "Unauthorized Overrun" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule.

## ARTICLE II - GENERAL TERMS & CONDITIONS

2.01 The General Terms & Conditions for the Storage Services provided under this Contract will be those specified in Schedule "A" of Union's C1 Rate Schedule (hereinafter referred to as the "General Terms & Conditions"). The General Terms & Conditions, as specified, are hereby incorporated into and form an integral part of this Contract by reference, as if fully set forth hereto. For purposes of the General Terms & Conditions, all references to "Customer" shall be deemed to be references to Shipper.

## ARTICLE III - CONDITIONS PRECEDENT

3.01 The following conditions precedent shall be satisfied or waived by the party benefiting from the condition, subject to Section 3.03 herein, before the commencement of service obligations hereunder:

i) Conditions benefiting Union:

(a) Union shall have obtained the governmental, regulatory and other approvals or authorizations that are required to enable Union to render the Storage Services contemplated herein, and to render an account in accordance with the provisions of this Contract, including the Schedules attached hereto;

(b) Union shall, where applicable, have obtained all internal and external approvals including the governmental, regulatory and other approvals or authorizations required to construct any facilities necessary to provide the Storage Services hereunder, which approvals and authorizations, if granted upon conditions, shall be conditions satisfactory to Union;

(c) Union shall, where applicable, have completed those facilities necessary to provide the Storage Services hereunder;

(d) Shipper shall provide Union with the requisite security or financial assurances reasonably necessary to ensure its ability to honour the provisions of this Contract as determined solely by Union. Such security or financial assurances will be reasonable and in a form and amount acceptable to Union;

ii) Conditions benefiting Shipper:

(e) Shipper shall, as required, have entered into the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein, and shall specifically, have an executed and valid Limited Balancing Agreement or Interruptible HUB Service Contract with Union; and,

(f) Shipper shall, where applicable, have received the governmental, regulatory and other approvals or authorizations that are required from the United States of America ("U.S.A.") and from Canada for the gas quantities handled under this Contract, which authorizations if granted upon conditions, shall be conditions satisfactory to Shipper.

3.02 Union and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfil their respective conditions precedent specified in Section 3.01. Each party shall notify the other forthwith in writing of their respective fulfilment or waiver of such conditions.

3.03 In the event that the conditions precedent as specified in Section 3.01, excluding Subsections 3.01 i) (b) and (c), are not satisfied, waived by the party deriving the benefit from that condition precedent with Union's consent or extended by mutual agreement, by March 15, 2006, then the parties hereto shall, upon thirty (30) days written notice by either party, such notice to be made not before March 15, 2006, be released from all their obligations hereunder, and this Contract shall thereupon be terminated.

#### ARTICLE IV - TERM OF CONTRACT

4.01 This Contract shall be effective as of the date of execution hereof; however, the service obligations, terms and conditions hereunder shall, subject to Article III, commence on the later of April 1, 2006, or, if applicable, the day following the date that the conditions precedent in Section 3.01 are satisfied or waived and shall continue in full force and effect until March 31, 2011 (the "Termination Date").

4.02 Without limiting the generality of the foregoing, this Contract may be terminated in accordance with Section XII of the General Terms & Conditions.

4.03 For the purpose of completing a final determination of the actual quantities of gas handled in any of the Storage Services to Shipper, this Contract shall be deemed to be in effect for an extended period equal to the time during which the companies, that transport the gas contemplated herein for Union and Shipper, retain the right to amend their statements. Such extended period of time shall not exceed three (3) years from the date of termination of this Contract.

#### ARTICLE V - STORAGE SERVICES

5.01 Services: Shipper agrees to the terms and conditions set out herein upon nomination to Union for the provision of the Storage Services, as follows:

##### A/ Storage Services:

(a) Union agrees, on any day and subject to Subsections 5.01 B and C, to either receive a quantity of gas from Shipper at the Receipt Point and credit Shipper's Storage Account, or to deliver a quantity of gas to Shipper at the Delivery Point and debit Shipper's Storage Account, such quantity of gas as Shipper may nominate and Union has authorized for Storage Service;

(b) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 4,415,580 GJ during the period from April 1, 2006 to March 31, 2011; and,

(c) On June 30<sup>th</sup> of each Contract Year, the quantity of gas in Shipper's Storage Account shall not be below 662,337 GJ.

**B/ Injection Demand:**

Union shall not be obligated to receive a quantity of gas in excess of an "Injection Demand" as hereinafter defined:

(a) from October 1 through and including November 30, on an interruptible basis and subject to Subsection 5.01 B(c), a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(b) from December 1 through and including September 30, on a firm basis and subject to Subsection 5.01 B(c), and provided that the current balance in the Storage Account is:

(i) less than 75% of the Maximum Storage Balance, a daily quantity equal to 0.75% of the Maximum Storage Balance; and,

(ii) greater than or equal to 75% of the Maximum Storage Balance, a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(c) the difference between the Maximum Storage Balance and Shipper's Storage Account.

Under no circumstances shall Union be required to accept receipt of a quantity of gas in excess of the Injection Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to accept receipt of greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

**C/ Withdrawal Demand:**

Union shall not be obligated to deliver a quantity of gas in excess of a "Withdrawal Demand" hereinafter defined as:

(a) from April 1 through and including May 31, on an interruptible basis and subject to Subsection 5.01 C(c), a daily quantity equal to 1.2% of the Maximum Storage Balance; and,

(b) from June 1 through and including March 31, subject to Subsection 5.01 C(c), and provided that the current balance in the Storage Account is:

(i) less than 25% of the Maximum Storage Balance, a daily quantity equal to 0.8% of the Maximum Storage Balance on a firm basis, plus, 0.4% of the Maximum Storage Balance on an interruptible basis; and,

(ii) greater than or equal to 25% of the Maximum Storage Balance, a daily quantity equal to 1.2% of the Maximum Storage Balance on a firm basis; and,

(c) except on those days where the delivery of gas would result in Shipper's Storage Account being reduced to zero (0), in which event the Withdrawal Demand shall be limited to the quantity remaining in Shipper's Storage Account.

Under no circumstances shall Union be required to deliver to Shipper a quantity of gas in excess of the Withdrawal Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to

deliver greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

D/ Fuel:

Shipper shall provide the fuel requirements, per the M12 Rate Schedule in effect at the time and as may be amended from time to time.

5.02 Daily Quantity: The Injection Demand and/or Withdrawal Demand, as the case may be on any day, and as defined in Section 5.01, shall be known as the "Daily Quantity".

5.03 Authorized Overrun: The amount by which Shipper's Authorized Quantity exceeds the Daily Quantity.

5.04 Accounting for Storage Services: All quantities of gas handled by Union shall be accounted for on a daily basis. Storage Services provided hereunder shall be in accordance with the prescribed nominations procedures herein.

5.05 Commingling: Union shall have the right to commingle the quantity of gas referenced herein with gas owned by Union or gas being stored and/or transported by Union for third parties.

5.06 Termination: Shipper's Storage Account is to be zero as of the Termination Date. It is Shipper's responsibility to schedule its deliveries to ensure that Shipper's Storage Account is zero on the Termination Date, except in the event that a force majeure, as provided for in Section 6.01 and where reasonably proven, has prevented delivery of quantities by Union to Shipper. Any gas remaining in Shipper's Storage Account as of the Termination Date, subject to other agreement of the parties hereto, shall be immediately forfeited to Union without further recourse.

#### ARTICLE VI - FORCE MAJEURE

6.01 An event of force majeure on Union's system, as defined in Section XI of the General Terms & Conditions, will excuse a delay in either the delivery of the gas by Union or the acceptance of receipt of the gas by Union hereunder, and will extend the time required for Union's or Shipper's obligation to be fulfilled on a day for day basis.

If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand) by reason of force majeure on Union's system, then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in this Section, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. "Daily Demand Rate" shall mean the Deliverability Rate for firm storage contained in Union's M12 Rate Schedule divided by the number of days in the month for which such rate is being calculated.

6.02 An event of force majeure, as contemplated under Section 6.01, or, upstream or downstream of Union's system, shall not relieve Shipper of any charges payable under Article VIII.

## ARTICLE VII - SERVICE CURTAILMENT

7.01 Capacity Sharing: Where requests for interruptible Storage Services hereunder exceed the capacity available for such Storage Services, Union will accept nominations from shippers and allocate capacity in the order of pricing for Storage Services and prior quantities moved, and shippers shall be so advised. Any interruptible services provided herein are subordinate to any and all firm services supplied by Union.

7.02 Capacity Procedures: Union reserves the right to change its procedures for sharing interruptible capacity and will provide Shipper with two (2) months prior notice of any such change.

7.03 Maintenance: Union's facilities from time to time may require maintenance or construction. In the event that such event occurs and in Union's sole opinion, acting reasonably, may impact its ability to meet Shipper's requirements, Union shall provide at least ten (10) days notice to Shipper. In the event the maintenance impacts Union's ability to meet Shipper's requirements, Union shall not be liable for any damages and shall not be deemed to be in breach of this Contract. To the extent that Union's ability to accept and/or deliver Shipper's gas is impaired, the time required for Union's obligation to be fulfilled on a day for day basis shall be extended. If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand), then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in Section 6.01, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. Union shall use reasonable efforts to determine a mutually acceptable period during which such maintenance or construction will occur and also to limit the extent and duration of any impairments. Union will endeavour to schedule and complete the maintenance and construction, that can be scheduled and completed, and which would normally be expected to impact on Union's ability to meet its obligations of any Contract Year, during the period from April 1 through to November 15.

## ARTICLE VIII - CHARGES AND RATES

8.01 The charges and rates to be billed by Union and paid for by Shipper for the Storage Services provided under this Contract and as agreed to by the parties, will be those specified in Schedule "A" attached hereto.

8.02 Prices exclude any applicable Goods and Services Tax or other taxes, royalties or levies imposed currently or subsequent to the commencement of this Contract.

8.03 Set Off: If Shipper shall, at any time, be in arrears under any of its payment obligations to Union, under this Contract, or otherwise indebted to Union, then Union shall be entitled to reduce the amount payable by Union to Shipper under this Contract by an amount equal to the amount of such arrears or other indebtedness to Union. In addition to the foregoing remedy, Union may, upon forty-eight (48) hours verbal notice, take possession of any or all of Shipper's gas under this Contract and any enhancements to this Contract, which shall be deemed to have been assigned to Union, to reduce such arrears or other indebtedness to Union.

## ARTICLE IX - PRESSURES

9.01 For Storage Services provided pursuant to Article V hereof:

- (a) Receipts of gas by Union for the account of Shipper, at the Receipt Point, shall be made at a pressure of not less than 4,825 kPa; and,
- (b) Deliveries of gas by Union for the account of Shipper, at the Delivery Point, shall be made at a pressure of not greater than 4,825 kPa.

Union shall operate its facilities at pressures which will normally permit the receipt and delivery of quantities scheduled for Storage Services hereunder; provided, however, that Union may at its discretion effect such receipts and deliveries by gas displacement. Under no circumstances shall Union be obligated to receive or deliver gas hereunder at pressures exceeding the maximum allowable operating pressures prescribed under any applicable governmental regulations; nor shall Union be required to make any physical deliveries or to accept any physical receipts which its existing facilities cannot accommodate.

## ARTICLE X - MEASUREMENT AND QUALITY

10.01 For Storage Services provided pursuant to Article V hereof:

- (a) The quality of the gas and the measurement of the gas to be received by Union hereunder is to be of a merchantable quality and in accordance with the quality standards and measurement standards as set out by Union in the General Terms & Conditions, but, Union will use reasonable efforts to accept gas of a quality that may deviate from the quality standards set out therein. Union will also accept gas of a quality as set out in TCPL's General Terms and Conditions.
- (b) Union shall cause Shipper to obtain measurement of the total quantity of gas to be received by Union hereunder from the upstream transporter(s) (or Union where applicable). Such measurement shall be done in accordance with established practices between Union and the upstream transporter(s) (or Union where applicable).

10.02 In the event of an error in metering or a meter failure, (such error or failure being determined through check measurement by Union or any other available method), then Union shall ask Shipper or Shipper's Agent to invoke its rights as Shipper with the upstream transporter(s) (or Union where applicable). Shipper shall exercise due diligence in the enforcement of any inspection and/or verification rights and procedures which Shipper or Shipper's Agent may have in relation to the meters owned and operated by the upstream transporter(s) (or Union where applicable) at the Receipt Point.

## ARTICLE XI - NOMINATIONS

11.01 Nominations shall be pursuant to Schedule "B" of Union's M12 Rate Schedule. Schedule "B" of Union's M12 Rate Schedule is hereby incorporated into and forms an integral part of this Contract. For purposes of the Nominations Section, all references to "Customer" shall be deemed to be references to Shipper.



## ARTICLE XII - SHIPPER'S REPRESENTATIONS AND WARRANTIES

12.01 Shipper's Warranty: Shipper warrants that it will, if required, maintain, or have maintained on its behalf, such certificates, permits, licenses and authorizations from regulatory bodies or other governmental agencies in the U.S.A. and Canada, as the case may be, as are necessary to enable Shipper, or others designated by Shipper, to deliver to Union at the Receipt Point and to export from the U.S.A. and import and deliver into Canada and/or export from Canada and import and deliver into the U.S.A., the quantities of gas to be handled by Union under this Contract. Shipper further warrants that it shall maintain the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein.

12.02 Financial Representations: Shipper represents and warrants that the financial assurances and representations provided to Union at the commencement of this Contract (if any) shall remain in place throughout the term hereof. Shipper shall notify Union in the event of any changes to the financial assurances and representations throughout the term hereof. Should Union, acting reasonably, solely determine that Shipper's financial condition warrants such, Shipper shall within fourteen (14) days of receipt of such notice by Union, obtain and provide to Union a letter of credit or other security in the form and amount reasonably required by Union (the "Security"). In the event that Shipper does not provide to Union such Security, Union may deem a default under the Default and Termination provisions of Section XII of the General Terms & Conditions.

## ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.01 Assignment: Shipper may not assign this Contract without the written consent of Union, the approval of the OEB, and any financial assurances as required by Union. Should Union consent to the assignment, Union will apply for OEB approval with all costs of the application to be paid by Shipper.

13.02 Notices: Subject to the express provisions of this Contract, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer or other responsible employee of the addressee or sent by registered mail, charges prepaid, or by facsimile or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened, or during any actual, postal strike or other disruption of the postal service. Any communication personally delivered shall be deemed to have been validly and effectively received on the date of such delivery. Any communication so sent by facsimile or other means of telecommunication shall be deemed to have been validly and effectively received on the business day following the day on which it is sent. Any communication so sent by mail shall be deemed to have been validly and effectively received on the seventh business day following the day on which it is postmarked.

Communications to the parties hereto shall be directed as follows:

IF TO SHIPPER:

Gaz Metro Limited Partnership  
1717 rue du Havre  
Montreal, Quebec H2K 2X3

Nominations: Attention: Co-ordinator, Operation and G.C.C  
Telephone: 514-598-3856  
Facsimile: 514-529-2253

Secondary Contact: Attention: Gas Control Centre  
Telephone: 514-598-3328  
Facsimile: 514-598-3613

IF TO UNION: Union Gas Limited,  
50 Keil Drive North,  
CHATHAM, Ontario N7M 5M1

Nominations: Attention: Manager, Gas Control  
Telephone: 519-436-5217  
Facsimile: 519-436-4635

Secondary Contact: Attention: Director, Business Development, Storage and Transmission  
Telephone: 519-436-4527  
Facsimile: 519-436-4643

Notwithstanding the above, nominations shall be made by facsimile or other recorded electronic means, subject to execution of the "Agreement for Use of the Secured Portion of Union Gas Limited's Website," or such other agreement, satisfactory to Union, and will be deemed to be received on the same day and same time as sent. Each party may from time to time change its address for the purpose of this Section by giving notice of such change to the other party in accordance with this Section.

13.03 Law of Contract: Union and Shipper agree that this Contract is made in the Province of Ontario and that the courts of the Province of Ontario shall have exclusive jurisdiction in all matters contained herein. The parties further agree this Contract shall be construed exclusively in accordance with the laws of the Province of Ontario.

13.04 Possession of Gas:

a) Union accepts no responsibility for any gas prior to such gas being delivered to Union at the Receipt Point and after its delivery by Union at the Delivery Point. As between the parties hereto, Union shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas enters Union's system until such gas is delivered to Shipper.

b) Shipper and Union shall each indemnify and hold the other harmless against any and all suits, actions, debts, accounts, damages, costs, losses and expenses caused by or resulting from its control and possession of the gas stored hereunder.

13.05 Title to Gas: Shipper represents and warrants to Union that, Shipper shall have good and marketable title or legal authority to all gas delivered to Union hereunder, which gas is not subject to litigation. Furthermore, Shipper hereby agrees to indemnify and save Union harmless from all suits,

actions, debts, accounts, damages, costs, losses and expenses arising from or out of claims of any or all third parties to such gas or on account of royalties, taxes, license fees, or other charges thereon.

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

13.07 Time of Essence: Time shall be of the essence hereof.

13.08 Counterparts: This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an originally executed copy, and it shall not be necessary in making proof of this Contract to produce all of such counterparts.

13.09 Amendments and Waivers: No amendment or waiver of any provision of this Contract nor consent to any departure of either party hereto shall in any event be effective unless the same shall be in writing and signed by each of the Shipper and Union and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Contract shall operate as a waiver thereof.

13.10 Severability: If any provision hereof is invalid or unenforceable in any jurisdiction, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.


13.11 General Liability: The liability of the parties hereunder is limited to direct damages only and all other remedies or damages are waived. In no event shall either party be liable for consequential, incidental, punitive, or indirect damages, in tort, contract or otherwise.

THIS CONTRACT SHALL BE BINDING UPON and shall enure to the benefit of the parties hereto and their respective successors and permitted and lawful assigns.

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

**UNION GAS LIMITED**

*I have authority to bind Union*

  
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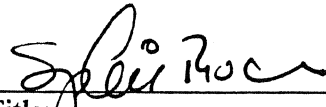
**Stephen W. Baker**

Vice President

**Business Development & Commercial Accounts**

**GAZ METRO LIMITED PARTNERSHIP**

*I have authority to bind Shipper*

  
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Title:

  
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Title:

Contract No. LST049