EB-2014-0154

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a hearing of the Ontario Energy Board on its own motion in order to determine the Application by Union Gas Limited for an order or orders approving a one-time exemption from Union Gas Limited's approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations;

AND IN THE MATTER OF a motion brought by TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. seeking an order of the Ontario Energy Board requiring Union Gas Limited to provide full and adequate responses to certain interrogatories.

SUBMISSION OF UNION GAS LIMITED
(Motion by TransAlta to compel answers to interrogatories)

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Lawyers for Union Gas

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A. Overview

1. This motion by TransAlta, supported by the City of Kitchener and others, to compel Union Gas Limited to provide answers to interrogatories that are beyond the scope of this proceeding should be denied.

2. The application before the Board is to determine whether Union may provide a one-time exemption to direct purchase customers that did not meet their contractual obligations in February or March 2014 from the obligation to pay certain specified penalty charges in their contracts. The application is not an omnibus proceeding to determine or resolve all issues that Union's customers may have with respect to the terms of their contracts. The only proper interrogatories are those that directly relate to whether the one-time exemption should be granted.

3. TransAlta and others are improperly attempting to broaden the scope of this proceeding by posing interrogatories that relate to contractual disputes they have with Union that are wholly unrelated to the issues in this proceeding. It would be outside the Board's jurisdiction, and contrary to principles of regulatory efficiency and the importance of public notice, for the Board to broaden the scope of this proceeding to include issues that are not properly before the Board in an application.

4. The interrogatories that relate to issues that are not before the Board in this proceeding are improper, and TransAlta's motion should be dismissed.

B. The Proper Scope of this Application

5. The scope of this proceeding is determined by Union's letter initiating the proceeding and by the Board's letter of direction.

6. By letter dated April 3, 2012, Union advised the Board that Union proposed to make changes to charges to direct purchase customers that did not meet their contractual obligations during the months of February and March 2014. Union proposed to offer T1/T2, Rate 25 and Bundled-T customers that did not meet their contractual balancing obligations during those two

months specified relief from the penalty clauses in their contracts, in recognition of the exceptionally cold weather conditions that occurred in 2014.

7. Under the applicable contractual terms and conditions, Union invoiced Rate T1/T2 Supplementary Inventory, and Rate 25 Unauthorized Overrun Gas Supply Commodity, at the higher of the daily spot cost at Dawn in the month of or the month following the month in which gas is sold, at an amount not less that Union's approved weighted average cost of gas.[1] Union proposed to limit the billing of the above charges to the highest spot price in the month in which gas was sold (and not the highest spot price in the month after the gas was sold). Union also proposed to reduce the charges from $78.73/GJ to $50.50/GJ (for customers who did not meet their February 2014 obligations) and to $52.04/GJ (for customers who did not meet their March 2014 obligations), subject to certain conditions.

8. By its Letter of Direction,[2] the Board determined that it would hold a hearing "to determine Union's application" for Board approval of "a one-time exemption from the relevant rate schedules to allow for the proposed reduction of certain penalty charges." The Board further clarified its intentions with respect to the application in its letter to Natural Resource Gas Limited of May 8, 2014, in which the Board stated:

> In the EB-2014-0154 proceeding, the Board will determine whether to grant Union a one-time exemption from the use of its approved tariffs with respect to certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of February and March 2014. The outcome of the proceeding will be the Board setting a final penalty charge that Union will be allowed to apply to those customers who did not meet their contractual obligations in the months cited above.[3]

9. The public notice that the Board issued with respect to the application similarly provided that Union "has applied to the [Board] for approval of a one-time exemption to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual

[1] Letter from Union to the Board dated April 3, 2014, Exhibit A to the Tavares Affidavit
[2] Board's Letter of Direction dated May 6, 2014, Exhibit B to the Tavares Affidavit
[3] Letter from the Board to NRG dated May 8, 2014, Exhibit C to the Tavares Affidavit

obligations during the months of February and March, 2014." The notice specified that "[a]t the end of this hearing, the [Board] will decide whether to approve Union's application."[4]

10. The question for determination in this application is circumscribed by Union's application, by the Board's letters and by the public notice. It is limited to determining whether a one-time exemption from the penalty charges should be granted for T1/T2, Rate 25 and Bundled-T customers, in recognition of the extremely cold weather conditions that occurred in 2014.

C. The Board Cannot Consider Matters Beyond the Scope of the Application

11. In Union's submission, the Board simply has no power to determine in one application issues that fall outside the scope of that application.

12. Applications may come before the Board in two ways: initiated by a party, or on the Board's own motion under section 19(4) of the *Ontario Energy Board Act, 1998*. Where an application is initiated by a party, the scope of the application is defined by grounds for the application set out in the application document and by the order or decision applied for.[5]

13. The Board has jurisdiction under section 21(5) of the Act to consolidate two or more proceedings or to hear two or more proceedings together. Thus, where two proceedings raise related issues, the Board may decide to hear them together. However, nothing in the Act gives the Board the power to determine matters in a proceeding that are not within the scope of that proceeding.

14. But even if it had the jurisdiction to do so, the Board should not determine issues in a proceeding that are beyond the scope of that proceeding. To do so would offend principles of regulatory efficiency and of public notice.

15. First, for the Board to determine issues that fall outside the scope of the application put before it would undermine regulatory efficiency by inviting continuous morphing of the matters at issue. Any application before the Board could effectively become hijacked by an ever-growing

[4] Public notice issued by the Board, Exhibit D to the Tavares Affidavit

[5] *Rules of Practice and Procedure*, rule 16.01

number of issues that bear little relevance to the original matter before the Board. This would undermine the prompt and effective resolution of applications before the Board.

16. Second, the effectiveness of public notice of Board proceedings would be severely undermined if the Board were to allow proceedings before it to morph into proceedings considering wholly different issues after public notice has been provided. The Board has frequently commented on the value it sees in facilitating public participation in its hearings.[6] This objective would not be met if a proceeding for which public notice was given with respect to one issue results in a determination by the Board of other issues of which public notice was not given.

17. Contrary to TransAlta's position,[7] TransAlta's intervention cannot broaden the scope of this proceeding. As an intervenor, TransAlta's participation rights are limited to asking questions about and making submissions on issues that are within the scope of this proceeding. Its intervention is not a free license to raise any and all contractual issues it has with Union.

18. Further, contrary to Kitchener's position,[8] the Board's broad mandate cannot give it the jurisdiction to consider matters that are simply not before it.

19. Thus, the Board cannot, and should not, consider in this application issues other than those that were submitted to it by Union in its application.

D. TransAlta's Contractual Dispute Falls Outside the Scope of this Proceeding

20. Nowhere in TransAlta's motion or subsequent submission does it describe the nature of its dispute with Union. Charitably, its submission appears designed to give the impression that TransAlta, like the parties actually affected by Union's application, either (1) failed to meet its contractual balancing obligations; or (2) met those obligations but paid significant amounts to do so. For example, at paragraph 9 of its submission TransAlta says:

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[6] See *e.g.* the Board's *Report on Gas Integrated Resource Planning* at paras. 26, 83-87, 131, Book of Authorities, Tab 1

[7] TransAlta's Submissions, paras. 11-14

[8] Kitchener's Submissions, p. 4

> TransAlta was very materially impacted by Union's exercise of discretion and decision-making in its calculation and application of certain gas costs and charges, resulting in an effective penalty to TransAlta under the approved rate schedules. TransAlta estimates that it incurred well over $1M in additional costs as a result of Union's discretionary and discriminatory conduct, even after all reasonable mitigation measures were taken by TransAlta.

21. All of the parties that have supported TransAlta's motion appear to believe that TransAlta's underlying complaint relates to its balancing obligation.

22. In fact, TransAlta's complaint has nothing to do with its balancing obligation at all, and the $1M referred to in its submission was not paid to Union as a penalty nor incurred by TransAlta to meet that obligation.

23. As evidenced by a series of letters exchanged by Union and TransAlta earlier this year (copies of which are attached to this submission), TransAlta's complaint focuses on the negotiated Daily Contract Quantity ("DCQ") of gas it is required to deliver to Union. As TransAlta put it in a letter to Union, "Union and TransAlta fundamentally disagree on the volume of gas that TransAlta is required to deliver under the terms of [TransAlta's T2] contract."[9]

24. In a nutshell, TransAlta takes the position that its DCQ is not 17,904 GJ/day as specified in Schedule 1 to its contract, but rather is 12,912 GJ/day. As explained in its letter to Union, it arrives at this interpretation of the T2 contract by reference to the definition of DCQ in the General Terms and Conditions. In its letter, TransAlta takes the position that the DCQ should be ***permanently*** revised to 12,912 GJ/day in accordance with its interpretation of the contract. It also proposes that the dispute be submitted to binding arbitration before Gordon Kaiser.

25. TransAlta provided Union with a draft notice of application to the Board in which it alleged that the DCQ requirement is in breach of the Board's *Storage and Transportation Access*

[9] Letter from TransAlta to Union dated March 7, 2014, Exhibit E to the Tavares Affidavit; Email from TransAlta to Union dated March 7, 2014, Exhibit F to the Tavares Affidavit; Letter from TransAlta to Union dated March 11, 2014, Exhibit G to Tavares Affidavit; Letter from TransAlta to Union dated March 12, 2014, Exhibit H to the Tavares Affidavit

Rule.[10] As part of its draft STAR application, TransAlta proposed to seek an order from the Board compelling arbitration of the dispute.

26. In response, Union explained that TransAlta's Obligated DCQ is indeed 17,904 GJ/day, as specified in Schedule 1 to the contract, and that STAR does not apply to distribution contracts. Union confirmed that it was prepared to have the contractual dispute resolved in Ontario courts, and that it would be prepared to consent to the dispute being heard by a Commercial List judge.[11]

27. What is apparent from the above is that the permanent amendment to TransAlta's DCQ that it is seeking, on the basis of an interpretation of its contract, is founded on commercial objectives and has nothing to do with the weather conditions during the 2014 winter. Indeed, TransAlta has confirmed that it takes issue with its DCQ because it "has not wanted to burn the gas at [its] facilities as power prices do not support the additional generation"[12] and that the DCQ is beyond TransAlta's "preferred usage".[13]

28. The dispute between TransAlta and Union is unrelated to the one-time penalty charge exemption that Union proposes to grant to its directly connected customers. It is not before the Board in this proceeding.

E. Kitchener's Dispute also Falls Outside the Scope of this Proceeding

29. Kitchener's complaint also has nothing to do with the Union's application. In correspondence dated May 2, 2014 it asked Union to waive or reduce the unauthorized storage withdrawal overrun charges billed to Kitchener under its T3 Contract. Union refused that request. A copy of Union's correspondence with Kitchener is attached.[14]

30. In brief, pursuant to its T3 Contract, Kitchener has contracted to provide its own storage deliverability inventory. Under the rate schedule, Kitchener pays a lower demand charge for Firm Injection Withdrawal Rights than when Union provides the deliverability inventory and

[10] TransAlta Draft STAR Application, Exhibit I to Tavares Affidavit

[11] Letter from Union to TransAlta dated March 20, 2014, Exhibit J to Tavares Affidavit

[12] Letter from TransAlta to Union dated March 12, 2014, Exhibit H to the Tavares Affidavit

[13] Letter from TransAlta to Union dated March 7, 2014, Exhibit E to the Tavares Affidavit

[14] Letter from Kitchener to Union dated May 2, 2014, Exhibit K to the Tavares Affidavit; Letter from Union to Kitchener dated May 15, 2014, Exhibit L to the Tavares Affidavit

accordingly Kitchener is required to maintain a quantity of gas in inventory equivalent to 20% of the annual storage space entitlement. Between January 1 and April 30, Kitchener's Firm Withdrawal Right is reduced in accordance with the formula outlined in the contract if the quantity of gas in inventory is less than 20% of Kitchener's annual storage space entitlement. Any gas withdrawn by Kitchener in excess of the Firm Withdrawal Right as adjusted by the formula is deemed to be overrun. Any such withdrawal overrun will be authorized or unauthorized as indicated on Union's website and Unionline.

31. During the time period in question, Kitchener's inventory of gas in storage was less than 20% and Kitchener's Firm Withdrawal Right was adjusted as outlined in the contract. Kitchener's withdrawals from storage were in excess of the adjusted Firm Withdrawal Right and were therefore overrun. Union was interrupting storage services to customers per the Priority of Service policy posted on Union's website. As such, storage withdrawal overrun was interrupted and the overrun indicator on Union's website and Unionline identified withdrawal overrun as unauthorized.

32. Union applied the Ontario Energy Board approved charge of $9.402/GJ for unauthorized storage withdrawal per the T3 rate schedule to the unauthorized overrun quantities.

33. Again, Kitchener's contractual dispute with Union does not relate to the same penalties for which Union is seeking rate relief for its directly connected customers, and is therefore not before the Board in this proceeding.

34. Kitchener's argument relating to the scope of the proceeding[15] amounts to an argument that it should be given rate relief along with Union's other customers. But rate relief for Kitchener is not before the Board in this application. Should Kitchener propose to have rate relief for it be put before the Board, it should bring an application seeking that relief or otherwise seek direction from the Board as to how that issue may be brought before the Board. TransAlta's motion to compel answers to interrogatories is simply not the right mechanism by which the issue of rate relief for Kitchener may be put before the Board.

[15] Kitchener's Submissions, pp. 2-4

F. Interrogatories Must be Limited to those Relevant to Issues in this Proceeding

35. In accordance with rule 26.02, interrogatories must be "relevant to the proceeding". The Board has required answers to interrogatories where:

(1) the interrogatory relates to an issue in the application before the Board; and

(2) the response is likely to adduce evidence that is relevant and helpful to the decision the Board must make.[16]

36. Neither of those prongs is met with respect to the interrogatories that are part of TransAlta's motion. They are relevant to the disputes raised by TransAlta and Kitchener but, as set out above, those disputes are not before the Board in this application. They are irrelevant to the issues in the application that is before the Board, and need not be answered.

G. NRG's Submissions Are Not Relevant to this Motion

37. NRG's submissions are not relevant to the only questions which are before the Board on this motion, namely, (1) what is the scope of this proceeding, and (2) are the interrogatories in question relevant to the issues in this proceeding. They appear to be directed to the merits of the application. In any event, these submissions are comprehensively addressed in Union's evidence in its April 1, 2014 QRAM application (EB-2014-0050). None of this has any bearing on TransAlta's motion.

38. For the reasons set out above, TransAlta's motion should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Crawford Smith / Myriam Seers

Lawyers for Union Gas Limited

[16] Decision on Motion and Procedural Order No. 5, EB-2009-0139, p. 2, Book of Authorities, Tab 2

EB-2014-0154

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a hearing of the Ontario Energy Board on its own motion in order to determine the Application by Union Gas Limited for an order or orders approving a one-time exemption from Union Gas Limited's approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations;

AND IN THE MATTER OF a motion brought by TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. seeking an order of the Ontario Energy Board requiring Union Gas Limited to provide full and adequate responses to certain interrogatories.

AFFIDAVIT OF LUCY TAVARES
(SWORN JULY 3, 2014)

I, Lucy Tavares, of the Regional Municipality of Peel, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a legal assistant with the law firm of Torys LLP, Lawyers for Union Gas Limited and, as such, have knowledge of the following matters.

2. Attached and marked as **Exhibit "A"** is a copy of the letter from Union to the Board dated April 3, 2014.

3. Attached and marked as **Exhibit "B"** is a copy of the Board's Letter of Direction dated May 6, 2014.

4. Attached and marked as **Exhibit "C"** is a copy of the letter from the Board to NRG dated May 8, 2014.

5. Attached and marked as **Exhibit "D"** is a copy of the Public notice issued by the Board.

6. Attached and marked as **Exhibit "E"** is a copy of the letter from TransAlta to Union dated March 7, 2014.

7. Attached and marked as **Exhibit "F"** is a copy of the email from TransAlta to Union dated March 7, 2014.

8. Attached and marked as **Exhibit "G"** is a copy of the letter from TransAlta to Union dated March 11, 2014.

9. Attached and marked as **Exhibit "H"** is a copy of the letter from TransAlta to Union dated March 12, 2014.

10. Attached and marked as **Exhibit "I"** is a copy of TransAlta Draft STAR Application.

11. Attached and marked as **Exhibit "J"** is a copy of the letter from Union to TransAlta dated March 20, 2014.

12. Attached and marked as **Exhibit "K"** is a copy of the letter from Kitchener to Union dated May 2, 2014.

13. Attached and marked as **Exhibit "L"** is a copy of the letter from Union to Kitchener dated May 15, 2014.

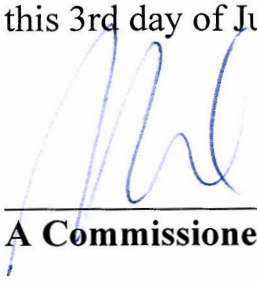
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 3rd day of July, 2014

Commissioner for Taking Affidavits (or as may be)

Lucy Tavares

Lucy Tavares

This is Exhibit "A" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

uniongas
A Spectra Energy Company

M. Richard Birmingham, CPA, CA
Vice President
Regulatory, Lands and Public Affairs

April 3, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

This letter is to advise you of some changes that Union is prepared to make respecting certain charges to direct purchase customers who did not meet their contractual obligations during the month of February, 2014.

Consistent with the contractual terms and conditions, Union invoices Rate T1/T2 Supplementary Inventory, and Rate 25 Unauthorized Overrun Gas Supply Commodity, using the highest spot cost at Dawn in the month it was used. Should a higher spot cost occur in the following month, Union will re-bill the Rate T1/T2 Supplementary Inventory, and the Rate 25 Unauthorized Overrun Gas Supply Commodity, on the next monthly invoice using that higher spot cost. Specifically, the terms of the contracts provide that the cost of gas shall be the higher of the daily spot cost at Dawn in the month of or the month following the month in which gas is sold and shall not be less than Union's approved weighted average cost of gas.

To date, those customers who have been subject to either a February Supplementary Inventory charge or a Rate 25 Unauthorized Overrun Gas Supply Commodity charge have been billed at a spot cost of $78.73/GJ. This spot cost is the highest spot cost at Dawn during February.

Union is prepared to make two changes in recognition of the exceptional weather conditions in 2014, and despite the fact that over 95% of Union's customers met their contractual obligations.

The first change is to limit the billing of the above charges to the highest spot cost in the month in which gas was sold. That is, the highest spot cost in the month following the month in which gas was sold will not be considered.

The second change is to reduce the above charges from $78.73/GJ to $50.50/GJ subject to the conditions described below. This reduced spot cost represents the second-highest spot cost at Dawn during the month of February. The reduced spot cost of $50.50/GJ continues to meet all of Union's objectives, including an appropriate financial incentive to customers to adhere to the contract terms and the protection of Union's system, and is made without prejudice to all rights and privileges as provided in the contract terms and conditions.

The above changes would be also be applied to Bundled T-service customers who did not meet their contractual balancing obligations.

Union also notes that it is willing to apply a similar approach to T1/T2, Rate 25, and Bundled T-service customers who did not meet their March contractual balancing obligations. That is, Union would limit the billing of the charges to the highest spot cost in the month of March, and would use the second-highest spot cost at Dawn during the month of March. This latter change would reduce the charges from $78.73/GJ to $52.04/GJ, and would be subject to the above conditions.

Should the Board have no objection to the above changes, Union anticipates being able to re-bill all affected customers within a week after a response from the Board.

I would appreciate it if you would bring this letter to the attention of the Board. Please don't hesitate to contact the undersigned should you have any questions.

Yours truly,

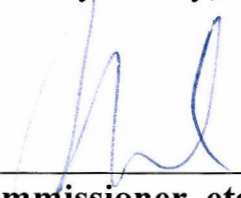
(Original signed by)

M. Richard Birmingham

cc: Michael Millar

P. O. Box 2001, 50 Keil Drive North, Chatham, Ontario, Canada N7M 5M1 tel. 519 436 4627
Union Gas Limited

This is Exhibit "B" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

Ontario Energy Board
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Facsimile: 416- 440-7656
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Commission de l'énergie de l'Ontario
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2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273

Ontario

BY EMAIL ONLY

May 6, 2014

Chris Ripley
Union Gas Limited
50 Keil Drive North
Chatham ON N7M 5M1

LETTER OF DIRECTION

Dear Mr. Ripley:

Re: Union Gas Limited
Reduction of Certain Charges Applied to Direct Purchase Customers
Board File Number: EB-2014-0154

The Board has determined that it will hold a hearing to decide the application filed by Union on April 3, 2014, which requested that the Board approve, without a hearing, a one-time exemption from the relevant rate schedules to allow for the proposed reduction of certain penalty charges. The Board finds that the test in s. 21(4)(b) is not met, as some customers may be materially affected by the outcome of the application.

The Ontario Energy Board has now issued its Notice concerning your application filed on April 3, 2014 (the "Notice"). Please note that you must comply with the following directions within five days of the date of this letter. If you cannot comply with the directions below within five days, you must inform the Board Secretary immediately.

You are directed:

1. to immediately serve a copy of the Notice in both the English and French versions, in the forms accompanying this Letter of Direction, together with a copy of the application either electronically, personally, by courier, or by registered mail on all of Union's customers that are subject, or could have been subject, to the charges at issue in Union's application;

2. to immediately serve a copy of the Notice in both the English and French versions, in the forms accompanying this Letter of Direction, together with a copy of the application either electronically, personally, by courier, or by registered mail on all intervenors in the EB-2011-0210 and EB-2013-0365 proceedings;

3. to immediately arrange for the Notice in both the English and French versions, in the forms accompanying this Letter of Direction, to be posted prominently on Union Gas Limited's website;

4. to file with the Board affidavit evidence proving the above service and website postings immediately upon completion;

5. to make a copy of the application and evidence, and any amendments thereto, available for public review at Union Gas Limited's office and on its website;

6. to make a copy of the Notice available for public review at Union Gas Limited's office; and,

7. to provide a copy of the application and evidence, and any amendments thereto, to anyone requesting the material.

You are further directed not to include any document(s) or material(s) when serving the Notice other than document(s) or material(s) expressly required by this Letter of Direction to be served.

Yours truly,

Original Signed By

Kirsten Walli
Board Secretary

cc: Mr. Crawford Smith (Torys LLP)

This is Exhibit "C" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014

A Commissioner, etc.

MYRIAM SEERS

Ontario Energy Board
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Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273

Ontario

BY E-MAIL

May 8, 2014

John A. Campion
Fasken Martineau
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto ON M5H 2T6

Dear Mr. Campion:

Re: Natural Resource Gas Limited
April 1, 2014 QRAM – Phase 2 Proceeding
Board File No. EB-2014-0053
Request for Board Direction

The Board has received your request that both the EB-2014-0053 (NRG QRAM Phase 2) and EB-2014-0154 (Union Penalty Reduction) matters be heard together or that the EB-2014-0053 matter be heard after the EB-2014-0154 proceeding concludes.

The Board would like to clarify its intentions for all parties involved in the two proceedings. In the interest of expediency, the Board plans to hear both proceedings at the same time.

In the EB-2014-0154 proceeding, the Board will determine whether to grant Union a one-time exemption from the use of its approved tariffs with respect to certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of February and March 2014. The outcome of this proceeding will be the Board setting a final penalty charge that Union will be allowed to apply to those customers who did not meet their contractual obligations during the months cited above.

The Board intends to hear, as part of the EB-2014-0154 proceeding, arguments as to whether the exemption should be granted and if so, what penalty charge should be applied in its place having regard for the intended purpose of the penalty charge and its efficacy. The penalty charge set in the EB-2014-0154 proceeding will be utilized for Phase 2 of NRG's QRAM proceeding (EB-2014-0053). Therefore, the Board intends to

make a final decision in this proceeding prior to making a final decision in NRG's QRAM proceeding.

In the EB-2014-0053 proceeding, the Board will review the prudence of NRG's incremental gas purchases made over the past winter. As part of the EB-2014-0053 proceeding, the Board will also review whether the costs associated with the penalty should be recovered from ratepayers. The quantum of the penalty charge, however, will be set by the Board in the EB-2014-0154 proceeding.

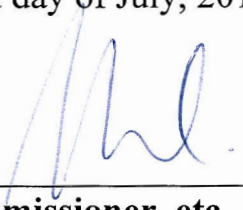
Yours truly,

Original signed by

Kirsten Walli
Board Secretary

c: Brian Lippold, Natural Resource Gas Limited
Laurie O'Meara, Natural Resource Gas Limited
Chris Ripley, Union Gas Limited
Crawford Smith, Torys

This is Exhibit "D" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

ONTARIO ENERGY BOARD NOTICE
TO CERTAIN CUSTOMERS OF UNION GAS LIMITED

Union Gas Limited has applied to reduce certain penalty charges applied to its direct purchase customers.
Learn more. Have your say.

Union Gas Limited has applied to the Ontario Energy Board (OEB) for approval of a one-time exemption to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations during the months of February and March, 2014.

THE ONTARIO ENERGY BOARD WILL HOLD A PUBLIC HEARING
The OEB will hold a public hearing to consider Union Gas Limited's request. We will question the company on its case. We will also hear arguments from individuals and from groups that represent Union Gas Limited's customers and that choose to participate in the OEB's hearing. At the end of this hearing, the OEB will decide whether to approve Union's application.

The OEB is an independent and impartial public agency. We make decisions that serve the public interest. Our goal is to promote a financially viable and efficient energy sector that provides you with reliable energy services at a reasonable cost.

BE INFORMED AND HAVE YOUR SAY
You have the right to information regarding this application and to be involved in the process. You can:

- review Union Gas Limited's application on the OEB's website now.
- become an active participant (called an intervenor). Apply by **May 22, 2014** or the hearing will go ahead without you and you will not receive any further notice of the proceeding. If you want to be eligible to apply for a cost award at the end of the hearing, you must file that request at the same time as your request to become an active participant.
- at the end of the process, review the OEB's decision and its reasons on our website.

LEARN MORE
Our file number for this case is EB-2014-0154. To learn more about this hearing, find instructions on how to become an intervenor, or to access any document related to this case please enter that file number on the Consumer page of the OEB website in the "Find an Application" box. You can also phone our Consumer Relations Centre at 1-877-632-2727 with any questions.

ORAL VS. WRITTEN HEARINGS
There are two types of OEB hearings – oral and written. The OEB intends to have a written hearing for this case unless a party satisfies the Board that there is a good reason for not holding a written hearing. If you object to the Board holding a written hearing for this case, you must provide written reasons why an oral hearing is necessary by **May 22, 2014** and provide a copy of those reasons to Union Gas Limited.

INTERROGATORIES
If you choose to become an intervenor and you wish information and material from Union Gas Limited that is in addition to the evidence filed with the application, and that is relevant to the hearing, you must request it by written interrogatories filed with the Board and delivered to Union Gas Limited on or before **May 29, 2014**. Union Gas Limited shall file with the Board complete responses to the interrogatories and deliver them to any interested parties in the proceeding no later than **June 5, 2014.**

SUBMISSIONS
If you wish to make a written submission on the application, you must file it with the Board and deliver it to Union Gas Limited by **June 12, 2014**. If Union Gas Limited wishes to respond to the submission(s), the written response must be filed with the Board and delivered to all parties who made submissions by **June 19, 2014**.

FILING DOCUMENTS WITH THE OEB
For anything you file with the OEB, you must provide an electronic copy in PDF format and two paper copies. You must quote file number **EB-2014-0154** and clearly state the sender's name, postal address, telephone number and email address. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

PRIVACY
If you choose to become an intervenor in this hearing, all the information your file with the OEB will be public.

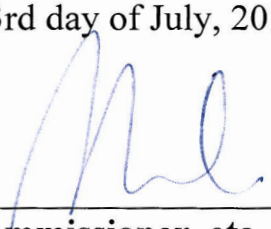
ADDRESSES

The Board:
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Filings:
https://www.pes.ontarioenergyboard.ca/service/
Email: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

The Applicant:
Union Gas Limited
P.O. Box 2001
50 Keil Drive North
Chatham ON N7M 5M1
Attention: Chris Ripley
Manager, Regulatory Applications
Tel: 519-436-5476
Fax: 519-436-4641

This hearing will be held under section 36 of the Ontario Energy Board Act, S.O. 1998 c.15 (Schedule B).

This is Exhibit "E" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

50 Keil Drive North
Chatham, ON
N7M 5M1

Dear Tom,

Re: Daily Contract Quantity ("DCQ") Obligation under Contract SA-6233-10

Further to discussions with Union regarding this matter, we have examined the terms of the Gas Storage and Distribution Contract (the "Contract") between TransAlta and Union dated November 1, 2012. The Contract incorporates the latest posted version of Union's General Terms and Conditions,[1] where DCQ is defined as follows:

*"**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/m³). 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.*

Section 3 of the Contract (cover letter) clearly indicates that the Contract term is greater than the 12 month Contract Year. We have taken steps to calculate the DCQ from November 1, 2012 to January 31, 2014 in accordance with the definition above, and we can advise that the DCQ is equal to 12,912 GJ/ day. Union's past and current demands that TransAlta provide 17,904 GJ per day are inconsistent with the express terms of Union's own Contract. These demands have caused, and continue to cause damage to TransAlta, by forcing TransAlta to purchase considerable additional gas per day over and above its preferred usage.

TransAlta is therefore taking steps to reduce its DCQ to 12,912GJ/ day, effective immediately.

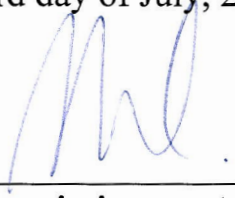
Yours very truly,

Pete Serafini
Commercial Specialist
TransAlta Generation Partnership

c.c. Frank Ries

[1] Section 1(c) of the Contract.

This is Exhibit "F" referred to in the
affidavit of Lucy Tavares sworn before me,
this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

From: Brenda Marshall
Sent: Friday, March 07, 2014 1:00 PM
To: 'sbaker@spectraenergy.com'
Subject: TransAlta Sarnia Site Issue

Hi Steve,

As we discussed on Tuesday, over the last few weeks Union Gas has been mandating delivery of the DCQ for the TransAlta Sarnia site, requiring us to deliver 17,904 GJ/day of gas into the Union system.

Our understanding of the DCQ is that its purpose was to ensure that industrial customers provide enough gas to the system to offset their usage thus avoiding overbuilding of system infrastructure.

Historically Union has rarely enforced the obligated DCQ, however TransAlta has been required to deliver a DCQ amount over for the past several weeks at exceptionally high gas prices, despite the fact that we have not wanted to burn the gas in our facility as power prices do not support the additional generation. This has left the site in an untenable position, forced to mitigate losses through one of three alternatives: 1) burning the gas in the facility and recouping some revenue by selling power at prices that do not cover the variable cost of production; 2) storing expensive gas and absorbing the loss in market value between the time when it is stored and ultimately used in our facility; and 3) selling the gas to another on system customer.

Clearly option 3 is the most preferable of the options above, and we are grateful for Union's assistance in helping us to locate third parties to absorb some of the excess gas. It has not been possible however to locate a sufficient number of additional on system customers, particularly following customers meeting their end February requirements. As a result, TransAlta is being forced to decide between options 1 and 2, and in many instances is choosing option 1 – burning the gas in the facility to minimize losses. Forcing TransAlta into making the decision to burn the unwanted gas does not benefit the Union system and does not help balance inventory. It consumes pipe space that others could utilize to deliver their needed gas during tight periods, provides no benefit to Union, and a loss to TransAlta.

Despite our mitigation attempts, as a result of these actions TransAlta is incurring losses estimated between $100,000 to $300,000 per day. We have attempted to come to commercial resolution with Union on this issue by offering to commit to foregoing our right to receive our full quantity of contracted gas during this period, and would still be interested in reaching some sort of resolution with Union on this or an alternate basis.

Union has been requesting TransAlta to deliver 17,904 GJ/day. The Gas Storage and Distribution Contract (the "Contract") between TransAlta and Union dated November 1, 2012 incorporates the latest posted version of Union's General Terms and Conditions, where DCQ is defined as follows:

*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^3). 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.*

17,904 is in excess of this calculated amount, and Union's demands that TransAlta provide it are inconsistent the with Union's longstanding pattern of practice and the express terms of Union's own Contract. These demands have caused, and continue to cause damage to TransAlta.

The obligated DCQ appears to be forcing TransAlta to take a loss with benefits accruing to other consumer types on the Union system. We see this as a regulatory rate cross subsidization issue.

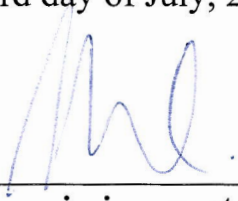
We would also like assurances that Union is not discriminating against TransAlta in this respect, and that all other customers including other power producers have similar DCQ obligations and have been required to deliver their full DCQs as a result of these circumstances.

Historically TransAlta has had an excellent working relationship with Union and want to continue that into the future, however we have not been able to bridge the gap on this issue. Due to the significant impact on our business, TransAlta requires an immediate resolution on this issue and I would certainly appreciate any help you can offer us in working through this. Please feel free to contact me at 403-819-2166 or via email if you need any further details.

Thanks for your help,

Brenda Marshall

This is Exhibit "G" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

Chatham, Ontario N7M 5M1

Dear Mr. Simpson:

Re: Dispute Regarding Daily Contract Quantity in Union Gas Contract

As you are aware, a dispute has arisen between TransAlta Generation Partnership (TransAlta) and Union Gas (Union) in relation to Daily Contract Quantity (DCQ) obligations under TransAlta's Contract with Union dated November 1, 2012 (Contract Number SA-6233-10) (the Contract). Union and TransAlta fundamentally disagree on the volume of gas that TransAlta is required to deliver under the terms of the Contract. TransAlta is of the view that the definition of DCQ[1] and the definition of "Contract Term" in section 3 of the Contract support that the maximum DCQ amount that Union may demand is 12,912 GJ per day. Union takes a different view, and since January 18, 2014, Union has required TransAlta to deliver a volume of 17,904 GJ of gas daily at exceptionally high prices.

On Friday, March 7, TransAlta took the step of reducing its DCQ to 12,912 GJ per day. Union has in turn demanded that the DCQ be increased to 17,904 GJ per day, and has advised TransAlta that it will be billing TransAlta for replacement gas, and imposing penalties under the Contract. TransAlta does not believe that the express terms, conditions and supporting definitions of the Contract support Union's position that DCQ is 17,904 GJ per day.

Notwithstanding that, TransAlta will take steps, effective today, to deliver 17,904 GJ per day as requested by Union. Please be advised that TransAlta will provide this amount under protest, and without prejudice to any rights that it may exercise under Contract, through Ontario Energy Board processes, and at common law or equity. To be clear, TransAlta does not believe that Union has the right under the Contract to require that TransAlta deliver 17,904 GJ per day. This unsupported demand by Union has caused and is causing ongoing harm to TransAlta.

TransAlta will simultaneously begin a Complaint Process ("Complaint") under the Storage and Transportation Access Rules (STAR), which Mr. Rick Birmingham of your office will receive later today or tomorrow. The Complaint will outline TransAlta's complaint relating to Union's discriminatory treatment of storage and transportation customers, and related areas where the Contract does not comply with STAR. By way of example, STAR requires that a transmitter's tariff include Alternative Dispute Resolution provisions.[2] The Contract, along with a number of other anomalies, currently has no dispute resolution provisions. TransAlta hopes to ensure that its complaint is resolved by Union in a manner that is consistent with the requirements and spirit and intent of the STAR and the best customer relations standards that should apply to a longstanding and significant customer like TransAlta. However TransAlta is prepared to take the STAR process to the Ontario Energy Board (OEB) if necessary.

In light of Union's stated urgency and need to resolve the contractual dispute in a timely matter, TransAlta proposes the following Alternative Dispute Resolution to resolve this matter as quickly and efficiently as possible. Continued uncertainty on this issue is not in the interest of either party.

---

[1] General Terms and Conditions

[2] Storage and Transportation Access Rule, Ontario Energy Board, Section 2.3.4(viii).

limited, written process targeting resolution of this matter within the next two weeks. Please note that we have made inquiries, and Mr. Gordon Kaiser, former Vice Chair of the Ontario Energy Board, is available during this period.

(iii) If the arbitrator determines that Union's interpretation of the Contract is entirely correct, the matter ends. If the arbitrator determines that TransAlta's interpretation is partially or entirely correct, there will need to be a second arbitration process with procedure to be agreed upon by the parties, for the purpose of determining and awarding damages to TransAlta[3]. We do not believe that we need to address and agree upon all of the procedural details of a second stage at this time, before the first stage is complete but we anticipate that any such second phase will take place in accordance with the *Arbitration Act, 1991*, S.O. 1990, c.17.

We believe that this proposal to resolve this issue through the above-mentioned binding arbitration process is both fair and reasonable. As noted above, section 2.3.4 of the STAR and its related processes require (among other things) that Union have such alternative dispute resolution provisions. It is our view that moving directly to such a dispute resolution process, while Union remedies the noteworthy gaps in its Contract is in the best interest of both TransAlta and Union in order to facilitate the timely resolution of this matter.

I look forward to hearing from you on the proposed course of action in a timely manner.

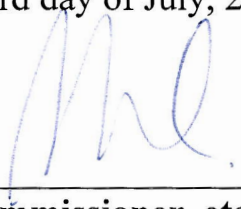
Yours very truly,

Calvin Johnson
Vice President Trading & Asset Optimization
TransAlta Corporation

c.c. Frank Ries, Union Gas
Pete Serafini, TransAlta

[3] We acknowledge that Union will likely take the position that TransAlta has suffered no damages.

This is Exhibit "H" referred to in the
affidavit of Lucy Tavares sworn before me,
this 3rd day of July, 2014



A Commissioner, etc.

MYRIAM SEERS

TransAlta Corporation
Box 1900, Station "M"
110-12th Avenue S.W.
Calgary, Alberta
T2P 2M1
T (403) 267 7110

March 12, 2014

Rick Birmingham
Vice President Regulatory Public Affairs
Union Gas
P.O. Box 2001
50 Keil Drive North
Chatham, Ontario N7M 5M1

Dear Mr. Birmingham:

Re: Complaint under the Storage and Transportation Access Rule ("STAR")

TransAlta Generation Partnership (TransAlta) hereby submits the following complaint in accordance with section 5 of the STAR and Union's related "Informational Posting". The complaint relates to Union's treatment of TransAlta in relation to Daily Contract Quantity (DCQ) obligations under TransAlta's Contract with Union dated November 1, 2012 (Contract Number SA-6233-10) (the "Contract") and Union's apparent failure to comply with a number of provisions of the STAR including but not limited to sections 1.1.1, 2.1.1, 2.1.4, 2.3.2, 2.3.4, 2.3.6, 2.3.7, 3.1.3, 4.1.1, and 4.1.2. The following sets out the facts giving rise to the complaint and proposed steps in attempt to facilitate the timely resolution of this matter.

Between January 4 and 9, 2014, and since January 18, 2014, Union has required TransAlta to deliver a volume of 17,904 GJ of natural gas daily at exceptionally high prices, notwithstanding the fact that such volume is not required under the terms of the Contract and TransAlta has not wanted to burn the gas at our facilities as power prices do not support the additional generation. The Contract and the definition of DCQ included in the Contract do not support Union's contention that it has the contractual right to demand delivery of 17,904 GJ daily. Rather Union's practices, the Contract, the definition of DCQ, and section 3 of the Contract cover each and all support that the maximum DCQ amount that Union may demand is 12,912 GJ per day. On March 7, 2014, TransAlta therefore took steps to reduce its delivered quantities of gas to correspond to a maximum DCQ of 12,912 GJ/day. We attach a copy of a letter sent to Union, dated March 7, 2014 providing notice of this measure. Yesterday, TransAlta agreed to continue to deliver a volume of 17,904 GJ per day, but does so under protest and on a without prejudice basis, as it does not believe that Union has the right to demand this volume under the Contract. A copy of a letter sent yesterday is attached.

TransAlta has suffered and continues to suffer considerable losses as a result of Union's unsupported demands. TransAlta has also attempted to mitigate its losses resulting from Union's ongoing and unsupported demands, but continues to incur losses between $100,000 and $300,000 per day. Further, we have also attempted to resolve this issue of discriminatory treatment and unsupported delivery demands in discussions with Union, including an offer to cap our gas use in exchange for a lower DCQ. We have also contacted Union's President regarding this issue. Please find a copy of an email sent on March 7, 2014 attached. To date, all attempts to resolve this matter in a collaborative way have been unsuccessful.

TransAlta is of the view that Union's position is not only contrary to the clear terms of its own Contract, but that by requiring TransAlta to deliver DCQ far in excess of its requirements, Union is forcing TransAlta to take a loss, with discriminatory benefits accruing to other consumers on the system. We are also concerned that TransAlta is being discriminated against.

Union has confirmed to TransAlta that not all transportation and storage contracts are being managed in the same manner, and therefore all shippers are not being treated in the same manner. By way of example, not all contracts have an obligated DCQ requirement. Further, the method for allocating the

differential treatment and related access to transportation and storage services, and any underlying differences in the related tariffs and contracts are not web-posted and transparent as required by the STAR. Moreover, the Contract does not appear to comply with a number of the terms of service and the standard form Contract required by the STAR, and in particular, the Contract does not include the requisite alternate dispute resolution provisions that would facilitate the timely resolution of this matter.

We hope that you can assist us in coming to a satisfactory and timely resolution of this complaint and the underlying matter. In the absence of a satisfactory resolution, TransAlta will be required to afford itself the rights and processes available under s.1.4.1 of the STAR, the Contract, and the Ontario Energy Board Act.

Yours very truly,

Original Signed By

Laura-Marie Berg
Regulatory Counsel
TransAlta Corporation

Attachments: Email dated March 7, 2014 from Brenda Marshall to Steve Baker
Letter dated March 7, 2014 from Pete Serafini to Tom Byng
Letter dated March 11, 2014 from Calvin Johnson to David Simpson

This is Exhibit "I" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014

A Commissioner, etc.

MYRIAM SEERS

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the Ontario Energy Board's *Storage and Transportation Access Rule*;

AND IN THE MATTER OF an application by TransAlta Generation Partnership for certain declarations and orders relating to a T1/T2 Gas Storage and Distribution Contract between TransAlta Generation Partnership and Union Gas Limited.

APPLICATION

The Parties

1. TransAlta Generation Partnership (**TransAlta**) is a Board-licensed natural gas fired electricity generator with plant operations in Sarnia, Ontario.

2. Union Gas Limited (**Union**) is a regulated public utility incorporated under the laws of Ontario and with a head office in Chatham-Kent, Ontario, and an "integrated utility" and a "natural gas transmitter" as defined in section 1.2.1 of the *Storage And Transportation Access Rules* (the **STAR**).

The Contractual Dispute

3. TransAlta and Union are parties to a T1/T2 Gas Storage and Distribution Contract dated November 1, 2012 (the **Contract**).

4. The Contract and related posted Tariff as required by the STAR provides that Union has the discretion to demand from TransAlta a Daily Contract Quantity of gas (**DCQ**).

5. DCQ is defined in Union's General Term and Conditions, which are incorporated by reference into the 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 Firm basis. The DCQ

> (GJ/day) is equal to 12 months of consumption of end-use locations underlying the direct purchase / 365 days * heat value (GJ/m^3). If this Contract has a term greater than 12 months, the DCQ is calculated by dividing the historical consumption of 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. [emphasis added]

6. Schedule 1 to the Contract states that the obligated DCQ is 17,904 GJ/day. However, the Contract has a term greater than 12 months: the Day of First Delivery under the Contract was November 1, 2012 and the Contract is currently ongoing. Accordingly, in accordance with the definition of DCQ in Union's General Terms and Conditions, DCQ is properly calculated by dividing the historical consumption for the term of the Contract by the number of the days in the term. Applying that calculation as of February 1, 2014, the Contract DCQ is 12,912 GJ/day .

7. Notwithstanding the definition of DCQ in the General Terms and Conditions, Union has taken the position that the DCQ is 17,904 GJ/day, as stated in Schedule 1 of the Contract. Union has required TransAlta to deliver the higher DCQ amount, causing TransAlta to suffer damages thus far of $1,200,000.

Union's Non-Compliance with STAR

8. In the context of its obligations and duties under the Contract, Union is subject to the STAR:

(a) Union is a "natural gas transmitter" as defined by STAR: under the Contract, Union provides TransAlta with "transportation services" (which include distribution services); and

(b) Union is an "integrated utility" as defined by STAR: under the Contract, Union is a gas distributor that also provides TransAlta with storage services.

9. Union has failed to comply with STAR. It's non-compliance includes the following:

(a) Union's position on the Contract has resulted in discriminatory treatment of TransAlta. Union does not treat all of its transportation and storage contracts in the same manner – for example, not all Union contracts have an obligated DCQ. The result is differential treatment by Union of shippers with whom it is contracting with;

(b) contrary to s. 2.1.4, Union has failed to post on its website its method for allocating the differential treatment of TransAlta under the Contract and related access to transportation and storage services;

(c) contrary to s. 2.3.4, the Contract fails to include Alternative Dispute Resolution provisions, and Union has refused to agree to resolve the Contract dispute through Alternative Dispute Resolution;

Relief Sought by TransAlta

10. TransAlta seeks the following relief:

(a) an order declaring that the STAR apply to Union as an "integrated utility" and "natural gas transmitter" in relation to its obligations and duties under the Contract;

(b) an order declaring that Union has engaged in discriminatory treatment of TransAlta,

(c) an order declaring that under the terms of the Contract the maximum DCQ that Union has the discretion, but not the obligation, to demand shall be calculated in accordance with the definition of DCQ under section 13 of Union's General Terms and Conditions and the posted Tariff, and that calculation for the period of November 1, 2012 to January 31, 2014 amounts to 12,912 GJ/day;

(d) an order compelling Union to amend the Contract to comply with, or otherwise give effect to sections 1.1.1, 2.1.1, 2.1.4, 2.3.2, 2.3.4, and 2.3.7 of the STAR, and specifically require that Union submit to an arbitration or other alternative dispute resolution procedure for the Contract as mandated by section 2.3.4(viii) of the STAR;

(e) an order compelling Union to reimburse TransAlta all monetary amounts related to any over-calculation of the DCQ for any and all quantities of gas above 12,912 GJ/day that Union has required TransAlta to deliver;

(f) in the alternative, an order compelling Union and TransAlta submit to binding arbitration for a determination of their dispute under the Contract, in accordance with the following process:

(i) the arbitration will involve two stages: (1) determination of Union's alleged liability under the Contract, and (2) if necessary, quantification of damages;

(ii) the first stage will proceed immediately and be determined within two weeks;

(iii) the first stage will proceed in writing only and be determined by a single arbitrator; and

(iv) the procedure for the second stage will be determined by the parties and the arbitrator upon conclusion of the first stage;

(g) an order that this application be heard and disposed of on an expedited basis; and

(h) such further relief as TransAlta's counsel may advise and that the Board may deem just.

11. TransAlta requests that this application be heard in writing, subject to a direction by the Board for a partial or full oral hearing upon its review of the parties' materials.

April ●, 2014

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower,
Suite 3800, 200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

Elisabeth DeMarco
Tel: 416.203.4431
Rahool P. Agarwal
Tel: 416.216.3943
Fax: 416.216.3930

Lawyers for the Applicant

TO:

This is Exhibit "J" referred to in the
affidavit of Lucy Tavares sworn before me,
this 3rd day of July, 2014

A Commissioner, etc.

MYRIAM SEERS

TORYS LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

Crawford Smith
csmith@torys.com
P. 416.865.8209

March 20, 2014

BY EMAIL

Calvin Johnson
Vice-President Trading & Asset Optimization
TransAlta Corporation
Box 1900, Station "M"
110-12th Avenue S.W.
Calgary, Alberta T2P 2M1

Dear Mr. Johnson:

Re: Gas Storage and Distribution Contract between Union and TransAlta

We are counsel to Union Gas Limited. We write in response to your letter of March 11, 2014 addressed to David Simpson and to Ms. Berg's letter of March 12, 2014 addressed to Rick Birmingham.

We understand the above correspondence to raise two issues: first, in relation to the Daily Contract Quantity ("DCQ") of gas TransAlta is required to deliver to Union on a daily basis; and second, in relation to the applicability of the Ontario Energy Board's Storage and Transportation Access Rule ("STAR"). Union's position in relation to these two issues is set out below.

In Union's view there is no merit to TransAlta's suggestion that the "maximum DCQ amount that Union may demand is 12,912 GJ per day". As set out in Schedule 1 to the Gas Storage and Distribution Contract between Union and TransAlta, TransAlta's Obligated DCQ is 17,904 GJs/day at Dawn. In accordance with section 2.01 of Schedule 2 of the Contract, TransAlta is required to deliver the DCQ to Union on a Firm basis every day. There is no ambiguity in the Contract with respect to TransAlta's DCQ. Indeed, TransAlta's own conduct under the Contract confirms Union's position. Until TransAlta failed to deliver in early March, and thus well after it had renewed the Contract for a term of one year commencing November 1, 2013, TransAlta regularly delivered 17,904 GJ/day of gas to Union at Dawn.

Further, TransAlta's actions are inconsistent with its position that the DCQ is only 12,912 GJs/day. If that were the case, TransAlta's Firm cost-based Storage Space would be 15 times 12,912 GJs, or approximately 193,680 GJs, and not 268,000 GJs as specified on Schedule 1. Yet, on 26 days in November 2013, 16 days in December 2013 and 5 days in January 2014, TransAlta's storage balance exceeded 193,680 GJs.

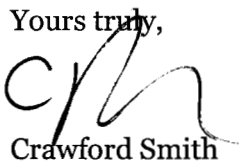
Union also disagrees with your suggestion that STAR applies to the Contract and has been breached. STAR does not apply to distribution contracts like the Contract. This is plain from the wording of STAR and the historical context giving rise to its passage. It is also entirely unclear

from your letter what breach of the substantive provisions of STAR TransAlta alleges has occurred, or what the nature of any complaint to the Board would be, even if STAR applied.

To the extent that TransAlta disagrees that it has a contractual obligation to deliver 17,904 GJs per day to Dawn, then a contractual dispute exists between Union and TransAlta. The Contract contemplates that contractual disputes be resolved in Ontario courts (General Terms and Conditions, section 12.03). Union is prepared to consent to the dispute being heard by a Commercial List judge, subject of course to the Commercial List's agreement, but does not consent to arbitration.

Please direct all future correspondence concerning this matter to my attention.

Yours truly,



Crawford Smith

CS/MS//lt

This is Exhibit "K" referred to in the
affidavit of Lucy Tavares sworn before me,
this 3rd day of July, 2014

A Commissioner, etc.

MYRIAM SEERS

INFRASTRUCTURE SERVICES DEPARTMENT
KITCHENER UTILITIES
James A. (Jim) Gruenbauer, CMA
Manager, Regulatory Affairs & Supply
Kitchener Operations Facility – Utilities Division
131 Goodrich Drive
Kitchener, Ontario, Canada, N2C 2E8
Phone: 519-741-2600 ext 4255
Cell: 519-580-3568
Fax: 519-741-2633
TTY: 1-866-969-9994
e-mail: jim.gruenbauer@kitchener.ca
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BY E-MAIL

02 May 2014

Union Gas Limited
Attn: Patrick Boyer, Manager, Greenhouse REM & Wholesale Markets
50 Keil Drive North
Chatham, Ontario, N7M 5M1

Dear Patrick:

Re: City of Kitchener T3 Contract SA 3863 – March 2014 Invoice # 391 712

As previously discussed, I am writing to request an adjustment by Union Gas to the unauthorized overrun withdrawal charges on our March 2014 invoice. These overrun charges appear in the re-billed section of the invoice for February 2014 storage activity in the amount of $ 120,714.79 for 12,765,946 MJ and in the section of the invoice for March 2014 storage activity in the amount of $ 85,664.51 for 9,059,276 MJ. The total overrun charges are $ 206,379.30 on a total storage withdrawal quantity of about 21,825 GJ.

Kitchener is seeking an adjustment and credit by Union Gas to waive or very significantly reduce the billed overrun withdrawal charges on the following grounds:

1. Kitchener's higher obligated DCQ deliveries during the winter period, including February and March 2014, significantly reduced Union's load balancing requirements for its other in-franchise bundled and semi-unbundled customers. As compared to obligated deliveries determined on a mean daily volume (annual forecast divided by 365 days), Kitchener delivered an additional 5,000 GJ per day of obligated supply to Union throughout the winter period, including February and March 2014. This reduced Union's daily load balancing required for its other customers by an equivalent amount, resulting in cost savings which far exceed the billed withdrawal overrun charges from which Kitchener seeks relief.

2. The cost savings to Union from Kitchener's higher obligated DCQ deliveries were particularly acute this past winter when pricing at Dawn was volatile and extreme. The extent of these extreme prices is set out in Union's April 2014 QRAM evidence. Simply put, Union avoided buying some very expensive gas this past winter to balance its overall load by virtue of Kitchener's "castle" DCQ with higher winter deliveries. The quantity of avoided purchases / load balancing is emphatically not insignificant – for the months of February and March 2014 alone, it is 295,000 GJ (5,000 GJ per day multiplied by 61 days). This avoided quantity far exceeds the quantity of billed withdrawal overrun from which Kitchener seeks relief.

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3. Kitchener proactively took steps to purchase and deliver significant amounts of non-obligated incremental gas this past winter to mitigate the steep and sustained rate of withdrawals from its storage to meet higher customer demand in its franchise area due to the abnormally harsh winter conditions. Kitchener arranged for incremental gas deliveries to Union for both its system supply and direct purchase customers. These incremental deliveries totalled 762,789 GJ over the January 1, 2014 to March 31, 2014 period.

4. Kitchener's firm storage space of 3,051,188 GJ was reduced by 318,994 GJ or 9.5% in our current contract with Union due to the application of the aggregate excess methodology. As an embedded gas distributor with an obligation to serve, Kitchener continues to view the application of this methodology as flawed because it assumes a zero ending balance for storage at the end of the winter period on a forecast basis. This may be an appropriate assumption for an industrial customer served under Rate T1 or T2, but it is not appropriate for an embedded gas distributor. If our space allocation had not been reduced, then Kitchener would have utilized the higher space and avoided the withdrawal overrun billed by Union for February and March 2014.

5. Kitchener has previously contracted for supplemental storage space at market prices with Union to mitigate the reduction in its space allocation at cost based rates. As previously discussed, Kitchener has a standing bid of 40 cents per GJ for supplemental storage space for the upcoming winter.

6. We understand from Exhibit C19.45 in the RP-1999-0017 proceeding which was provided in your email response to me in late February 2014 that the unauthorized overrun rate of $ 9.456 per GJ which applies to Rate T3 corresponds to the transportation rate at approximately a 1% load factor (service required at a specified level for only 4 days of the year). The T3 overrun rate is 700% higher than the comparable rate of $ 1.175 per GJ which applies to Rates T1 and T2. The level of the overrun rate for Rate T3 cannot be justified. Kitchener is currently the only customer served under Rate T3. To the best of its knowledge, it is the only customer that has ever been served under Rate T3 since its inception. Kitchener's load factor has never been remotely close to 1%. Its current and historic annual load factor has been around 30% – a far cry from 1% and which strongly supports a directly comparable overrun rate of 1.175 per GJ. The onerous level of the T3 overrun rate has only come to light now because Kitchener has never before incurred any withdrawal overrun until the March 2014 invoice.

7. It is my understanding from participation via teleconference in the Union Gas Annual Stakeholder Meeting on April 9, 2014 at the OEB that Union did not curtail its Southern Area in-franchise interruptible customers for storage deliverability constraints in late February and early March 2014 when Kitchener incurred withdrawal overrun as billed by Union. Speaking here as "utility to utility", I strongly submit that Union cannot in good conscience or with prudence invoice its firm in-franchise customers such as Kitchener for withdrawal overrun charges at the same time it is permitting its interruptible customers to continue to consume gas when deliverability from storage is constrained. If you were ever going to curtail interruptible customers during the winter period for peak day distribution constraints and late season storage deliverability constraints to ensure firm services are met, then this past winter was that time. Enbridge Gas curtailed its interruptible customers on multiple occasions this past winter for both reasons. Kitchener did so as well. Union Gas did not likewise curtail its interruptible customers, yet sends Kitchener a bill for over $ 200,000 in withdrawal overrun charges despite Kitchener's mitigation efforts as noted above. That is simply wrong.

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In good faith and pending the timely and fair resolution of this dispute, Kitchener has paid the March 2014 invoice, in full, as billed by Union. For all of the reasons provided above, Kitchener is requesting Union to review the March 2014 invoice for adjustment and credit on a subsequent invoice by Union to waive or very significantly reduce the billed overrun withdrawal charges.

If you have any questions or need further clarification to respond to this request for adjustment, please contact me at your earliest convenience. I look forward to hearing back from you in a timely fashion.

Sincerely,

James A. Gruenbauer, CMA
Manager, Regulatory Affairs and Supply

Cc: W. Malcolm (Kitchener)
L. Baillargeon (Kitchener)
J. Chatterjee (Kitchener)

This is Exhibit "L" referred to in the affidavit of Lucy Tavares sworn before me, this 3rd day of July, 2014

A Commissioner, etc.

MYRIAM SEERS

May 15, 2014

Infrastructure Services Department
Kitchener Utilities
131 Goodrich Drive
Kitchener, ON
N2C 2E8

Attn: James A. Gruenbauer

Re: City of Kitchener T3 Contract SA3863 – March 2014 Invoice #391 712

Dear Jim;

Union Gas Limited ("Union") has received your letter dated May 2, 2014, requesting that Union waive or reduce the unauthorized storage withdrawal overrun charges billed to the City of Kitchener ("Kitchener") under the T3 Contract between Union and Kitchener.

Under its T3 Contract, Kitchener has contracted to provide its own storage deliverability inventory. Per the rate schedule, Kitchener pays a lower demand charge for Firm Injection Withdrawal Rights than when Union provides the deliverability inventory and accordingly Kitchener is required to maintain a quantity of gas in inventory equivalent to 20% of the annual storage space entitlement. Between January 1 and April 30, Kitchener's Firm Withdrawal Right is reduced in accordance with the formula outlined in the contract if the quantity of gas in inventory is less than 20% of Kitchener's annual storage space entitlement.

Any gas withdrawn by Kitchener in excess of the Firm Withdrawal Right as adjusted by the formula is deemed to be overrun. Any such withdrawal overrun will be authorized or unauthorized as indicated on Union's website and Unionline.

During the time period in question, Kitchener's inventory of gas in storage was less than 20% and Kitchener's Firm Withdrawal Right was adjusted as outlined in the contract. Kitchener's withdrawals from storage were in excess of the adjusted Firm Withdrawal Right and were therefore overrun. Union was interrupting storage services to customers per the Priority of Service policy posted on Union's website. As such, storage withdrawal overrun was interrupted and the overrun indicator on Union's website and Unionline identified withdrawal overrun as unauthorized.

Union applied the Ontario Energy Board approved charge of $9.402/GJ for unauthorized storage withdrawal per the T3 rate schedule to the unauthorized overrun quantities.

In response to the points raised in your letter, Union provides the following:

1. Kitchener does deliver gas under a higher obligated DCQ during the winter period. It has done this for many years. Kitchener is the only customer with such an arrangement in place; Union's other customers have the same obligated DCQ through the entire year. This arrangement was requested by Kitchener and agreed to by Union. This gas is used by Kitchener to meet the requirements of its T3 contract and its customers. It has no impact on load balancing requirements of Union's other customers.

2. As the gas delivered by Kitchener was used by Kitchener, it did not provide a load balancing benefit to Union's other customers. During the period in question, Kitchener consumed well in excess of what it was delivering which resulted in the reduced storage balance and unauthorized withdrawal overrun.

3. Like Union and its other direct purchase customers, Kitchener experienced additional consumption resulting from much colder than normal winter weather and had to purchase significant quantities of incremental gas this past winter. Kitchener delivered incremental supply of 36,560 GJ in January, 8,577 GJ in February, and 731,778 GJ in March. The vast majority of this gas was delivered by Kitchener after its gas in storage had decreased below 20% and resulted in unauthorized overrun of its storage parameters.

4. Kitchener's storage parameters were determined using the storage allocation methodology reviewed and approved by the OEB in EB-2007-0725.

5. Kitchener had not contracted for additional storage for the period in question. However, having contracted for additional storage space would not have alleviated this situation.

6. The unauthorized overrun charge was reviewed and approved by the OEB in RP-1999-0017. The rate has been in each approved rate order since the RP-1999-0017 proceeding. As noted in Exhibit C19.45, the intent of the rate was to incent appropriate behaviour by customers in establishing contract parameters and in operating within those parameters. This rate was set equivalent to the unauthorized rate for services to other LDC's under Union's M12 rate class. Although the charge was equivalent to the T3 rate at approximately a 1% load factor, it is a penalty charge, not a load factor driven cost-based rate. Kitchener's load factor is not relevant to the unauthorized overrun charge.

7. Union did interrupt services to customers as per the Priority of Service policy posted on Union's website during most of the winter including the late February and early March period. While Union did not have to curtail interruptible distribution services (tier 2), Union had curtailed services up to and including tier 3. Further to this, the overrun indicator on Union's website had identified that storage withdrawal overrun was unauthorized during the period that Kitchener exceeded its storage withdrawal parameters.

It was Kitchener's responsibility to operate within its contract parameters. Had Kitchener maintained a storage balance above 20%, it could have avoided the unauthorized storage withdrawal overrun charge. As such, the charges for unauthorized storage withdrawal overrun per the T3 rate schedule are appropriate and Union will not provide the relief requested by Kitchener.

Should you have any further questions, please contact your account manager, Patrick Boyer.

Sincerely,

Jim Laforet, Manager Contract Billing & Operational Support

Copy:
Patrick Boyer, Union Gas

Via Email