

K1.4

**Compendium of Documents of Northeast Midstream LP
(re: Northeast's motion made pursuant to section 29(1) of the
Ontario Energy Board Act)**

Ontario Statutes

Ontario Energy Board Act, 1998

Part III — Gas Regulation

S.O. 1998, c. 15, Sched. B, s. 36

s 36.

Currency

36.

36(1) Order of Board required

No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

36(1.1) Order of Board re Smart Metering Entity

Neither the Smart Metering Entity nor any other person licensed to do so shall conduct activities relating to the metering of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

36(2) Order re: rates

The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.

36(3) Power of Board

In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.

36(4) Contents of order

An order under this section may include conditions, classifications or practices applicable to the sale, transmission, distribution or storage of gas, including rules respecting the calculation of rates.

36(4.1) Deferral or variance accounts

If a gas distributor has a deferral or variance account that relates to the commodity of gas, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates.

36(4.2) Same

If a gas distributor has a deferral or variance account that does not relate to the commodity of gas, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates.

36(4.3) Same

An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations.

36(4.4) Same

If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (4.1) or (4.2) and the delay is due in whole or in part to the conduct of a gas distributor, the Board may reduce the amount that is reflected in rates.

36(4.5) Same

If an amount recorded in a deferral or variance account of a gas distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers.

36(5) Fixing other rates

Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable.

36(6) Burden of proof

Subject to subsection (7), in an application with respect to rates for the sale, transmission, distribution or storage of gas, the burden of proof is on the applicant.

36(7) Order

If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates for the sale, transmission, distribution or storage of gas by any gas transmitter, gas distributor or storage company are just and reasonable, the Board shall make an order under subsection (2) and the burden of establishing that the rates are just and reasonable is on the gas transmitter, gas distributor or storage company, as the case may be.

36(8) Exception

This section does not apply to a municipality or municipal public utility commission transmitting or distributing gas under the *Public Utilities Act* on the day before this section comes into force.

Amendment History

2003, c. 3, s. 30; 2006, c. 3, Sched. C, s. 3

Currency

Ontario Current to Gazette Vol. 147:46 (November 15, 2014)

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas facility.

APPLICATION

5. The service will allow Union, with the new facilities that it will construct adjacent to Hagar, to dispense LNG to LNG wholesalers or customers primarily for vehicle transportation fuel. Union plans to offer this service beginning September 1, 2015.
6. The service will result in better utilization of Hagar. This better utilization will benefit Union's ratepayers over the Incentive Regulation Mechanism ("IRM") term (2014-2018) by contributing to regulated earnings subject to sharing. On rebasing, the revenue from these services will form part of regulated revenue for ratemaking.
7. Specifically, Union applies to the Board for:
 - (i) an order approving the proposed cost allocation methodology used to allocate 2013 Board-approved costs between liquefaction, storage and vapourization functions performed at Hagar;
 - (ii) an order approving the proposed cost allocation methodology that allocates 2013 Board-approved Union North distribution costs to the Rate L1 service;
 - (iii) an order approving a new Rate L1 rate schedule and a cost-based rate to accommodate an interruptible liquefaction service at Hagar;
 - (iv) an order approving a maximum interruptible liquefaction rate on short-term (i.e. one year or less) liquefaction service equal to approximately three times the cost-based interruptible liquefaction rate;
 - (v) an order approving modifications to the Union North Schedule "A" to accommodate Rate L1 gas supply charges expressed in dollars per gigajoules (\$/GJ);
 - (vi) for such interim order or orders approving interim rates or other charges and accounting orders as may from time to time appear appropriate or necessary; and
 - (vii) all necessary orders and directions concerning pre-hearing and hearing procedures for the determination of this application.
8. This application will be supported by written evidence. This evidence will be pre-filed and will be amended from time to time as required by the Board, or as circumstances may require.

Ontario Regulations

Ontario Energy Board Act, 1998

Ont. Reg. 161/99 — Definitions and Exemptions

Exemptions

O. Reg. 161/99, s. 2

S 2.

Currency

2.

2(1) In this section,

"Class A distributor" means a distributor with annual revenues of more than \$1,000,000 from rates and other charges approved by the Board;

"motor vehicle fuel gas" means gas that has been liquefied or compressed to 2100 or more kilopascals and is sold or prepared and held for sale only for use as a motor vehicle fuel.

2(2) Section 36 of the Act does not apply to,

- (a) a Class A distributor in respect of the sale, transmission, distribution or storage of motor vehicle fuel gas if,
 - (i) the value of the gas immediately before it was liquefied or compressed into motor vehicle fuel gas is recorded in a special account,
 - (ii) the value recorded is approved by the Board, and
 - (iii) all amounts recorded in the special account are reported as revenue for the purposes of section 36 of the Act; or
- (b) any other person in respect of the sale, transmission, distribution or storage of motor vehicle fuel gas.

Currency

Ontario Current to Gazette Vol. 147:46 (November 15, 2014)

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas facility.

APPLICATION

1. Union Gas Limited ("Union") is a business corporation, incorporated under the laws of Ontario, with its head office in the Municipality of Chatham-Kent.
2. Union conducts an integrated natural gas utility business that combines the operations of selling, distributing, transmitting and storing gas within the meaning of the *Ontario Energy Board Act, 1998* (the "Act").
3. Union hereby applies to the Ontario Energy Board ("Board"), pursuant to section 36(1) of the *Ontario Energy Board Act, 1998* (the "Act") for an order or orders approving a new interruptible natural gas liquefaction service. The service will be provided at Union's Liquefied Natural Gas ("LNG") facility Hagar, Ontario using liquefaction capacity that is excess to utility requirements.
4. This service is in direct response to an increased interest in the use of natural gas, and LNG particularly, as an economical and environmentally preferable fuel for heavy duty vehicles.

Non-Binding Call for Expressions of Interest for Liquefied Natural Gas (LNG) Services

February 18th, 2014

Cost Advantage:

When compared to alternative fuels like diesel and gasoline, LNG use can lower energy costs by 30-40 percent. As a result of abundant natural gas supply in North America, the price of natural gas is expected to remain low and stable over the long term relative to historic levels.

Environmental Advantages:

Union Gas is committed to minimizing the effects of our operating facilities on the environment. Any environmental impacts of new construction or ongoing operations will be taken seriously and protective measures will be developed to avoid or minimize effects. LNG can also help address environmental concerns like climate change and smog, offering green house gas emissions reductions of up to 28%.

LNG Safety:

Our highest priority is the safe operations of our facilities for the public and our workers.

The Hagar LNG Plant is designed to meet stringent safety codes and requirements of the Canadian Standards Association and the Technical Standards and Safety Authority. The facility is manned 24/7 and has multiple safeguard measures in place, including the ability to shut down the system at anytime.

Customers will be responsible for the transportation of the LNG from the Hagar LNG Plant to market.

Who Will Benefit:**Local Communities**

- Experienced contractors will use local resources to construct the facilities, and where possible, will procure material from the local community.
- Local communities also benefit from taxes that Union Gas pays to the municipality annually for its existing Hagar LNG Plant.

Ontario

- Liquefied natural gas will play a key role in meeting Ontario's future transportation fuel needs and in helping the province meet greenhouse gas emissions targets.
- The benefits of LNG have prompted plans to build refueling stations in the United States and Canada along main trucking corridors. The Hagar Project will help support such initiatives.
- The Union Gas Hagar facility is currently the only existing Ontario based LNG plant and it presents an opportunity to offer a service without the need to construct a new facility.
- The use of LNG is limited to transportation fuels.

UNION GAS LIMITED

Answer to Interrogatory from
Energy Probe

Reference: Exhibit A, Tab 1, Page 1, Line 11 ff

Preamble: The sale, transmission, distribution or storage of motor vehicle fuel gas by a person other than a Class A distributor is exempted from Section 36 of the OEB Act by Section 2. (2) (b) of O. Reg. 161/99.

- a) Why does Union want to provide this proposed LNG Transportation Fuel Service as a Regulated Service/Rate rather than as a non-utility business? Please provide the regulatory case/rationale for this.
- b) Assuming Union would provide the LNG Transportation Fuel as a non-regulated service and Union "LNG" paid Union Gas for the appropriate costs for use of the utility assets at the Hagar facility, what would be the reduction in the annual revenue requirement related to Hagar? Please provide a schedule that shows the allocated costs and shows the annual revenue requirement change over the IRM period.
- c) Would this change to revenue (assuming Union "LNG" is responsible for capital) be considered a Y factor under the IR regime? Please discuss in detail and in particular alternative regulatory treatments assuming LNG Transportation Fuel is a non-utility business.

Response:

- a) Please see the response to Exhibit B.Staff.6.
- b) Under a scenario where Union provided LNG for transportation fuel as a non-regulated service and Union "LNG" paid Union for the appropriate costs for the use of the utility assets at Hagar, there would be no reduction in the 2013 Board-approved revenue requirement related to Hagar during Union's 2014-2018 IRM term.

As described at Exhibit A, Tab 1, page 1, the revenue from the proposed liquefaction service will contribute to utility earnings subject to sharing over the IRM term. Regardless of whether Union provides the liquefaction service to LNG wholesalers/customers or Union "LNG", the revenue will be included in utility earnings subject to sharing.

Upon rebasing, Union anticipates that there will be a reduction in the revenue requirement at Hagar allocated to existing ratepayers. The revenue from the liquefaction service will also form part of regulated revenue for ratemaking purposes.

- c) Under the assumption that Union would provide the LNG transportation fuel as a non-regulated service, the revenue from a non-regulated service would not be considered as a Y factor.

UNION GAS LIMITED

Answer to Interrogatory from
Board Staff

Reference: Exhibit A / Tab 1 / Page 15

Union has indicated that it will provide liquefaction service under a new Rate L1 rate schedule. How does Union intend to proceed if it does not received approval from the Board to charge a regulated rate but does receive approval to provide the new service? In other words, Union would be free to charge a market or unregulated rate for the new LNG service.

Response:

The primary purpose of the Hagar facility is for system integrity needed to support regulated operations. There is no change to this purpose or operations as a result of this application. The proposal to provide a small amount of interruptible LNG service is a form of asset optimization which will ultimately benefit ratepayers upon rebasing. During the IRM term, the interruptible service and revenue will contribute to regulated earnings, and may affect earnings sharing. For LNG that is used exclusively as a transportation fuel and is therefore subject to regulatory exemption, a new stand-alone plant investment and related services would not be regulated. This is not the case with the Hagar facility. For LNG that is used for purposes other than transportation (i.e. non-exempt), a new stand-alone plant investment and related services should be subject to competitive market and regulatory forbearance determinations.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

UNION GAS MOTION RESPONSE

RE MOTION BY NORTHEAST MIDSTREAM

October 23, 2014

(see Exhibit B.Staff.6) (Van Der Paelt Affidavit, Schedule 'C'). Union believes this is an important distinction. As the market develops, the Board will have ample time to consider the competitiveness of the market (Van Der Paelt Affidavit, Schedule 'C'). At present, given the market in general and the circumstances related to the Hagar Facility that affect Union's participation in that market, Union believes forbearance as sought by Northeast is premature and not an issue that the Board needs to consider as part of this proceeding.

15. However, with respect to new greenfield-type LNG developments that are independent of the regulated operations, it is Union's expectation that such developments would fall outside of rate regulation and be the subject of a section 29(1) application. Such an application would extend to all LNG fuel uses, not just for LNG that is used exclusively as a transportation fuel and is therefore subject to regulatory exemption, which can be supplied by a new stand-alone plant investment. This is not the case with the Hagar facility (Van Der Paelt Affidavit, Schedule 'C').
16. For the reasons noted above, Union believes that this is not the time or proceeding for the Board to make a determination specific to the competitive nature of the LNG market. The Board can and should proceed with hearing Union's application and setting a rate and approving the related cost allocation methodologies for the utility.
17. Should the Board, however, agree with Northeast's Motion, Union will, in any event, require the Board to make a finding on its cost allocation methodologies as set out in Union's updated pre-filed evidence.

**UNION GAS LIMITED
P.O. Box 2001
50 Keil Drive North
Chatham, ON N7M 5M1**

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**REPLY AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn November 6, 2014)**

1 Although somewhat less capacity may be available due to occasional stops for maintenance, these
2 figures indicate the approximate magnitude of distribution system use and the volumes available for
3 LNG fuel sales. From this it can be seen that interruptions will be rare and that distribution system
4 integrity could easily become the activity that is incidental to the LNG fuel service activity. Thus, it
5 would be incorrect to conclude that the Hagar facility has special circumstances that require the
6 Board to regulate its LNG fuel venture.

7 5. Paragraph. 7 of Union's Response argues for regulating the competitive LNG fuel venture
8 because: *"For storage, Union's in-franchise and ex-franchise requirements were easier to determine and ultimately*
9 *separate."* However, Union is proposing to spend \$9.9 million on incremental facilities, mostly for
10 dispensing and pumping facilities that have nothing to do with gas distribution operations. These
11 costs are easily separated from utility requirements and there is no reason for the Board to regulate
12 these facilities or to ultimately roll them in with Union's gas distribution rate base in the future.

13 6. Similarly, while cost allocation sometimes can be complicated, it is an integral part of
14 ratemaking and not beyond the ability of Union or the Board. Union indicates that in the second
15 half of 2016 only 152,640 GJ (305,280 GJ on an annualized basis) of its liquefaction capacity will be
16 used for LNG fuel service, but that twice as much capacity (610,560 GJ) will be used for LNG fuel
17 service in 2018.¹ In order to allocate costs between regulated utility and competitive non-utility
18 services Union and the Board would need to determine how much of the Hagar liquefaction and
19 storage capacity is excess to utility needs at this time. That exercise should be no more difficult than
20 determining how much storage capacity was excess to utility needs in the NGEIR proceeding.

¹ Exhibit A, Tab 2, Schedule 5, line 9.

Ontario Statutes
Ontario Energy Board Act, 1998
Part II — The Board

S.O. 1998, c. 15, Sched. B, s. 29

s 29.

Currency

29.

29(1)Refrain from exercising power

On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

29(2)Scope

Subsection (1) applies to the exercise of any power or the performance of any duty of the Board in relation to,

- (a) any matter before the Board;
- (b) any licensee;
- (c) any person who is subject to this Act;
- (d) any person selling, transmitting, distributing or storing gas; or
- (e) any product or class of products supplied or service or class of services rendered within the province by a licensee or a person who is subject to this Act.

29(3)Where determination made

For greater certainty, where the Board makes a determination to refrain in whole or in part from the exercise of any power or the performance of any duty under this Act, and does so refrain, nothing in this Act limits the application of the *Competition Act* (Canada) to those matters with respect to which the Board refrains.

29(4)Notice

Where the Board makes a determination under this section, it shall promptly give notice of that fact to the Minister.

Currency

Ontario Current to Gazette Vol. 147:46 (November 15, 2014)

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

Whereas the FERC focuses on the HHI, the Competition Bureau looks at market share to assess the potential for unilateral exercise of market power and generally will not challenge a merger if this indicator is below 35%. For assessing coordinated exercise of market power, the Bureau looks at the four-firm concentration ratio (the post-merger combined market share of the four largest firms) and generally will not challenge a merger when this indicator is below 65%.

Board Findings

The question before us in this proceeding is unlike that addressed by the Competition Bureau in a merger application or by the FERC in an individual application for market-based rates. The Board has entered into this broad-based inquiry to determine whether it will refrain from regulating storage rates in Ontario. However, the Board finds that there is much to be gained from considering the approaches of others in determining questions of market power – both the analytical tests used and the actual application in specific cases.

Enbridge argued that the Board can use the CRTC's approach to forbearance as a model for an appropriate analytical framework. Enbridge further argued that FERC's Order 678 amounts to a recognition by FERC that its assessment of market power should be less restrictive in order to encourage the development of storage and in order that customers get the benefits of reduced price volatility and greater assurance that peak demands will be met. Enbridge reasoned that the Board should not take guidance from FERC decisions which took a narrow approach to the assessment of market power because the FERC itself has moved away from this approach.

The Board notes that while the experts and intervenors differed as to how the test should be applied, there was little disagreement as to the key components of the analysis, namely those followed in the MEGs:

- Identification of the product market;

- Identification of the geographic market;
- Calculation of market share and market concentration measures;
- An assessment of the conditions for entry for new suppliers, together with any dynamic efficiency considerations (such as the climate for innovation and the likelihood of attracting new investment).

The Board finds that this approach is the appropriate means by which to determine whether Union or Enbridge have market power and whether the storage market is competitive. This approach encompasses the key components of the approaches used by the FERC and the Competition Bureau. Having determined the appropriate analytical framework, we turn now to the application of the framework to Ontario.

We will address each of the four components; we will also address the price impact issue raised by Mr. Stauff, an expert witness sponsored by a number of consumer intervenors. His analysis asserted that a comparison of the market price and the regulated price can be used to assess market power.

3.4 IDENTIFICATION OF THE PRODUCT MARKET

The product market identifies a set of products that are reasonably good substitutes for each other. In other words, where buyers will respond to a price increase by switching, in significant numbers, to a substitute product, the two products should be considered as belonging to the same product market. It should be noted that since storage has several distinct functions, including seasonal balancing and meeting short-term demand peaks, it is arguable that more than one product market may be identified for the different functions of storage.

Concentric Energy Advisors (CEA) provided expert evidence on behalf of MHP Canada. CEA suggested that the relevant product market would include physical storage, local production from the regions in the relevant geographic market, pipeline capacity in the relevant geographic market contracted by marketers either directly or as agents for

4. COMPETITION AND THE PUBLIC INTEREST

Although the Board has determined that the storage market in Ontario is subject to workable competition, the Board must also determine whether the level of competition is or will be "sufficient to protect the public interest". This is a key element of section 29. There has been considerable debate in this proceeding regarding the meaning of "public interest" in section 29. The public interest is multi-faceted and dynamic, but it is important to clearly identify how the Board will assess whether the public interest will be protected by competition if the Board refrains from regulating storage rates.

Board Findings

The public interest can incorporate many aspects including customers, investors, utilities, the market, and the environment. Union and Enbridge argued for a narrow definition of the public interest. In their view, competition itself protects the public interest, and once the Board has satisfied itself that the market is competitive, the public interest is protected by definition. The Board finds this to be an inappropriate narrowing of the concept. Competition is better characterized as a continuum, not a simple "yes" or "no". The Board would not be fulfilling its responsibilities if it limited the review in the way suggested without considering the full range of impacts and the potential need for transition mechanisms and other means by which to ensure forbearance proceeds smoothly.

Some of the intervenors took the position that the public interest review should be focussed on the financial impacts. For example, Schools argued that the Board should look at the benefits and costs of forbearance, and in its view, the costs include a possible transfer of between \$50 million and \$174 million from ratepayers to shareholders (arising from the proposed end to the margin-sharing mechanisms and the

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

consumers. As the Federal Communications Commission noted, the costs include reducing the firm's ability to react rapidly to the changing market conditions, dampening incentives to innovate and wasting resources through the regulation of firms that have no market power.²⁶

There are degrees of competition in any market. They range from a monopoly, where there is a sole seller, to perfect competition, where there are many sellers and no one seller can influence price and quantity in the market. It is not necessary to find that there is perfect competition in a market to meet the statutory test of "competition sufficient to protect the public interest"; what economists refer to as a "workably competitive" market may well be sufficient.

It is also important to remember that competition is a dynamic concept. Accordingly, in section 29 the test is whether a class of products "is or will be" subject to sufficient competition. In this respect parties often rely on qualitative evidence to estimate the direction in which the market is moving.

3.2 ONUS

One of the issues raised was who has the onus in the NGEIR Proceeding. Generally, the onus is on the applicant. Most intervenors argued that the onus was on Union and Enbridge. The utilities and their affiliates disagreed. MHP, for example, countered that the onus was on any party seeking to change the status quo. In its view, Union has been selling storage at market-based rates for many years and that represents the status quo.

Some have argued that the ex-franchise prices are not competitive and that the framework should be revisited. Union itself is proposing to freeze the allocation of cost-based storage to in-franchise customers, and to acquire incremental volumes at market-

²⁶ Further Notice of proposed Rulemaking, 84 FCC 2nd 445 at 472-74, 478, (1981)

Ontario Statutes
Ontario Energy Board Act, 1998
Part I — General

S.O. 1998, c. 15, Sched. B, s. 2

s 2. Board objectives, gas

Currency

2.Board objectives, gas

The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
- 5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
6. To promote communication within the gas industry and the education of consumers.

Amendment History

2002, c. 23, s. 4(2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2; 2009, c. 12, Sched. D, s. 2

Currency

Ontario Current to Gazette Vol. 147:46 (November 15, 2014)

**Ontario Energy Board Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

Regulators in Canada and the United States offered two related grounds for forbearance. The first was that markets were being redefined by new technology and, therefore, competition rather than regulation could produce better outcomes in terms of the quantity and prices of goods and services, all of which would maximize social welfare. Much of the early work was done in the telecommunications industry. Not surprisingly, the absence of market power was held by both the U.S. Federal Communications Commission and the Canadian Radio-television and Telecommunications Commission (CRTC) to be sufficient grounds for the exercise of regulatory forbearance.²³

The *Telecommunications Act*²⁴, which came into effect October 25, 1993, created the first statutory provision relating to forbearance in this country. Section 34 reads:

Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to the service or class of services.

The CRTC between 1994 to 2007, pursuant to that section 34 decided to forbear from regulating telecommunications terminal equipment, cellular telephone and paging service, satellite services, data and private line services, internet services and ultimately long distance services.²⁵

It is important to remember that the public policy rationale for forbearance is not limited to the belief that competition provided adequate safeguards in workably competitive markets. The second ground for forbearance is based on concerns related to regulatory costs. Those costs are not limited to the financial burden on utilities and ultimately

²³ Further Notice of Proposed Rulemaking, 84 F.C.C. 2d 445, at 472-74, 478 (1981). See, Enhanced services, Telecom Decision CRTC 84-18, at 6-17, 118 CAN GAZETTE PT I, 6117, at 6123-25 (12-July, 1984).

²⁴ Telecommunications Act S.C. 1993 c.38

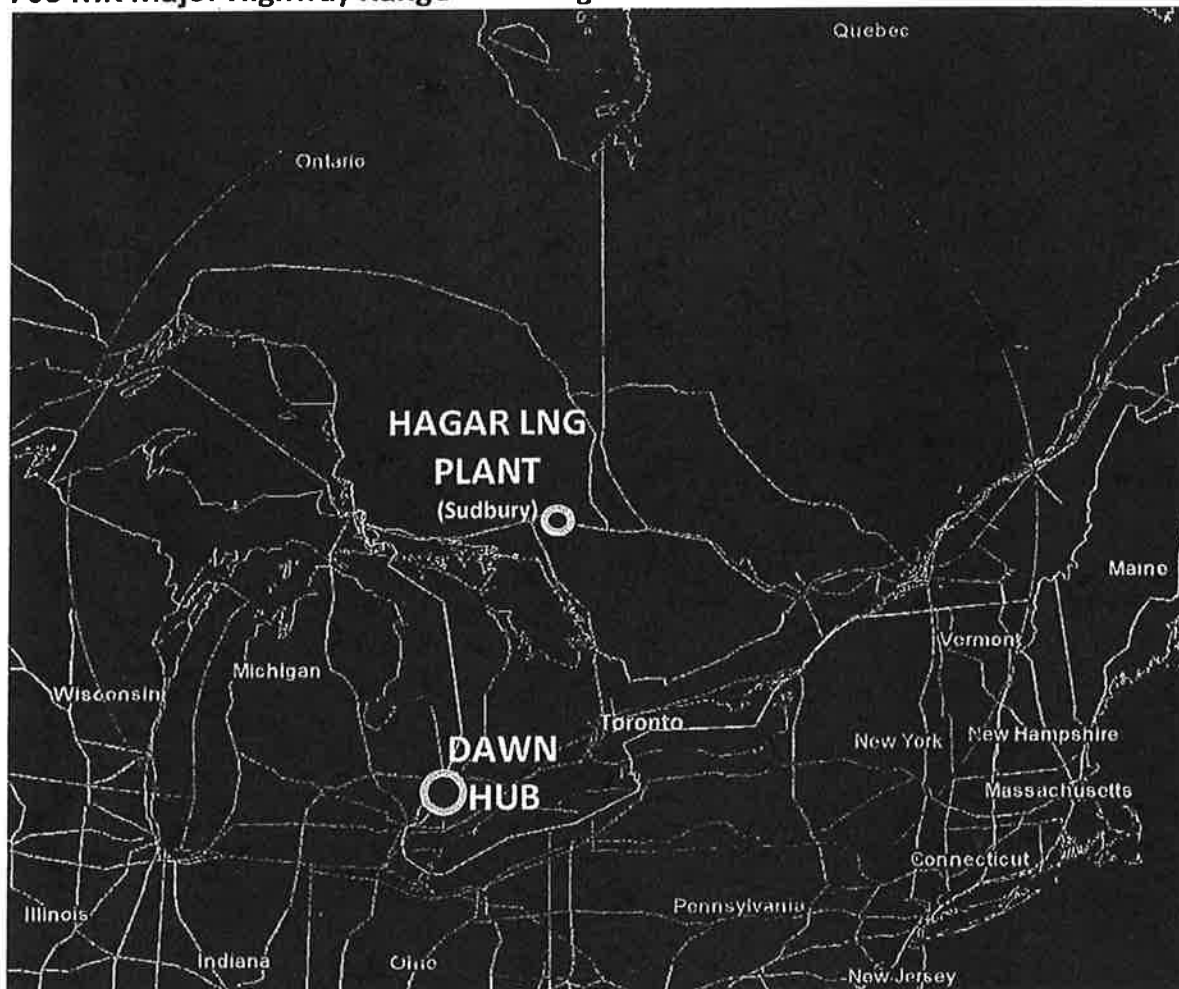
²⁵ Exhibit E, Tab 2, Schedule 1, Attachment 2

Non-Binding Call for Expressions of Interest for Liquefied Natural Gas (LNG) Services

February 18th, 2014

Union Gas Limited ("Union Gas") is conducting this non-binding call for expressions of interest in support of a proposal to offer liquefaction (LNG) services at the Hagar LNG Plant located near Sudbury, Ontario. Interested parties are asked to express interest in this liquefaction service dispensed by Union Gas FOB at the Hagar LNG Plant.

700 MK Major Highway Range from Hagar LNG Plant:



Map data: Google, National Institute of Statistics and Geography

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn October 15, 2014)**

1 modularized, portable natural gas liquefaction plants that can be moved to new locations as the
2 market changes.¹¹

3 17. It is not clear at this time which alternative LNG fuel liquefaction and distribution business
4 model – private fleet liquefaction, large plant liquefaction with delivery by tanker trucks, micro-
5 liquefaction plant, portable liquefaction plant, or some other alternative – will prove to be the best
6 business model for serving the various circumstances of customers as the LNG alternative fuel
7 market develops in the future. An unregulated competitive market will be the best way to sort out
8 which business models best serve the needs of consumers.

9 **Competition in the Fuel Market**

10 18. In assessing Union's proposal to use Hagar to provide transportation fuel, the relevant
11 product is fuel for heavy duty transportation engines (i.e., diesel and LNG), and the actual and
12 potential competitors in this market include refineries that supply diesel fuel, large liquefaction
13 facilities that can provide LNG by tanker truck to fueling stations, and small facilities that provide
14 on-site liquefaction at LNG fueling stations.

15 19. Based on the 700 km radius shown on the market area map that Union Gas provided as part
16 of its Call for Expressions of Interest for Hagar liquefaction services (Exhibit 1, attached hereto),
17 the relevant geographic market is, at a minimum, Ontario, Quebec, Michigan, Wisconsin, Indiana,
18 Pennsylvania, Ohio, New York, and Vermont. In addition, the fact that LNG fuel providers
19 located in Quebec and Indiana¹² already are serving the Ontario market, as shown on Exhibit 5,
20 indicates that those locations, and other locations that are a similar distance from Ontario, are within
21 the relevant geographic market.

¹¹ <http://lpg.dresser-rand.com/>

¹² According to Union Response to Staff.3: "Both will source LNG from the most economical supply available looking at the total delivered cost including the natural gas price, liquefaction charges, and transportation costs."

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn October 15, 2014)**

1 within a year. Alternatively, within less than a year an uncompetitive LNG fuel provider could lose
2 even larger portions of its market to (i) other existing LNG fuel providers, (ii) non-stationary
3 liquefaction facilities, and/or (iii) be forced to bid for long-term contracts against developers who
4 could propose to construct new liquefaction facilities in response to uncompetitively high prices. In
5 these circumstances, the market for heavy duty transportation fuel meets the Competition Bureau's
6 standard that a competitor would not be able to profitably sustain a price that is five percent above
7 the competitive market level for a year. In other words, competition in this market is sufficient to
8 promote the public interest.

9 23. If one were to limit the market power analysis solely to LNG transportation fuel and exclude
10 diesel fuel from the analysis, the conclusion that competition is sufficient to promote the public
11 interest would still apply. Normally, one would look at the relative market shares of competitors
12 and the degree of market concentration. However, the narrowly-defined LNG fuel market is so new
13 that existing market shares of LNG providers are not particularly relevant. Moreover, this
14 proceeding involves a proposal for Union to enter a new market for which it does not already have
15 market share. Consequently, I believe the focus of the LNG fuel competition analysis should be on
16 the extent to which there are barriers to competitive entry as this market develops, and whether
17 Union's proposal will encourage or inhibit competition in the developing market.

18 24. The LNG transportation fuel market has characteristics that are conducive to a competitive
19 market because the provision of LNG transportation fuel is an activity for which there are no
20 unusually high barriers to competitive entry. Liquefaction facilities are not overly difficult to
21 construct and both large and small liquefaction facilities used for various purposes already exist
22 throughout North America. Moreover, the liquefaction facilities required to provide this service can

20. It should be noted that actual or competing fuel providers do not need to be located within the 700 km radius of Union's Hagar facility market to effectively compete in this market. Instead, fuel providers that can economically supply significant areas of Union's proposed market are relevant competitors. For example, a distant refinery that can ship diesel fuel by pipeline, rail or truck into Union's proposed market area would be a participant in the market. Similarly, a liquefaction facility located outside of the Hagar geographic market that is reasonably close to portions of that market could have an effective market reach by tanker truck that overlaps with Hagar's 700 km radius. For example, the highway travel distance from the UGI LNG facility in Temple, Pennsylvania to Kingston, Ontario, is nearly identical to the travel distance from Hagar to Kingston (570 km v. 550 km), even though the UGI LNG liquefaction facility is outside of Hagar's 700 km radius. Similarly, the Citizen's Gas liquefaction facilities in Indianapolis are outside of the 700 km radius, but they also are providing LNG to the Ontario market.

21. The market for fuel for heavy duty transportation vehicles is highly competitive within the geographic market of Union's Hagar liquefaction facility. In order for LNG to increase its share of the transportation fuel market, fleets and other truck operators must be convinced to switch from diesel fuel to LNG. The market for diesel fuel is a well-established competitive market. For example, as shown on Exhibit 6 of this affidavit, Imperial Oil, Shell, Suncor and Ultramar all operate refineries in Ontario and Quebec and there are 25 different companies that operate refineries producing diesel fuel in the U.S. Northeast and Midwest (PAD 1 and 2).

22. Even after a heavy duty truck operator switches from diesel to LNG the LNG proposition must continue to be competitive or the operator will switch back to diesel or switch LNG providers. Given that heavy-duty fleet operators replace their equipment as often as every four years, an uncompetitive LNG fuel provider could lose as much as 25 percent of its market to diesel fuel

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

NOTICE OF MOTION

requirements. In its material filed in support of its application, Union asserts that the liquefaction and storage capacity at the Hager facility exceeds that which is required for system integrity requirements and thus it seeks to sell excess LNG capacity to wholesalers or customers (ex-franchise) primarily for vehicle transportation fuel. Union has applied to the Board for an order approving a new Rate L1 rate schedule and a cost-based rate to accommodate an interruptible liquefaction service in Hager, Ontario.

- (g) With Northeast's entry into the LNG market in Ontario, there will be an increased number of market participants competing with each other without the benefits of being able to shield themselves from investment risk. The potential entry by Union into the LNG market on a rate regulated basis, where its existing distribution customers take on the investment risk, is incompatible with the development of a competitive market and will not facilitate competition in the market of selling LNG to users.
- (h) Union's proposed entry, as set out in its application, falls squarely within the provisions of section 29(1) of the Act. LNG in the transportation market is a product subject to competition sufficient to protect the public interest.
- (i) The public interest relevant to assessing whether competition is sufficient is the operation of the competitive market.
- (j) Such further and other grounds as counsel may advise and the Board may permit.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn October 15, 2014)**

7. The NEB also has recognized the importance of allowing competitive markets to work. For example, in OH-1-2009, the NEB stated:

In general, the public interest is served by allowing competitive forces to work, except where there are costs that outweigh the benefits.³

Determination of Relevant Product and Geographic Market

8. In assessing whether a market is workably competitive it is first necessary to determine the relevant product and geographic markets. The ability of competitors to provide good substitutes for the company's products in a timely manner is the standard that is typically used in market-power determinations. The Competition Bureau of Canada ("Bureau") specifies the following standard for defining the relevant market:

"Conceptually, a relevant market is defined as the smallest group of products, including at least one product of the merging parties, and the smallest geographic area, in which a sole profit-maximizing seller (a "hypothetical monopolist") would impose and sustain a small but significant and non-transitory increase in price ("SSNIP") above levels that would likely exist in the absence of the merger. In most cases, the Bureau considers a five percent price increase to be significant and a one-year period to be non-transitory. Market characteristics may support using a different price increase or time period."⁴

In other words, the Competition Bureau considers a market to be workably competitive if no company can raise prices more than five percent above a competitive market level for a period of a year or more.

9. Once the relevant product and geographic markets are determined it is then necessary to determine whether a company is able to exercise market power. A common approach to this analysis is to calculate the relative market shares of the competitors who are already selling the product in the relevant market. If there are numerous competitors in the relevant market and no

³ NEB, Reasons for Decision, OH-1-2009, p. 32.

⁴ *Merger Enforcement Guidelines*, Competition Bureau Canada, Revised October 6, 2011, para. 4.3, footnote omitted.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

UNION GAS MOTION RESPONSE

RE MOTION BY NORTHEAST MIDSTREAM

October 23, 2014

4. In Union's view, the market for LNG as a transportation fuel will be competitive. Union made this same assertion both in its pre-filed evidence and interrogatory responses. In fact, aside from certain assertions, which Union disagrees with and corrects below, Union does not oppose the overall basis of the Motion, particularly in respect of LNG facilities that are greenfield.
5. However, Union's application for a regulated interruptible liquefaction rate is based upon the specific and unique circumstances related to Union's Hagar LNG facility (the "Hagar Facility" or "Hagar"). Because of these unique and specific circumstances, a request for forbearance under Section 29 of the *Ontario Energy Board Act* related to the LNG market in general is premature and should not be heard at this time in this proceeding.

Unique and Specific Circumstances

6. The unique and specific circumstances that give rise to Union's request for a regulated liquefaction rate are as follows:
 - (a) The Hagar facility is a regulated asset that is required for system integrity purposes. Union is only offering an interruptible liquefaction service, and the associated LNG, to the extent that there is liquefaction capacity that is excess to utility requirements (Fay Affidavit, Schedule 'A').
 - (b) Because of Hagar's importance for system integrity, Union can only offer the liquefaction service on an interruptible basis. The service is effectively controlled by Union's distribution needs should there be a system integrity event (Fay Affidavit, Schedule 'A').
 - (c) Due to the constraints on Hagar's LNG volume under the liquefaction service and the interruptible nature of the proposed service, there is a limited supply of LNG available at the Hagar Facility. For this reason, the quality of service is lower than that offered by a greenfield facility. The available marketable LNG at Hagar is estimated to be only 5 percent of the projected volume of the Northeast facility. In Union's view, Hagar will have no material impact on the overall competitiveness

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

UNION GAS MOTION RESPONSE

RE MOTION BY NORTHEAST MIDSTREAM

October 23, 2014

of the LNG market. Rather, Hagar is intended to support pilot projects and demonstrations that will help start a more robust and competitive market. Hagar will not be a direct competitor to greenfield LNG facilities (Van Der Paelt Affidavit, Schedule 'C').

7. Northeast also cites the Board's NGEIR proceeding in the Motion under the heading *OEB policy and Precedents for Forbearance* (p.3, Affidavit of J. Stephen Gaske). Because the regulated and unregulated aspects of the liquefaction service provided from the Hagar Facility, any attempt to draw parallels between NGEIR, the subsequent treatment of storage and the Hagar Facility are, in Union's view, without merit. For storage, Union's in-franchise and ex-franchise requirements were easier to determine and ultimately separate. This reality ultimately enabled the Board's decision to forbear from regulating Union's competitive storage services.
8. As a result of the foregoing unique and specific circumstances, Union applied to the Board for approval of (i) a regulated interruptible liquefaction rate and (ii) its proposed cost allocation methodologies in an effort to be as transparent as possible in respect to the use of Hagar beyond its system integrity requirements.

Existing Customers Do Not Underwrite the Service

9. Union wishes to clarify and correct certain statements and assertions made by in the affidavit of J. Stephen Gaske, as filed by Northeast. In particular, there are a number of references claiming Union's existing distribution customers will "underwrite" the proposed service. (lines 10-12, p.2, Affidavit of J. Stephen Gaske). The assertion that existing distribution customers will underwrite, or subsidize, the interruptible liquefaction service is incorrect. To be clear, existing ratepayers will in no way fund the proposed service. As stated in its evidence, during the period prior to rebasing all incremental capital and O&M costs (including variable costs) associated with the provision of the liquefaction service have been allocated to Rate L1 and will be recovered in the proposed liquefaction rate (Tetreault Affidavit, Schedule 'B').

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

detrimental to not only GMi but to the very existence of the secondary market that Ontario currently supports and benefits from.”

Conclusion

The Board finds that there should be a cap on the amount of Union’s existing storage space that is reserved for in-franchise customers at cost-based rates. In the Board’s view, Union’s existing storage assets are, in substance, a combination of “utility assets” required to serve Union’s in-franchise distribution customers and “non-utility assets” that are not required for regulated utility operations and that are sold in the competitive storage market. This distinction is supported by the significant excess of total capacity over in-franchise needs for the foreseeable future and by the fact that development in recent years has been driven by the ex-franchise market, not in-franchise needs. The Board does not accept IGUA/AMPCO’s submissions that the entire amount of Union’s storage is a “utility asset” and that ex-franchise customers (such as gas marketers and utilities in the U.S. Northeast) are buying “utility services” when they purchase storage from Union. The Board has determined that the ex-franchise market is competitive and that it will refrain from rate regulation or contract approval; these will no longer be “utility” services.

The Board concludes that its determination that the storage market is competitive requires it to clearly delineate the portion of Union’s storage business that will be exempt from rate regulation. Retaining a perpetual call on all of Union’s current capacity for future in-franchise needs is not consistent with forbearance. As evidenced by the arguments from GMi and Nexen, two major participants in the ex-franchise market, retaining such a call is likely to create uncertainty in the ex-franchise market that is not conducive to the continued growth and development of Dawn as a major market centre.

The Board concludes that it would be inappropriate, however, to freeze the in-franchise allocation at the level proposed by Union. Union’s proposal implies that a distributor with an obligation to serve would be prepared to own, or to have under contract, only the

The Board Hearing Team also recommended that Union's transmission and storage operations should be functionally separated, and that both Union and Enbridge's regulated and non-regulated storage should be functionally separated. The Board Hearing Team was of the view that this separation is necessary to ensure the development of the competitive storage market and to encourage new entrants. However, if no separation were required, the Board Hearing Team suggested that there should be a generic cost allocation review to examine the cost allocation thoroughly and to ensure no cross-subsidization.

LIEN argued that it would be difficult to separate costs for Union's integrated storage business. In LIEN's view, the current cost allocation study may be adequate to set rates, but it is not sufficient to separate price-regulated storage from non-price-regulated storage. LIEN proposed that an alternative would be to transfer assets which are surplus to distribution needs to a separate entity at fair market value which, in LIEN's view, would put Union on an equal footing with other storage providers.

Similarly, LPMA/WPSPG argued that Union's current cost allocation is not necessarily appropriate; there may be fundamental methodology issues to be addressed and there are storage-related costs that are included in distribution costs that should be considered for allocation to Union.

Board Findings

The Board finds that functional separation is not necessary. The evidence before the Board is that it would be costly and difficult to establish a functional separation of utility and non-utility storage, and there was no evidence to suggest that there would be significant benefits from such a separation. To the extent there may be concerns regarding the integrated operations, these will be addressed through the reporting requirements set out in section 5.4.

We also conclude that Union's current cost allocation study is adequate for the purposes of separating the regulated and unregulated costs and revenues for ratemaking purposes. The Board agrees with the Board Hearing Team that it is important to ensure that there is no cross-subsidization between regulated and unregulated storage. However, the Board is content that with its findings on the treatment of the premium on short-term storage services (Chapter 7) Union will have little incentive to use the cost allocation for purposes of cross-subsidy.

The issue of Enbridge's cost allocation is addressed in Chapter 7.

5.3 CONCLUSIONS ON FORBEARANCE

In the previous sections, the Board has found that it will refrain, in part, from regulating storage rates under section 36 (as that section relates to storage) of the *OEB Act* and refrain from approving certain storage contracts under section 39(2) of the *OEB Act*. Specifically:

- The Board will refrain from regulating the storage rates or approving the contracts of new storage providers.
- The Board will continue to regulate storage rates for bundled, unbundled and semi-unbundled customers of Union and Enbridge (up to the allocated amount).
- The Board will refrain from regulating the storage rates or approving the contracts of cross-franchise, or ex-franchise, storage customers of Union and Enbridge.
- The Board will refrain from regulating the rates or approving the contracts for new storage services offered by Union and Enbridge.

5.4 REPORTING

A number of parties made recommendations regarding ongoing reporting by utilities and other storage operators. The utilities and their affiliates generally agreed to provide the type of reporting required by FERC for interstate pipelines (FERC Regulations, §284.13)

the utilities provide storage to their regulated business through these investments, the ratemaking implications of that approach will be considered in the context of a rates proceeding.

5.2.4 Forbearance in the Ex-Franchise Market

Most parties argued that ex-franchise customers should pay market-based rates. Some parties took the position that the Board could refrain from regulating the prices in this market (if the Board determined the market was competitive), and others were of the view that the Board should continue to approve market-based range rates.

For example, the Consumers Council argued that the Board should not refrain from regulating storage but that it is appropriate for the utilities to charge market rates for Transactional Services and long-term storage services to maximize revenue from the assets for the benefit of ratepayers.

Board Findings

The evidence shows that other than for in-franchise customers, the storage market is competitive. With the exception of Enbridge, the customers in this competitive part of the market (commonly referred to as ex-franchise) have been acquiring storage at market-based rates for some time. The Board sees no benefit from continuing to regulate the prices of these services; on the contrary, competition in this area is sufficient to protect the public interest. The Board will therefore refrain from regulating rates or approving contracts for Union's short- or long-term ex-franchise storage services and will refrain from regulating the rates or approving the contracts for Enbridge's Transactional Storage Services.

5.2.5 Separation of Unregulated Storage Costs and Revenues

Both Union and Enbridge proposed to separate the unregulated costs and revenues from the regulated costs and revenues using a cost allocation study. The issue is whether a cost allocation approach is sufficient, or if a greater degree of separation is

required. Further, if a cost allocation approach is sufficient, there is an issue as to whether Union's current cost allocation study is adequate.

During the oral hearing, Union's witnesses indicated that Union would be preparing a new cost allocation study as the basis for revising the allocation of the costs of its storage assets between in-franchise (regulated) and ex-franchise (unregulated). In its final argument, however, Union submitted that the cost allocation necessary to split the costs of its storage assets between in-franchise and ex-franchise has already been completed in its 2007 rates case. According to Union, that allocation would result in the total storage rate base being split as follows (\$ million):

Included in regulated rate base	\$380.703 (79%)
Allocated to ex-franchise activities	<u>\$102.916</u> (21%)
Total	<u>\$483.619</u> (100%)

Enbridge proposed to separate the costs and revenues associated with its Transactional Storage Services at the next rates proceeding. It was Enbridge's position that no adjustment to rate base would be required if the Board were to forbear from price regulation.

Some parties argued that a greater degree of separation was required; others argued that Union's cost allocation study was inadequate.

Energy Probe argued that accounting separation is not sufficient because the historic cost allocation work could not have anticipated the dramatic change of storage forbearance. It took the position that the Board should encourage full structural separation at least, and that ratepayers should be held harmless for any associated costs.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**REPLY AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn November 6, 2014)**

1 Although somewhat less capacity may be available due to occasional stops for maintenance, these
2 figures indicate the approximate magnitude of distribution system use and the volumes available for
3 LNG fuel sales. From this it can be seen that interruptions will be rare and that distribution system
4 integrity could easily become the activity that is incidental to the LNG fuel service activity. Thus, it
5 would be incorrect to conclude that the Hagar facility has special circumstances that require the
6 Board to regulate its LNG fuel venture.

7 5. Paragraph. 7 of Union's Response argues for regulating the competitive LNG fuel venture
8 because: "*For storage, Union's in-franchise and ex-franchise requirements were easier to determine and ultimately*
9 *separate.*" However, Union is proposing to spend \$9.9 million on incremental facilities, mostly for
10 dispensing and pumping facilities that have nothing to do with gas distribution operations. These
11 costs are easily separated from utility requirements and there is no reason for the Board to regulate
12 these facilities or to ultimately roll them in with Union's gas distribution rate base in the future.

13 6. Similarly, while cost allocation sometimes can be complicated, it is an integral part of
14 ratemaking and not beyond the ability of Union or the Board. Union indicates that in the second
15 half of 2016 only 152,640 GJ (305,280 GJ on an annualized basis) of its liquefaction capacity will be
16 used for LNG fuel service, but that twice as much capacity (610,560 GJ) will be used for LNG fuel
17 service in 2018.¹ In order to allocate costs between regulated utility and competitive non-utility
18 services Union and the Board would need to determine how much of the Hagar liquefaction and
19 storage capacity is excess to utility needs at this time. That exercise should be no more difficult than
20 determining how much storage capacity was excess to utility needs in the NGEIR proceeding.

¹ Exhibit A, Tab 2, Schedule 5, line 9.

**Ontario Energy Board Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

rates to in-franchise customers. GMi and the Board Hearing Team supported Union's proposal.

Board Findings

Under the existing regulatory framework, Union's in-franchise customers have had first call, at cost-based rates, on Union's storage capacity. Said differently, Union has sold storage services to ex-franchise customers only when it can demonstrate that the storage being sold is surplus to in-franchise needs.

From an operational perspective, it is not necessary (nor would it appear to be feasible) for Union to physically split its storage facilities between "in-franchise" and "ex-franchise" uses. And until now, Union has been able to offer storage services in the ex-franchise market without capping or freezing the amount of capacity that is available for in-franchise uses.

Giving in-franchise customers a priority call at cost-based rates on all of Union's storage may be supportable if one takes the view that every Bcf of Union's storage capacity is a "utility asset" and is required to provide "utility services." But that view needs to be re-examined in light of the evidence presented at this hearing about the development and use of Union storage in recent years, and the Board's determination that the storage market is competitive.

Amount of Union's "surplus" capacity

There is no doubt that Union's existing storage capacity far exceeds the current requirements of its in-franchise customers. Some 40% of the current capacity has been sold in the ex-franchise market. And the requirements of in-franchise customers have grown slowly (less than 0.5% per year over the past six years according to Union's evidence). The excess is so large that it would take several decades for all of the current capacity of 152 Bcf to be required for in-franchise customer needs if those needs grow at 1% per annum, and more than 100 years at the current rate of growth.

- 1 4. A maximum interruptible liquefaction rate on short-term (i.e. one year or less)
- 2 liquefaction service equal to approximately three times the cost-based interruptible
- 3 liquefaction rate; and
- 4 5. Modifications to the Union North Schedule "A" to accommodate Rate L1 gas supply
- 5 charges expressed in dollars per gigajoules (\$/GJ).

6

7 The proposed service will be facilitated using liquefaction capabilities that are excess to Union's

8 system integrity requirements. Offering this service will not impact, in any way, Union's ability

9 to meet the utility's system integrity requirements.

10

11 Union is proposing the new service in response to increasing interest in the use of natural gas,

12 and LNG particularly, as an economical and environmentally preferable fuel for heavy duty

13 vehicles. Union will invest approximately \$8.7 million in capital for incremental facilities and

14 the related O&M to provide this new service. From September 1, 2015 to December 31, 2018,

15 Union is forecasting approximately \$8.5 million, or an average of \$2.117 million per year, in

16 utility revenue related to the provision of the liquefaction service. Table 1 summarizes the

17 forecast activity, proposed rate, and utility revenues over the IRM term.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

UNION GAS MOTION RESPONSE

RE MOTION BY NORTHEAST MIDSTREAM

October 23, 2014

of the LNG market. Rather, Hagar is intended to support pilot projects and demonstrations that will help start a more robust and competitive market. Hagar will not be a direct competitor to greenfield LNG facilities (Van Der Paelt Affidavit, Schedule 'C').

7. Northeast also cites the Board's NGEIR proceeding in the Motion under the heading *OEB policy and Precedents for Forbearance* (p.3, Affidavit of J. Stephen Gaske). Because the regulated and unregulated aspects of the liquefaction service provided from the Hagar Facility, any attempt to draw parallels between NGEIR, the subsequent treatment of storage and the Hagar Facility are, in Union's view, without merit. For storage, Union's in-franchise and ex-franchise requirements were easier to determine and ultimately separate. This reality ultimately enabled the Board's decision to forbear from regulating Union's competitive storage services.
8. As a result of the foregoing unique and specific circumstances, Union applied to the Board for approval of (i) a regulated interruptible liquefaction rate and (ii) its proposed cost allocation methodologies in an effort to be as transparent as possible in respect to the use of Hagar beyond its system integrity requirements.

Existing Customers Do Not Underwrite the Service

9. Union wishes to clarify and correct certain statements and assertions made by in the affidavit of J. Stephen Gaske, as filed by Northeast. In particular, there are a number of references claiming Union's existing distribution customers will "underwrite" the proposed service. (lines 10-12, p.2, Affidavit of J. Stephen Gaske). The assertion that existing distribution customers will underwrite, or subsidize, the interruptible liquefaction service is incorrect. To be clear, existing ratepayers will in no way fund the proposed service. As stated in its evidence, during the period prior to rebasing all incremental capital and O&M costs (including variable costs) associated with the provision of the liquefaction service have been allocated to Rate L1 and will be recovered in the proposed liquefaction rate (Tetreault Affidavit, Schedule 'B').

1
2 This current uncertainty in the LNG markets coupled with the resulting delay to the construction
3 timeline have driven the change in the effective date to July 1, 2016.
4

5 *ii) Cost Estimate Update*

6 As noted above, Union is taking this opportunity to update its capital and O&M cost estimates.
7 From a capital cost perspective, the \$8.7 million estimate has increased to \$9.9 million. This \$1.2
8 million increase is the result of two key drivers: i) further refinement of the costs and, ii) a
9 change in the accounting treatment for the \$500,000 budgeted for road upgrade work. The black
10 lined capital cost table can found at Exhibit A, Tab 1, pg. 20.
11

12 In its response to Exhibit B.Energy Probe.13, Union indicated the costs specific to the road
13 upgrade work required for the service were O&M. However, upon further review Union has
14 determined that this \$500,000 cost will be added to the incremental capital costs. Despite the
15 road being owned by the municipality, the roadway improvement is required to facilitate the
16 increased flow of LNG tanker trucks to and from the facility which is required in order to
17 provide the liquefaction service.
18

19 The O&M cost update black lined at pgs. 21 and 22 of Exhibit A, Tab 1 shows the shift in
20 spending resulting primarily from the delayed in-service date as well as the removal of the road
21 upgrade cost.
22

UNION GAS LIMITED

Answer to Interrogatory from
Board Staff

Reference: Exhibit A / Tab 1 / Page 20

Union has indicated that it will invest an estimated \$8.7 million in capital costs to increase storage capacity and facilitate the dispensing of LNG into tanker trucks.

- a) Please confirm whether Union intends to add the capital costs to rate base at Union's next cost of service proceeding.
 - b) Please provide the estimate capital costs that will be added to rate base in 2019.
 - c) Please provide the return on rate base that Union will be able to include in the revenue requirement in 2019 as a result of this addition. Please use the current Board approved ROE to estimate the return.
 - d) What will be the estimated net revenue in 2019 from the additional services proposed by Union in this application?
-

Response:

- a) Confirmed. Union will add the capital costs to rate base when the proposed facilities are deemed to be in-service. These facilities will be included in Union's forecasted rate base at its next cost of service proceeding.
- b) Union estimates that approximately \$7.5 million will be added to rate base in 2019 as a result of Union's proposed capital investment of \$8.7 million at Hagar.
- c) Using the 2013 Board-approved return of 7.32%, the return on rate base in 2019 is estimated to be \$0.550 million (\$7.5 million net plant x 7.32%).
- d) Union does not have a forecast of the 2019 net revenue associated with the proposed liquefaction service.

Based on Union's proposed liquefaction rate of \$5.096/GJ and forecasted 2018 liquefaction activity of 678,400 GJ, Union is forecasting approximately \$3.5 million in liquefaction

revenue in 2018. This figure represents the best available forecast of liquefaction revenue beyond 2018.

Union will forecast 2019 liquefaction revenue as part of its next cost of service proceeding.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**REPLY AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn November 6, 2014)**

1 7. Paragraph 9 of Union's Response claims that "*The assertion that existing distribution customers will*
2 *underwrite, or subsidize, the interruptible liquefaction service is incorrect. To be clear, existing customers will in no*
3 *way fund the proposed service.*" (Emphasis added). In this argument Union is conflating "underwrite",
4 which refers to backstopping or risk taking, and "fund", which refers to the source of initial cash for
5 investment. My original affidavit addressed risk, not funding, and Union does not respond to the
6 risk argument. However, Union was clear in its intention to shift the risks of its new LNG fuel
7 service to distribution ratepayers.

8 8. For example, in respect to incremental non-utility fuel dispensing and storage costs Union
9 states that it will "... *add the capital costs to rate base when the proposed facilities are deemed to be in service. These*
10 *facilities will be included in Union's forecasted rate base at its next cost of service proceeding.*" (Union Response to
11 Staff.7). Thus, Union intends to roll those costs into its distribution rate base and embed the risks
12 of failure or underperformance within an undetermined cost allocation process.

13 9. In addition, as discussed in paragraph 6 above, Union's proposal in this proceeding implies
14 that it intends to allocate liquefaction costs to the new, competitive service only to the extent that
15 the new liquefaction service grows. If the LNG service does not succeed, presumably no costs will
16 be allocated to the service at the next cost of service hearing and the risks of excess non-utility
17 capacity will revert back to distribution ratepayers.

18 10. In both of these examples, Union has indicated that it intends for distribution utility
19 customers to absorb the costs if its LNG fuel venture fails. Thus, distribution customers will not
20 **fund** the new facilities. Instead, they will **underwrite** the risks by paying for the cost of the facilities
21 if the venture fails or underperforms.

comparison of the proposed net plant by function relative to the updated net plant by function including the 2018 incremental liquefaction costs is provided at Attachment 1, page 1. The detailed functionalization of Hagar LNG costs including the 2018 incremental liquefaction costs is provided at Attachment 1, page 2.

Union also updated Exhibit A, Tab 2, Schedule 5 to include an allocation of indirect costs, such as general plant and administrative and general O&M costs, to Rate L1. To estimate the allocation of indirect costs, Union added the incremental 2018 Hagar liquefaction costs of \$1.872 million to the 2013 Board-approved cost allocation study. Based on this analysis, Union estimates that the allocation of indirect costs would be approximately \$0.690 million, which results in a total 2018 Hagar liquefaction cost of \$2.562 million. The calculation of the 2018 incremental project costs and the allocation of 2013 Board-approved costs is provided at Attachment 2.

Lastly, Union updated Exhibit A, Tab 2, Schedule 6 to incorporate this analysis. Based on these results and the assumptions listed above, Union estimates that the 2018 liquefaction rate would be \$6.313 (\$/GJ) (Attachment 3, line 17).

- b) i) Union cannot forecast the gas supply revenue related to the liquefaction service as gas supply charges will be negotiated with customers based on the proposed Rate L1 gas supply charges. Negotiated Rate L1 gas supply charges will fall within Union's proposed minimum and maximum gas supply charge.
 - ii) N/A
 - iii) N/A
 - iv) Union is forecasting \$8.5 million in utility revenue related to the provision of the liquefaction service from September 1, 2015 to December 31, 2018.
 - v) Union will not be providing this service.
- c) Union cannot determine whether revenues from the proposed liquefaction service are sufficient to recover the fully allocated costs of providing the service at this time. As described in evidence, Union's proposed rate design is intended to provide a contribution to the recovery of fully allocated 2013 Board-approved costs at the Hagar facility, as well as recover all incremental costs associated with the provision of the service. This rate design is consistent with the rate design of the C1 Dawn to Dawn-TCPL firm transportation rate approved by the Board in EB-2010-0207.

Union will determine the fully allocated costs associated with the proposed liquefaction service at its next rebasing proceeding in 2019, when it completes a cost allocation study. To the extent that the approved liquefaction rate does not recover the fully allocated costs at that time, the liquefaction rate will increase to ensure there is no revenue deficiency.

- d) As Union's rate design is intended to provide a contribution to the recovery of fully allocated Hagar costs and recover all incremental costs (return, taxes, depreciation and operating

UNION GAS LIMITED

Answer to Interrogatory from
Building Owners and Managers Association ("BOMA")

Reference: A-2-21

Union estimates that the interruptible liquefaction service will generate approximately \$2.1 million per year. If that amount is not sufficient to provide the utility return on the costs assigned or allocated to the liquefaction business, will Union be inputting revenue for the difference, so that the shareholders will assume the underperformance risk? Please discuss fully.

Response:

No, Union will not be imputing revenue if the \$2.1 million per year in forecasted revenue is not sufficient to generate a utility return. Based on Union's current forecast of revenues and costs, including a utility return on rate base, Union's project is economic.

During Union's 2014-2018 IRM term, Union is assuming risk with the development of the interruptible liquefaction service. Specifically, Union is taking the risk on any cost overruns associated with the forecasted capital investment and the volume risk associated with the forecasted level of liquefaction activity. Should the costs of the capital investment exceed the forecast of \$8.7 million or the level of liquefaction activity fall below the average annual forecast of approximately 415,000 GJ per year, Union's utility earnings will be reduced.

The forecasted revenues and costs associated with the liquefaction service will also be subject to a full review during Union's next cost of service proceeding.

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

Union's existing storage capacity is well in excess of the current needs of its in-franchise customers and has been for many years. The Board has decided that Union will reserve approximately two-thirds of its existing capacity for in-franchise needs. At current rates of growth, that amount limit will satisfy in-franchise needs for several decades. Enbridge currently purchases storage from Union for a portion of its requirements. The Board has decided that Union will continue to provide these services at cost through a transition period ending in 2010.

Sharing the Premium on Ex-Franchise Sales

The sale of storage services by Union and Enbridge at market-based rates to ex-franchise customers has generated revenues well in excess of the cost of providing those services. Until now, the Board has required that most of the profits be used to reduce distribution rates. The Board has concluded that this sharing should continue for short-term storage deals. These are storage transactions that use storage space that is temporarily surplus to in-franchise needs. All of the profits on these transactions, less small incentive payments to the utilities, will be for the benefit of ratepayers.

The Board finds, however, that Union will not be required to share the profits on long-term storage transactions that use storage space not needed to serve in-franchise needs because that capacity now constitutes a "non-utility" asset for which the shareholders appropriately bear the risk. The sharing of these profits will remain unchanged for 2007 and then be phased out over the period to 2011.

Impact on Consumers

The Board's decisions are expected to have virtually no effect on consumers' bills in 2007. The impact after that cannot be precisely quantified because it will depend on future storage prices, the profit on ex-franchise storage sales, and the amount of gas consumed. While a precise forecast is not possible, bills are likely to increase by a small amount – perhaps around 1% for the typical residential consumer.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn October 15, 2014)**

1 Ontario.”²⁰ However, this argument that sales from the Hagar facility, underwritten by distribution
2 ratepayers, will not affect the market is inconsistent with Union’s other argument that Union’s
3 proposal will stimulate the market. At this time Ontario is a very small market for LNG
4 transportation fuel and there is nothing to suggest that Union’s Hagar operations will remain small
5 relative to the size of the existing market.

6 37. Regardless of the size of Union relative to the market at this time, the most important
7 consideration for the Board is how Union’s proposal is likely to affect future development of the
8 market. As mentioned earlier, in determining whether a merger is likely to lessen competition, the
9 Competition Bureau considers the expectations that potential entrants may have of incumbent
10 responses to entry. If gas distribution ratepayers are required to underwrite its LNG fuel business,
11 Union will have the unique ability to invest in the LNG fuel market without suffering any risks of
12 losses of its own. In contrast, potential competitors would have risks and a cost of capital that is far
13 higher than Union. This will make it more difficult to attract venture capital for new facilities that
14 would need to compete with Union’s ratepayer-underwritten service. Similarly, existing competitors
15 could be disadvantaged and either leave the market or limit future expansions of service. Thus,
16 rather than stimulating development of the market, Union’s proposal for regulated entry into the
17 market is likely to inhibit the market.

18 38. In its response to Board Staff.6 (attached as Exhibit 11) Union suggests that a new stand-
19 alone plant would not be regulated if it is used exclusively to provide transportation fuel. However,
20 there is nothing to prevent Union from expanding the Hagar facility to jointly provide both LNG
21 transportation fuel and distribution system integrity. Moreover, the prospect that Union might
22 decide to build unregulated stand-alone facilities after it is well-established in the market with

²⁰ See Exhibit 7.

1 operations underwritten by gas distribution ratepayers does not change the fact that Union's
2 proposal will give it a risk-free "first-mover" advantage that will inhibit investments by other
3 competitors in the nascent market.

4 39. If the LNG fuel market grows, it is unlikely that Union will remain small. Instead, it can
5 reasonably be anticipated that Union initially will expand its Hagar LNG fuel capacity in an attempt
6 to capture as much market share as possible. In doing so, Union would be likely to move from a
7 small interruptible service to a larger firm service. Thus, if the Board approves regulated treatment
8 in this proceeding, and Union's competitive LNG fuel venture succeeds, Union can be expected to
9 add additional LNG fuel facilities to its regulated gas distribution rate base in the future.

10 40. A good example of this process is the way in which Union grew its participation in the
11 increasingly competitive natural gas storage market. As the Board noted in its NGEIR decision:

12 ... the sheer magnitude of the current surplus makes it unlikely that Union's
13 expansion of its storage facilities in the recent past has been driven primarily, or
14 perhaps even to any significant extent, by the anticipated needs of in-franchise
15 customers. For example, since 1999 Union has added almost 18 Bcf of capacity
16 through greenfield developments and enhancements to existing pools, capacity that
17 was not necessary to cover in-franchise needs. This additional capacity has been
18 directed to, and taken up by, the "ex-franchise" market, not distribution customers
19 of Union.²¹

20 Thus, although Union describes the LNG fuel facilities and business operations proposed in this
21 application as being small, a Board decision to provide rolled-in regulatory rate treatment in this
22 proceeding would establish a precedent for gas distribution ratepayers to continue underwriting
23 future expansions of Union's Hagar LNG fuel facilities.

²¹ Decisions with Reasons, EB-2005-0551, November 7, 2006, p. 80.

1 In accordance with Board-approved methodology, Union classified \$5.1 million of Hagar costs
2 to the storage system integrity function to recognize that the Hagar facility provides system
3 integrity to firm Union North in-franchise customers. The \$5.1 million of Hagar system integrity
4 costs were allocated to Union North rate classes in proportion to the excess of peak day demand
5 over average day demand.

6
7 The Hagar compressor fuel costs of \$1.1 million were classified as a storage commodity-related
8 cost and allocated to firm Union North rate classes in proportion to sales service and direct
9 purchase winter volumes.

10
11 The 2013 Board-approved costs associated with the Hagar facility are recovered from firm
12 Union North in-franchise customers in delivery rates.

13
14 **2. Proposed Allocation of the 2013 Board-Approved Hagar Costs by Function**

15 As described above, Union engaged KPMG to conduct a comprehensive cost allocation review
16 of 2013 Board-approved Hagar costs and recommend a cost allocation methodology that
17 functionalizes these costs between liquefaction, storage and vapourization functions. Union has
18 adopted the proposed cost allocation methodology recommended by KPMG.

19
20 In summary, Union is proposing to directly assign 2013 Board-approved Hagar costs to a
21 liquefaction, storage or vapourization function where Union can specifically identify the cost as

1 being directly attributable to that function. For 2013 Board-approved Hagar costs that support
2 the overall operations of the Hagar facility and cannot be directly attributed to a particular
3 function, Union is proposing to functionalize those costs in proportion to the functionalization of
4 directly assigned costs.

5
6 Please see Schedule 1 for a detailed breakdown of the 2013 Board-approved Hagar revenue
7 requirement by function.

8
9 In the following sections, Union has provided a description of the comprehensive cost allocation
10 review and proposed cost allocation methodology used to determine the allocation by function of
11 a) Hagar facility assets, b) operating and maintenance expenses and c) indirect costs and taxes.

12 Please also see Attachment A for the final KPMG report.

13
14 **a. Hagar Facility Assets**

15 The first step in the cost allocation review was to determine the function of the individual assets
16 at the Hagar facility. Through this process, Union and KPMG reviewed the assets at Hagar and
17 identified which Hagar assets were directly attributable to the provision of liquefaction, storage
18 or vapourization. Assets that were directly attributable to one of these functions were directly
19 assigned to that function. For example, if an asset at the Hagar facility was determined to be
20 required to liquefy natural gas only, the asset was directly assigned to the liquefaction function.

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving rates and other charges for an interruptible natural gas liquefaction service.

UNION GAS MOTION RESPONSE

RE MOTION BY NORTHEAST MIDSTREAM

October 23, 2014

(see Exhibit B.Staff.6) (Van Der Paelt Affidavit, Schedule 'C'). Union believes this is an important distinction. As the market develops, the Board will have ample time to consider the competitiveness of the market (Van Der Paelt Affidavit, Schedule 'C'). At present, given the market in general and the circumstances related to the Hagar Facility that affect Union's participation in that market, Union believes forbearance as sought by Northeast is premature and not an issue that the Board needs to consider as part of this proceeding.

15. However, with respect to new greenfield-type LNG developments that are independent of the regulated operations, it is Union's expectation that such developments would fall outside of rate regulation and be the subject of a section 29(1) application. Such an application would extend to all LNG fuel uses, not just for LNG that is used exclusively as a transportation fuel and is therefore subject to regulatory exemption, which can be supplied by a new stand-alone plant investment. This is not the case with the Hagar facility (Van Der Paelt Affidavit, Schedule 'C').
16. For the reasons noted above, Union believes that this is not the time or proceeding for the Board to make a determination specific to the competitive nature of the LNG market. The Board can and should proceed with hearing Union's application and setting a rate and approving the related cost allocation methodologies for the utility.
17. Should the Board, however, agree with Northeast's Motion, Union will, in any event, require the Board to make a finding on its cost allocation methodologies as set out in Union's updated pre-filed evidence.

UNION GAS LIMITED
P.O. Box 2001
50 Keil Drive North
Chatham, ON N7M 5M1

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 an Application by Union Gas Limited, pursuant to section 36(1) of the *Ontario Energy Board Act*, 1998, for an order or orders necessary to accommodate a new interruptible natural gas liquefaction service at its Hagar Liquefied Natural Gas Facility.

**AFFIDAVIT OF J. STEPHEN GASKE
ON BEHALF OF NORTHEAST MIDSTREAM LP
(Sworn October 15, 2014)**

1 "stimulus" argument is irrelevant to the issue of whether the Board should forbear from regulation
2 in this instance.

3 30. Union's solicitation of expressions of interest indicates that it is marketing its Hagar capacity
4 for delivery to markets in Quebec, Michigan, Wisconsin, Indiana, Pennsylvania, Ohio, New York
5 and Vermont, as well as Ontario. Consequently, its LNG fuel business is intended to serve an end-
6 use market that extends far beyond the bounds of its regulated gas distribution service territory
7 franchise. Given the large ex-franchise scope of the proposed market there is no need for the Board
8 to protect LNG fuel consumers in these other jurisdictions by exercising traditional utility-type
9 regulation.

10 31. Indeed, Union's updated evidence indicates that OEB regulation is an impediment to its
11 own competition in the LNG fuel market. According to Union, one reason that it has been unable
12 to attract customers for its project is that the customers will not commit to long-term contracts until
13 they know what rate the Board will set for the service.¹⁸ However, Union's marketing dilemma
14 would not be solved if the Board decides to regulate this activity and sets initial rates because those
15 rates will only apply for two and a half years before the Board sets new rates. Thus, Union's
16 prospective customers would still face future rate uncertainty that would inhibit their ability to
17 commit to long-term contracts required to support Union's proposed investment in new facilities.

18 32. On the other hand, if the Board were to forbear in regulating this activity Union could
19 immediately provide potential customers with contractually guaranteed rates and proceed to develop
20 the business at its own risk.

¹⁸ Union Gas Limited, Addendum to Prefiled Evidence, p. 4.



ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

Revised April 24, 2014

dated April 1, 2010, as may be revised from time to time; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

2. COST POWERS

2.01 The Board may order any one or more of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party; and
- (e) the costs of the Board to be paid by a party or parties.

2.02 The timelines set out in this Practice Direction shall apply unless, at any stage in a particular process, the Board determines or orders otherwise.

3. COST ELIGIBILITY

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
- (b) primarily represents an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost award eligibility is sought; or
- (c) is a person with an interest in land that is affected by the process.

3.03.1 A party that frequently applies for intervenor status and cost award eligibility in Board proceedings shall file with the Board, at least annually, the following information about the party:

- (a) its mandate and objectives;
- (b) its membership and the constituency it represents;
- (c) the types of programs or activities that the party carries out;
- (d) the identity of the individual(s) that represent the party in Board proceedings;
- (e) any other information that could be relevant to the Board's consideration of the party's application for intervenor status and cost award eligibility; and
- (f) updates to any information previously filed.

3.04 In making a determination whether a party is eligible or ineligible, the Board may:

- (a) in the case of a party that is an association or other form of organization comprised of two or more members, have regard to whether the individual members would themselves be eligible or ineligible;
- (b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest (other than as a ratepayer) , even if the entity may be in the business of providing services that can be said to serve an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost eligibility is sought;
- (c) in the case of a party that frequently applies for intervenor status and cost award eligibility in Board proceedings, have regard to whether the party has conformed with section 3.03.1 of this *Practice Direction*; and
- (d) also consider any other factor the Board considers to be relevant to the public interest.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (a) an applicant;
- (b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group;
- (c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group;
- (d) the Independent Electricity System Operator;
- (e) the Ontario Power Authority;
- (f) the Smart Metering Entity;
- (g) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the *Financial Administration Act* (Canada) that has not at the relevant time been privatized;
- (h) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies – Definitions) made under the *Public Service of Ontario Act, 2006* (Ontario);
- (i) a municipality in Ontario, individually or in a group;
- (j) a conservation authority established by or under the *Conservation Authorities Act* (Ontario) or a predecessor of that *Act*, individually or in a group;
- (k) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and
- (l) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.

For the purposes of paragraph (k), control has the same meaning as in the *Business Corporations Act* (Ontario).

For the purposes of paragraph (l): (i) a person has a controlling interest in another person listed in (a), (b) or (c) that is a limited partnership if the person is a general partner; (ii) a person has a controlling interest in another person listed in (a), (b) or (c) that is any other form of partnership if the person is a partner; and (iii) a person



ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

Revised April 24, 2014

has a controlling interest in another person listed in (a), (b) or (c) that is a corporation if the person controls the corporation or controls a corporation that holds 100 percent of the voting securities of the first-mentioned corporation, control having the same meaning as in the *Business Corporations Act* (Ontario).

- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
- 3.08 The Board may, in appropriate circumstances, award an honorarium in such amount as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments.

4. COST ELIGIBILITY PROCESS

- 4.01 A party that will be requesting costs must make a request for cost eligibility that includes the reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3). The request for cost eligibility shall be filed as part of the party's letter of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, shall be filed by the date specified by the Board for that purpose. For information on filing and serving a letter of intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 10 calendar days from the filing of the letter of intervention or request for cost eligibility, as applicable, to submit its objections to the Board, after which time the Board will rule on the request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility or objected to such a request, and may provide direction in respect of any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence or interventions.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

5. CONSIDERATIONS IN AWARDING COSTS

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:
 - (a) participated responsibly in the process;
 - (b) contributed to a better understanding by the Board of one or more of the issues in the process;



ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

Revised April 24, 2014

has a controlling interest in another person listed in (a), (b) or (c) that is a corporation if the person controls the corporation or controls a corporation that holds 100 percent of the voting securities of the first-mentioned corporation, control having the same meaning as in the *Business Corporations Act* (Ontario).

- 3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.
- 3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
- 3.08 The Board may, in appropriate circumstances, award an honorarium in such amount as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments.

4. COST ELIGIBILITY PROCESS

- 4.01 A party that will be requesting costs must make a request for cost eligibility that includes the reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3). The request for cost eligibility shall be filed as part of the party's letter of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, shall be filed by the date specified by the Board for that purpose. For information on filing and serving a letter of intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 10 calendar days from the filing of the letter of intervention or request for cost eligibility, as applicable, to submit its objections to the Board, after which time the Board will rule on the request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility or objected to such a request, and may provide direction in respect of any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence or interventions.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

5. CONSIDERATIONS IN AWARDING COSTS

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:
 - (a) participated responsibly in the process;
 - (b) contributed to a better understanding by the Board of one or more of the issues in the process;

- (c) complied with the Board's orders, rules, codes, guidelines, filing requirements and section 3.03.1 of this *Practice Direction* with respect to frequent intervenors, and any directions of the Board;
- (d) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties;
- (e) made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues;
- (f) engaged in any conduct that tended to lengthen the process unnecessarily; or
- (g) engaged in any conduct which the Board considers inappropriate or irresponsible.

6. COSTS THAT MAY BE CLAIMED

- 6.01 Reference should be made to the Board's Tariff.
- 6.02 Cost claims shall be prepared using the applicable Board-approved form attached to this Practice Direction as Appendix "B".
- 6.03 The burden of establishing that the costs claimed were incurred directly and necessarily for the party's participation in the process is on the party claiming costs.
- 6.04 A party that is a natural person who has incurred a wage or salary loss as a result of participating in a hearing may recover all or part of such wage or salary loss, in an amount determined appropriate by the Board.
- 6.05 A party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes. When determining whether an individual is an officer or employee of the party, the Board will look at the true nature of the relationship between the individual and the party and the role the individual performs for the party. The Board may deem the individual to be an officer or employee of the party regardless of the individual's title, position, or contractual status with the party. Furthermore, an employee or officer of a company or organization that is affiliated with or related to the party that is eligible for an award of costs will be deemed to be an employee or officer of the party.
- 6.06 Counsel fees will be accepted in accordance with the Board's Tariff.
- 6.07 Paralegal fees will be accepted in accordance with the Board's Tariff. To qualify for consideration as a paralegal service, a paralegal must have undertaken services normally or traditionally performed by legal counsel, thereby reducing the counsel's time spent on client affairs.
- 6.08 Where appropriate, fees for articling students may be accepted in accordance with the Board's Tariff.
- 6.09 Cost awards will not be available in respect of services provided by in-house