EB-2014-0154

**ONTARIO ENERGY BOARD**

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

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

**AND IN THE MATTER OF** a motion brought by Natural Resource Gas Limited (“NRG”) pursuant to the Board’s Rules of Practice and Procedure revised to April 24, 2014 (the “Rules”) and, in particular, Rules 7 and 40.01 that the Board review that part of the final Order in EB‑2014‑0154 in its Decision and Order dated October 9, 2014 as it affects NRG and Union and consolidation with the NRG QRAM – Phase 2 Proceeding in EB-2014-0053.

NOTICE OF motion

**Natural Resource Gas Limited** (“**NRG**”) hereby makes a motion to the Ontario Energy Board (the “Board”) requesting, *inter alia*, certain directions regarding the process to be followed on this motion and, if an oral hearing is granted, a date to be fixed by the Board for the oral hearing at the Board’s hearing rooms at 2300 Yonge Street, 27th Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

NRG requests that the motion be heard orally, subject to direction of the Board.

**THE MOTION IS FOR:**

1. An Order of the Board under Rule 40.01 of the R*ules of Practice and Procedure of the Board* (the “Rules”) reviewing and varying the Board’s Decision and Order dated October 9, 2014 given in the Union Penalty Rate Hearing (EB‑2014‑0154) and fixing the “penalty rate” to be paid by NRG to Union for the cost of 25,496 GJ at Union’s cost of spot purchases as at February 28, 2014, namely $7.12 per GJ plus HST for a total amount of $205,130.62.
2. An Order that no interest be payable on any amounts claimed by Union to be owed to it for natural gas purchases by NRG for winter checkpoint banked gas.
3. An extension of time to bring this motion for a review and variation from October 29, 2014 (20 days after the Decision and Order of the Board being delivered) to December 15, 2014 pursuant to Rule 7.01 of the Rules;
4. A Direction that the oral or other hearing of the above‑captioned motion regarding interest and motion for review and variation of the Board’s Decision and Order in the Union Penalty Rate Hearing be consolidated to be heard together with the NRG QRAM hearing, EB‑2014‑0053; and
5. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. NRG has discovered new evidence, facts and expert opinions that were not available and could not have been previously placed in evidence in the hearing of this matter before the Board, and could not have been discovered by reasonable diligence up to the time the Board made its Decision and Order on October 9, 2014;
2. The new evidence, facts and expert opinions are cogent, relevant to the outcome of the Union Penalty Rate Hearing and the NRG QRAM Hearing, and could not have been discovered with more diligence up to the time that the new evidence was presented to the public on December 3 and 4, 2014;
3. The issues arising in the Union Penalty Rate Hearing and the NRG QRAM Hearing are sufficiently intertwined that the two matters should be consolidated and heard together in order that the Board secure the most just, expeditious and efficient determination of both matters on their merits pursuant to Rule 2.01 of the Rules.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Brian Lippold sworn December 8, 2014; and
2. Such further and other evidence as counsel may advise and this Board may permit.

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| December 8, 2014 | **FASKEN MARTINEAU DuMOULIN LLP**  Barristers and Solicitors  333 Bay Street, Suite 2400 Bay Adelaide Centre, Box 20 Toronto, ON M5H 2T6  **John A. Campion (LSUC# 14121C)**  Tel: 416.865 4357  Email: jcampion@fasken.com  Fax: 416 364 7813  Lawyers for Moving Party/Appellant, Natural Resource Gas Ltd. |

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| **TO:** | **ONTARIO ENERGY BOARD**  2300 Yonge Street, 27th Floor  Toronto, ON M4P 1E4  **Kirsten Walli**  Tel: 416 440 7677  Email: kirsten.walli@ontarioenergyboard.ca  Fax: 416 440 7656  Board Secretary for Respondent, The Ontario Energy Board |
| **AND TO:** | **TORYS LLP**  Barristers and Solicitors  79 Wellington St. W., 30th Floor  Box 270, TD South Tower  Toronto, Ontario M5K 1N2 Canada  **Crawford G. Smith**  Tel: 416 865 8209  Email: csmith@torys.com  Fax: 416 865 7380  Lawyers for the Respondent, Union Gas Limited |

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| **ONTARIO ENERGY BOARD** |
| **NOTICE OF MOTION** |
| **FASKEN MARTINEAU DuMOULIN LLP**  333 Bay Street, Suite 2400  Bay Adelaide Centre, Box 20  Toronto, Ontario M5H 2T6  **John A. Campion**  Tel: 416.865.4357  Fax: 416 364.7813  Email: jcampion@fasken.com  **Lawyers for the Moving Party/Appellant, Natural Resource Gas Limited** |