

Court File No. 521/14

(Ontario Energy Board)  
File No. EB-2014-0154

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

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

**AND IN THE MATTER OF** a Decision and Order of the Ontario Energy Board dated October 9, 2014 on the Application by Union Gas Limited for an order or orders approving a one-time exemption from Union Gas Limited's approved rate schedules to reduce certain penalty charges applied to direct purchase customers who did not meet their contractual obligations;

**AND IN THE MATTER OF** the Intervenor – Natural Resource Gas Limited

**BETWEEN:**

**NATURAL RESOURCE GAS LIMITED**

Moving Party/Appellant

- and -

**THE ONTARIO ENERGY BOARD and UNION GAS LIMITED**

Respondents

**AFFIDAVIT OF BRIAN LIPPOLD  
(Sworn December 8, 2014)**

I, Brian Lippold, of the City of London, MAKE OATH AND SAY AS

FOLLOWS:

1. I am the General Manager for NRG and was involved in the issues and gas purchases of NRG to meet its Winter Checkpoint Quantity under its contract with Union leading up to February 28, 2014.
2. This motion is brought to this Honourable Court seeking an extension of time to perfect the within appeal until 30 days following the final decision and order of the Ontario Energy

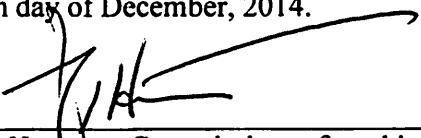
Board (the "Board") resulting from NRG's motion for a review described below and any decision or order made by Board accordingly.


3. The motion before the Board is brought pursuant to the above-captioned Rules seeking leave of the Board and, if leave be granted, a review of the Decision and Order of the Board dated October 9, 2014 in EB-2014-0154 (the "Union Penalty Rate Hearing").

4. The Board made its final Decision and Order in the Union Penalty Rate Hearing on October 9, 2014, as is set out below. NRG appealed from the final Decision and Order by Notice of Appeal to this Honourable Court dated November 6, 2014. By reason of new evidence described below, NRG is now seeking a review of its Decision and Order in the Union Penalty Rate Hearing.

5. NRG is seeking an extension of time to perfect its appeal until the Board has finally decided NRG's request to review its final decision. Attached as Exhibit "A" to this my Affidavit is a copy of my Affidavit filed before the Board seeking the review of its Decision and Order in the Union Penalty Rate Hearing dated October 9, 2014. The factual grounds for the review request before the Board are set out in my Affidavit.

6. In the circumstances, I believe it is appropriate that NRG be granted an extension of time to perfect its appeal until 30 days after the Board has made its final decision and order to review the original decision.

SWORN BEFORE ME at the )  
City of London, in the )  
Province of Ontario, )  
this 8th day of December, 2014. )  
 )  
\_\_\_\_\_)  
Robert Hutton, a Commissioner for taking )  
Affidavits. )

  
\_\_\_\_\_)  
Brian Lippold

**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, 8, 40 and 42 for leave and if leave be granted for a motion 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.

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**ONTARIO ENERGY BOARD**

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**AFFIDAVIT of BRIAN LIPPOLD**

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**Counsel to National Resource Gas Ltd.**

This is Exhibit <sup>A</sup> referred to in the  
affidavit of Brian Lippold  
sworn before me, this 8<sup>th</sup>  
day of December, 2014.

EB-2014-0154

.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**ONTARIO ENERGY BOARD**

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2. This motion is brought pursuant to the above-captioned Rules seeking leave of the Board and, if leave be granted, a review of the Decision and Order of the Board dated October 9, 2014 in EB-2014-0154 (the “Union Penalty Rate Hearing”).
3. NRG is an Ontario corporation that carries on the business of distributing and selling natural gas in the southern Ontario. NRG is regulated by the Board under the Act.
4. NRG is a customer of Union. NRG receives gas from Union pursuant to a Southern Bundled T Contract. In the Divisional Court appeal from the Board’s Decision and Order in the Union Penalty Rate Hearing, the record consists of the Appeal Book and Compendium (“Volume I”) and the Exhibit Book (Volume II) (collectively, the “NRG Appeal Record”). The

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Southern Bundled T Contract between Union and NRG is found in the NRG Appeal Record delivered with this Affidavit at Volume I, Tab 5, pages 32 to 59.

5. Volumes I and II are filed together with this Affidavit.

6. The Board made its Decision and Order in the above-captioned matter on October 9, 2014 (Volume I, Tab 2, pp. 10 to 20). NRG served a Notice of Appeal from the Board Decision and Order to the Divisional Court (Volume I, Tab 1, pp. 1 to 9).

7. The evidence relevant to this motion and filed by NRG, Union and other Intervenors in this Union Penalty Rate Hearing is found in Volume II.

8. The Board convened the 2014 Natural Gas Market Review Stakeholder Conference (the "Conference") on December 3 and 4, 2014. Board commissioned its own consultant reports giving a historical gas market review, a winter 2013/2014 natural gas price review. Union also retained an expert to review the Ontario natural gas markets during the 2013/2014 winter. The experts and Union presented their remarks with slide presentations. These reports and slide presentations were not available before the Board made its Decision and Order in this Union Penalty Rate Hearing. The five relevant reports and slide presentations are marked as Exhibits "A", "B", "C", "D" and "E" to this Affidavit.

9. I also attended the Conference in person and took notes of the comments made by the various participants. I believe that the evidence led by the consultants in their reports and by the witnesses at the Conference is essential evidence necessary for an informed decision in this Union Penalty Rate Hearing. The opinions contained in the reports, the description of the market dynamics in the winter of 2013 and 2014 and the evidence given by the Conference participants are new evidence which was not available and which could not have been available prior to December 3 and 4, 2014.

10. The expert consultants and market participants gave significant testimony, opinions, market overviews and conclusions about the market conditions in January and February 2014. It is apparent that there were many unknown, unforeseen, unpredictable and unprecedented events in the market which even the most sophisticated market participant could not envision or appreciate in January and February 2014 and could have not been known prior to the date of the Conference, namely December 3 and 4, 2014. The consultants reports and the evidence referred to above were therefore new evidence which was not available and could not have been previously placed in evidence in the Union Penalty Rate Hearing nor been discovered by reasonable diligence up to the time the Board made its Decision and Order in this Union Penalty Rate Hearing.

11. Navigant Consulting Limited prepared a report for the Ontario Energy Board dated November 25, 2014. That report raised a number of significant facts, issues and market dynamics which were not known to anyone in the marketplace up to that time. One of the conclusions drawn by Navigant stated as follows: "... there were many events unfolding in real time last winter as market participants made decisions on planning and acquiring supply. The most important event was the cold weather, which was widespread, persistent, and extreme. Hindsight allows all the information to be seen at once."

12. The Navigant Consulting Limited report listed eight main conclusions about last winter's gas prices and the various events that contributed to them:

- (a) Extreme winter conditions elevated natural gas demand throughout US and Canada to record levels, leading to a tight gas market and setting the stage for additional factors that exacerbated the winter's price behaviour;
- (b) Strong Midwest demand impacted gas prices at Dawn and incited increased storage withdrawals to meet Ontario demand;
- (c) Large storage withdrawals early necessitated large spot purchases later (which happened to be at high prices) as continued cold conditions led to persistent high demand;
- (d) "Check point" balancing by Union direct purchase customers, although an annual occurrence, coincided last winter with the on going need to meet high demand, exacerbating prices;
- (e) Increased interruptible transport tolls appear to have limited the competitiveness of Empress as an economic source of supply, leading incremental gas for Ontario to be drawn from the Midwest and Northeast, further exacerbated Dawn prices;
- (f) The necessary conditions for last winter's price scenario appear to be the coincidence in both the U.S. and Canada of early, widespread and persistent high demand (resulting from the macro weather conditions);
- (g) It is not clear whether the same weather conditions would have led to the same price impacts had the supply requirements called for more base storage or increased firm transportation but more storage and increased firm transportation may have helped; and
- (h) Similarly, supply plan arrangements leading to a more conservative use of storage withdrawals (and thus more supply procurement early in the winter) would likely have helped.

13. Navigant also stated that it "... reviewed the drivers of the Quarterly Rate Adjustment Mechanism (QRAM), the province's mechanism to allow gas distributors to recover their actual gas costs. As the QRAM relates to actual gas supply costs, the drivers of the QRAM are essentially the factors that influence a gas distribution company's actual gas costs. Such factors that could potentially be impacted by operational, managerial and a regulatory policies, procedures, directives and decisions of a gas distribution company or its regulatory include the following: weather assumption designed a criteria, demand forecasts, firm transportation planning criteria, storage level planning, use of peaking supplies, and procurement mechanisms for incremental supply. Choices made with respect to these factors likely involve cost and risk trade-offs dependent on an entity's risk profile and array of potential risks."

14. These comments merely set the stage for the conclusion that "... extreme weather conditions associated with last winter's polar vortex events elevated natural gas demand


throughout the U.S. and Ontario to record levels. As a result of dramatically elevated natural gas demand levels that occurred over an extended period of time and over a widespread geographic area, spot natural gas prices were elevated across most market points of North America for at least some period of the winter. Prices at the Dawn market hub were elevated mostly during February, with a few spikes in January and some residual price elevation in March. These market conditions also set the stage for additional factors that further exacerbated Ontario gas prices ...”.


15. The factors noted for elevated spot prices across North America and, in particular, at Dawn are affected by “... competition for Dawn gas from the Chicago market could have had a role in driving early season Ontario demand to be met in large part from storage rather than from purchases. The fact that the spikes were larger in the U.S. Midwest than at Dawn would seem to indicate that the dynamic originated in the U.S., with some attenuated affect in Ontario.” Navigant further noted that “... perhaps the most interesting developments with regard to Dawn prices occurred in February which saw a relatively steady increase in price level over the course of the month from under U.S. \$8.00/MMBtu to over U.S. \$40.00/MMBtu on March 1, 2014. Factors that contributed to these price levels include [those set out above] and rates set by TransCanada PipeLine (TCPL) to move gas from Empress to Dawn on TCPL (the winter of 2013/2014 was the first in which TCPL had the ability to set interruptible and short term firm transportation tolls at their discretion, pursuant to the NEB’s decision in TransCanada’s application to restructure its mainline ratemaking); the requirement for winter checkpoint quantity to meet shortfalls in direct purchase customers’ banked gas accounts created a demand bubble that contributed to price volatility which became even more pronounced in an extremely tight market; there were many events unfolding in real time last winter.

16. It is apparent from the above and from the conclusions that only hindsight allows all the unfolding information to be seen at once.

17. Some of the factors and many of the conclusions drawn by the Board’s own experts indicate that the information available to NRG during the winter of 2013/2014, and the information available to all other market participants was not sufficient to meet the unique circumstances which occurred and the high resulting prices in the marketplace.

SWORN BEFORE ME at the )  
City of London, in the )  
Province of Ontario, )  
this 8th day of December, 2014. )

  
\_\_\_\_\_  
Robert Hutton, a Commissioner for taking )  
Affidavits. )

  
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Brian Lippold



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**ONTARIO ENERGY BOARD**

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**AFFIDAVIT of BRIAN LIPPOLD**

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Toronto, Ontario M5H 2T6

**John A. Champion**

Tel: 416.865.4357  
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Email: [jchampion@fasken.com](mailto:jchampion@fasken.com)

**Counsel to National Resource Gas Ltd.**

## Ontario Energy Board

2014 Natural Gas Market Review  
Stakeholder Conference

### Historical Gas Market Review – Session 1

Ontario Energy Board  
2300 Yonge Street, 25<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4  
West Hearing Room / ADR Room  
December 3-4, 2014



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This is Exhibit A referred to in the  
affidavit of Brian Lippold  
sworn before me, this 8th  
day of December, 2014.

  
A COMMISSIONER FOR TAKING AFFIDAVITS

# NAVIGANT

ENERGY

## Ontario Energy Board

2014 Natural Gas Market Review  
Stakeholder Conference


Winter 2013/14 Natural Gas Prices –  
Session 2/ Panel 1

Ontario Energy Board  
2300 Yonge Street, 25<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4  
West Hearing Room / ADR Room  
December 3-4, 2014



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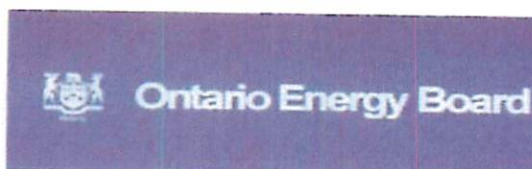
This is to certify that B is authorized to be the  
attorney-in-fact for Brian Lippold  
on 6th  
of December 2014  




## Winter 2013/14 Natural Gas Price Review

Prepared for:

**Ontario Energy Board**



Navigant Consulting Ltd.  
Bay Adelaide Centre  
333 Bay Street, Suite 1250  
Toronto, ON M5H 2R2  
(416) 777-2440  
www.navigant.com

November 25, 2014

This is Exhibit C referred to in the  
affidavit of Brian Hippold  
sworn before me, this 8th  
day of December 2014.

  
A COMMISSIONER FOR TAKING AFFIDAVITS




**uniongas**

A Spectra Energy Company

**An Exceptional Winter**  
Serving the Needs of Ontario's Natural Gas Customers

Winter 2013-14


This is Exhibit B.D referred to in the  
affidavit of Brian Lippold  
sworn before me, this 8th  
day of December 2014  
  
A COMMISSIONER FOR TAKING AFFIDAVITS



# Review of Ontario Natural Gas Markets During the 2013-2014 Winter

Prepared for:  
Union Gas Limited  
November 24, 2014

Kevin Petak  
Vice President  
ICF International  
[Kevin.Petak@ICFI.COM](mailto:Kevin.Petak@ICFI.COM)  
703.218.2753

This is Exhibit E referred to in the  
affidavit of Brian Lippold  
sworn before me, this 8th  
day of December 2014  
  
A COMMISSIONER FOR TAKING AFFIDAVITS