



EB-2014-0375

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 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 initiated by Natural Resource Gas Limited pursuant to the Board's Rules of Practice and Procedure requesting that the Board review its Decision and Order dated October 9, 2014 in EB-2014-0154.

**NOTICE OF MOTION TO REVIEW AND VARY
AND PROCEDURAL ORDER NO. 1**

January 9, 2015

Natural Resource Gas Limited ("NRG") filed a Notice of Motion dated December 10, 2014 with the Ontario Energy Board (the "Board") under Rule 40.01 of the Board's Rules of Practice and Procedure (the "Rules") requesting that the Board review and vary its Decision and Order dated October 9, 2014 in the EB-2014-0154 proceeding as it relates to the penalty charge applicable to NRG (the "Motion"). The Board has assigned File No. EB-2014-0375 to this matter.

NRG specifically requested the following:

- 1) An Order setting aside the timeframe under Section 40.03 of the Rules for filing a motion to review and vary;

- 2) An Order varying the Board's October 9, 2014 Decision and Order in EB-2014-0154 directing that NRG pay only Union's average cost of gas (\$7.12 / GJ) for the 25,496 GJ of gas that NRG was short at the time of the Winter Checkpoint;
- 3) That the Board combine its review of the Decision and Order in EB-2014-0154 with Phase 2 of the EB-2014-0053 proceeding (NRG's April 2014 QRAM) and the EB-2014-0361 proceeding (NRG's request for Interest Rate Relief / Stay);
and
- 4) That the above noted issues all be heard by way of an oral hearing.

The Board notes that under Section 40.03 of the Rules a motion to review and vary should be brought within twenty days of the date that the Decision and Order is issued. If the motion is brought outside the time period, the Board, under Section 7.02 of the Rules, has discretion as to whether it will hear the motion. In this case, the Board finds that NRG brought its Motion forward soon after it received what it has characterized as new evidence and therefore will grant the requested extension for the filing of the Motion.

NRG relies upon Section 42.01 of the Rules for setting out the grounds for its Motion to Review and Vary the EB-2014-0154 Decision and Order. Specifically, NRG sets the grounds for its Motion as "new facts that have arisen" and "facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time." NRG, in its Notice of Motion, stated that it has discovered new evidence, facts and expert opinions that were not available and could not have been previously placed in evidence in the EB-2014-0154 proceeding, and could not have been discovered by reasonable diligence up to the time that the Board rendered its Decision and Order on October 9, 2014.

The Board has determined that, pursuant to Rule 43.01, it will hear submissions on a threshold issue of whether the Motion should proceed and be heard on its merits. The Board will hear argument on the threshold question by way of an oral hearing.

In regard to NRG's request to combine this proceeding with the EB-2014-0053 and the EB-2014-0361 proceedings, the Board notes that it will first make its determination on the threshold question before making a decision on that request. On that basis, the

Board will place the EB-2014-0053 and the EB-2014-0361 proceedings on hold until it makes its findings on the threshold question in this proceeding.

The Board adopts Union Gas Limited and the intervenors in the EB-2014-0154 proceeding as intervenors in this proceeding. Intervenors that were eligible for costs in that proceeding are deemed eligible for costs in this proceeding. A list of intervenors for EB-2014-0375 is attached as Appendix "A" to this order.

Accordingly, the Board will make provisions for the following procedural matters. Further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The parties listed in Appendix "A" are granted intervenor status in the proceeding. Intervenors that were granted cost eligibility in the EB-2014-0154 proceeding are also granted cost eligibility in this proceeding.
2. Any party seeking to make argument regarding the threshold question at the Oral Hearing shall advise the Board no later than **January 20, 2015**.
3. If any party wishes to file materials in support of their oral argument, those materials shall be filed with the Board no later than **January 23, 2015**.
4. An Oral Hearing will be held on **January 27, 2015** beginning at 9:30 a.m. in the Board's Hearing room, on the 25th floor at 2300 Yonge Street, Toronto, Ontario, to hear argument in regard to the threshold question. The Board expects that, at the outset of the Oral Hearing, NRG will provide an opening statement, after which, parties wishing to make oral argument will be provided an opportunity to do so. Finally, NRG will be granted an opportunity to reply to the arguments of other parties.

All filings to the Board must quote file number **EB-2014-0375**, be made electronically through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Lawrie Gluck at Lawrie.Gluck@ontarioenergyboard.ca and Senior Legal Counsel, Michael Millar at Michael.Millar@ontarioenergyboard.ca.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
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Filings: <https://www.pes.ontarioenergyboard.ca/eservice/>
E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
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ISSUED at Toronto, January 9, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

NOTICE OF MOTION TO REVIEW AND VARY AND PROCEDURAL ORDER NO. 1

APPLICANT AND LIST OF INTERVENORS

BOARD FILE NO. EB-2014-0375

DATED: January 9, 2015

Natural Resource Gas Limited
EB-2014-0375
APPLICANT & LIST OF INTERVENORS

January 09, 2015

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