

June 16, 2017

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

Dear Ms. Walli:

**Re: Natural Resource Gas Sale to EPCOR Natural Gas Limited Partnership
Board File No. EB-2016-0351**

Pursuant to Procedural Order No. 3 in the above noted proceeding, attached is the final argument submission of Union Gas.

Should you have any questions on these submissions, please do not hesitate to contact me.

Yours truly,

[Original signed by]

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Encl.

c.c. (email only): Brian Lippold, NRG
 Bruce Brandell, EPCOR Utilities Inc.
 Britt Tan, EPCOR Utilities Inc.
 Sander Duncanson, Osler, Hoskin & Harcourt LLP
 Jim Grey, IGPC
 Scott Stoll, Aird & Berlis LLP (IGPC)
 Cynthia Khoo, Public Interest Advocacy Centre (VECC)
 Mark Garner, Econalysis Consulting Services (VECC)

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 Natural Resource Gas Limited for the relief necessary to transfer its natural gas distribution system to EPCOR Natural Gas Limited Partnership.

ARGUMENT OF UNION GAS LIMITED

1. Based on the Ontario Energy Board's Decision and Order dated January 14, 2016 in the combined EB-2014-0053 / EB-2014-0361 / EB-2015-0044 proceeding, Natural Resource Gas (NRG) was directed to pay the entire penalty amount (\$1,287,548) to Union related to their failure to balance its supply at the February 28, 2014 winter checkpoint. The Board directed that NRG's customers on system supply were responsible to pay the portion of the penalty amount that is equal to Union's average cost of gas (\$181,531). NRG's shareholder was directed to pay the remainder of the penalty amount (\$1,106,017).
2. Pursuant to the Decision and Order dated October 30, 2014 in Union's 2013 Deferral Account Disposition Proceeding (EB-2014-0145), Union's shareholder does not keep the amounts arising from the penalty charges. They are used as an offset to the gas rates paid by Union's system gas customers. All amounts received flow through Union's Purchased Gas Variance Account for the benefit of Union's customers.
3. The Board directed that payments on the penalty amount to be paid by NRG's shareholder (\$1,106,017) to Union Gas shall be made annually no later than April 30th and NRG is required, at a minimum, to pay the greater of 50% of its annual shareholder return or \$100,000 each year until the penalty amount is entirely paid.
4. To date, NRG has paid \$399,543 of the amount owing which leaves \$706,474 (+ HST) of the penalty amount outstanding.
5. In response to Union Gas-1(b) in the current proceeding, NRG refers to section 6.1.12 of the Asset Purchase Agreement when asked about whether the penalty amount payment will be paid in full before the transfer of NRG's distribution system to EPCOR Natural Gas Limited Partnership.
6. Section 6.1.12 (Completion of OEB Payment when Due and Payable) states:

"The Vendor will have satisfied, or will have made an agreement to settle payment of, all amounts owing and all other obligations and liabilities owing as a result of the Decision and Order of the Ontario Energy Board in combined proceedings EB-2014-0053, EB-2014-0361 and EB-2015-0044 and the Decision and Order in proceeding EB-2014-0154,

when due and payable. In no circumstance shall any amounts owing as a result of the aforementioned order become the liability of the Purchaser.”

7. NRG states in response to Union Gas-1(c) that this clause means that EPCOR is not assuming responsibility for the penalty payment obligation.
8. There is also a Clause 4.1.6 (Transaction Regulatory Approvals) in the Asset Purchase Agreement that states:

“There is no requirement on the part of the Vendor to obtain any Regulatory Approval or make any filing with or give notice to any Governmental Authority in connection with the lawful completion of the transactions contemplated by this Agreement or to maintain in full force and effect after Closing any Assumed Contract, Regulatory Approval, Order or License in respect of the Business or the Purchased Assets, except for the filings, notifications and Regulatory Approvals described in Schedule 4.1.6”.

9. In Union’s view, this implies that the Decision and Order dated January 14, 2016 in the combined EB-2014-0053 / EB-2014-0361 / EB-2015-0044 proceeding would not be enforceable once the proposed transaction is completed.
10. The proposed transaction should not allow NRG’s shareholder to avoid the remaining unpaid obligation to Union and, in turn, Union’s customers. This seems to have been contemplated in section 6.1.12 of the Asset Purchase Agreement. Presumably the price to be paid by EPCOR to NRG’s shareholder is higher than it would have otherwise been if EPCOR was to assume the remaining obligation.
11. Union submits that the purchase and sale of NRG’s assets should not be approved without a condition requiring the \$706,474 (+ HST) balance owing to Union and Union’s customers to be paid upon closing. As an alternative, the proposed transaction could be approved with a condition requiring EPCOR to assume this obligation. A commercial agreement of sale should not be allowed to override the mandatory nature of a decision/order of the Ontario Energy Board.

All of which is respectfully submitted this 16th day of June, 2017.

UNION GAS LIMITED

[Original signed by]

Patrick McMahon
Manager, Regulatory Research and Records