

June 11, 2008

BY EMAIL AND COURIER

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

Dear Ms. Walli:

Re: Gas IRM Applications - EB-2007-0606/615 - Tax as a Z Factor

I am writing as counsel to Union Gas in the above matter.

Mr. Shepherd's correspondence to the OEB of June 9, 2008 is completely inappropriate and should be disregarded in its entirety. Mr. Shepherd's correspondence seeks to introduce new evidence. Not only is this in flagrant breach of the OEB's procedural order on the timing of filing evidence in this matter (an order to which Mr. Shepherd consented) but the attempt to file this evidence has been made long after the hearing is over. Contrary to the OEB's procedures, Mr. Shepherd sought no leave to do so. Indeed, the weak justifications offered for this contumelious delay do not meet any reasonable definition of the test for filing new evidence.

Most importantly, however, (and altogether apart from the complete lack of any probative value associated with this new "evidence") the manner in which Mr. Shepherd has sought to file this material renders it both inadmissible and prejudicial to Union. It is inadmissible because, among other things, it has not been adopted under oath by the author and it purports to express opinions from a person whose qualifications to do so have not been established or subject to scrutiny. It is prejudicial to Union because the letter attached to Mr. Shepherd's correspondence is tendered, not from a witness, but merely as a letter commenting on a matter purportedly relevant to this case long after the hearing is over, thereby depriving Union of any opportunity to cross examine on the content. Every principle of adjudicative procedural fairness and finality in litigation of which I am aware demand that this material must be rejected and that it should not be reviewed by the members of the Board panel adjudicating this case.

Yours very truly,



Michael A. Penny

Tel 416.865.7526
mpenny@torys.com

MAP/jeb

cc: Jay Shepherd, Shibley Righton LLP (email)
Michael Millar, OEB (email)