



EB-2008-0154

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 amending or varying the rate or rates charged to customers as of July 1, 2008.

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders amending or varying the rate or rates charged to customers as of July 1, 2007.

AND IN THE MATTER OF Rules 7, 42, 44.01 and 45.01 of the Board's *Rules of Practice and Procedure*.

NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1

Union Gas Limited ("Union") filed an application (the "Application") on March 4, 2008 with the Ontario Energy Board (the "Board") seeking approval for final disposition and recovery of certain 2007 year-end deferral account balances (EB-2008-0034). On June 3, 2008, the Board issued its decision on this matter (the "2007 Deferral Account Decision").

In the above noted proceeding Union requested disposal of the Long Term Peak Storage Services Deferral Account (Account 179-72). Union indicated that, based on its interpretation of the Natural Gas Electricity Interface Review Decision dated November 6, 2006, ("the NGEIR Decision"), it did not record net revenues from long-term storage contracts in Account 179-72 entered into after the NGEIR Decision. The Board in its 2007 Deferral Account Decision did not agree with Union's interpretation of this matter and ordered Union to include all long-term storage transactions in calculating the balance in Account 179-72, that is, transactions that occurred both before and after the release of the NGEIR Decision.

On June 23, 2008, Union filed a Motion to review the Board's 2007 Deferral Account Decision with respect to Account 179-72. Union has asked for a review of whether

Account 179-72 is to be used only to record differences in actual and forecast net revenues in respect of long-term storage contracts entered into prior to the Board's NGEIR Decision.

Union is asking the Board to review this ruling because it is of the opinion that it is inconsistent with the intent of the NGEIR Decision and with the Board's EB-2007-0598 decision related to the 2006 deferral account balances ("the 2006 Deferral Account Decision").

In Union's 2006 deferral account application, Union asked the Board to approve a debit charge to Account 179-72. Union claimed that it was required to record a deferred income tax expense of \$10.524 million related to storage service as a result of the change in the regulatory treatment of storage services provided to Union's ex-franchise customers. Union asserted that the change in accounting treatment resulted from the Board's NGEIR Decision.

The Board in that application determined that the decision to forbear from regulating certain of Union's storage assets was notionally equivalent to a divestiture, and that any liabilities associated with these assets should properly be associated with Union's newly formed ex-franchise storage service business. The Board ordered Union to eliminate any and all deferred income tax expense from the Account 179-72.

Union, in its motion materials, argues that the Board's ruling in the 2007 Deferral Account Decision is inconsistent with the Board's ruling in the 2006 Deferral Account Decision. Union argues that while the 2006 Deferral Account Decision was based on the principle that the assets and liabilities of the regulated business should be accounted for separately from the assets and liabilities of the unregulated business, the 2007 Deferral Account Decision was based on the opposite view that the earnings from the new unregulated business should be used to subsidize rates paid by customers of Union's unregulated business.

Union has claimed that it would be unfair to require Union to share with ratepayers the margins earned from its unregulated Post-NGEIR Long-Term Storage Contracts while at the same time prohibiting Union from deducting from Account 179-72 all the costs of providing that unregulated service.

Union has further indicated that if the Board finds that the 2007 Deferral Account Decision is correct, then the Board should review the 2006 Deferral Account Decision.

The Board has determined that it will proceed to hear submissions from parties on both the threshold question of whether the matter should be reviewed and the merits on the substantive issues.

The Board intends to proceed in this matter by way of a written hearing unless any party provides a good reason why it should proceed by way of an oral hearing.

The Board accepts as intervenors in this proceeding, the intervenors of the following three proceedings: EB-2007-0598, EB-2008-0034, and EB-2005-0551. A list of intervenors is attached as Appendix A. **The Board directs Union to serve the Notice of Motion and Procedural Order to all intervenors listed in Appendix A.**

THE BOARD THEREFORE ORDERS THAT:

1. Union shall file its argument **on or before Monday, July 28, 2008** with respect to the following:
 - (a) the threshold question of whether the matter should be reviewed and the substantive issues.The arguments shall be filed with the Board and copied to all intervenors.
2. The arguments on substance must be restricted to two issues: (i) whether all long-term storage transactions, pre and post-NGEIR, should be recorded to calculate the balance in Account 179-72 (EB-2008-0034) and (ii) whether Union should be allowed to claim a debit charge to Account 179-72 reflecting deferred income taxes related to storage services in the event that the Board concludes that the 2007 Deferral Account Decision is correct (EB-2007-0598).
3. Any intervenor may file a submission in response to Union's argument on the threshold question and the two substantive issues. Intervenor submissions shall be filed with the Board and copied to Union and all intervenors **no later than Monday, August 11, 2007**.
4. Union shall file its written reply argument **on or before Monday, August 25, 2008**. The reply argument shall be filed with the Board and copied to all intervenors.

5. The Board accepts Union's request to stay the portion of the 2007 Deferral Account Decision that directed Union to recalculate the 2007 balances in Account 179-72 pending the final resolution of the motions proceeding.
6. The Board may order costs in this proceeding. Any party that was determined by the Board to be eligible for costs in EB-2007-0598, EB-2008-0034 or EB-2005-0551 shall be eligible for costs in this proceeding. Any party that is not automatically eligible for costs but expects to seek costs in this proceeding shall file a letter with the Board and copy Union (at the address provided in Appendix "A") **no later than Friday, July 18, 2008** which letter shall provide the grounds for that party's eligibility for costs. Union will have until **Thursday, July 24, 2008** to object to any new cost eligibility request. Requests for cost eligibility and the determination of cost awards will be addressed in accordance with the Board's *Practice Direction on Cost Awards*. The Board will issue details with respect to the filing of cost claims at a later date. Union will be ordered to pay the cost awards for this proceeding.

All filings to the Board must quote file number EB-2008-0154 and be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to BoardSec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. 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.

DATED at Toronto, July 14, 2008

Original Signed By

Kirsten Walli
Board Secretary

Appendix "A" to
Notice of Written Hearing and Procedural Order No. 1

EB-2008-0034

APPLICANT & LIST OF INTERVENTIONS
(List used in EB-2008-0034/ EB-2007-0598)

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**EB-2005-0551
NGEIR ISSUES AND STORAGE REGULATION
LIST OF PARTICIPANTS**

Revised: December 11, 2006

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