

**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 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 order 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*.

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**SUBMISSIONS OF THE**  
**SCHOOL ENERGY COALITION**

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**July 30, 2008**

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## INTRODUCTION

1. These are the submissions of the School Energy Coalition ("SEC") in response to the Argument-in-Chief of Union Gas Limited ("Union").
2. Union has asked the Board to review the decision in EB-2008-0034 (the "2007 Deferral Decision"). In the event the Board finds that the 2007 Decision was decided correctly, Union asks that the Board also review the decision in EB-2007-0598 (the "2006 Deferral Decision") on the basis that the two decisions are inconsistent with the Board's finding in EB-2005-0551 (the "NGEIR" decision) or with each other.
3. For reasons set out in greater detail below, SEC's position with respect to the relief sought by Union is as follows:
  - (a) With respect to Union's request to have the Board review the 2006 Deferral Decision, SEC does not believe that Union has justified the substantial delay in filing its motion for review. SEC submits that the Board should decline to hear the proposed review of the 2006 Deferral Decision.
  - (b) In any event, both the 2006 and 2007 Deferral Decisions were correctly decided. Both are consistent with the NGEIR decision and with each other:
    - (i) The 2007 Deferral Decision correctly found that the formula from the NGEIR decision for determining the ratepayer share of long-term storage revenue already deducts a proxy value that represents the revenue derived from new long-term ("LT") storage contracts. There is, therefore, no need to further reduce the ratepayer share, as suggested by Union.
    - (ii) The 2006 Deferral Decision dealt with the discrete issue of how to treat accumulated deferred taxes given that the storage assets are no longer rate-regulated. The Board's finding that the NGEIR deregulation decision is notionally the equivalent of a divestiture simply reflected the non-contentious fact that the storage assets were no longer rate regulated. There is no inconsistency between the Board's treatment of deferred taxes

and the 2007 Deferral Decision regarding the implementation of the phase-out formula from NGEIR.

### **I. Request for Extension to Review 2006 Deferral Decision Should be Denied**

4. SEC Union asks for an extension of the time limit to file a motion for review of the 2006 Deferral Account decision on the grounds that "the inconsistency between the 2006 Deferral Decision and the 2007 Deferral Decision did not become apparent until the issuance of the 2007 Deferral Decision on June 3, 2008." [Union Argument, para. 31].

5. The core of Union's argument, however, is that one or both of the Deferral Account decisions are inconsistent with the NGEIR Decision. There was no reason, therefore, for Union to have awaited the outcome of the 2007 Deferral Decision to decide whether to seek a review of the 2006 Deferral Decision.

6. In any event, SEC submits that the fact that a subsequent decision may be inconsistent with a previous decision does not give a party a right to extend the time for appealing the previous decision. Such a result would set a dangerous precedent, and could see parties seeking to review decisions from years past on the basis that a new decision is inconsistent with that previous decision.

### **II. 2006 and 2007 Deferral Decisions Correctly Decided**

#### *i.) 2007 Deferral Decision: Union Misconstrues NGEIR Decision*

7. Central to Union's argument in respect of the 2007 Deferral Decision is that in the NGEIR Decision the Board meant to order that ratepayers would only share in long-term storage

revenues from contracts entered into before the NGEIR decision. SEC submits that, although Union is correct that the Board found that ratepayers would only share in revenues from existing (pre-NGEIR) contracts, Union is incorrect in its characterization of how the Board intended to carry out that goal. In SEC's submission, the Board elected against separating revenue from pre- and post-NGEIR contracts and instead opted to record all revenue together and simply gradually reduce the ratepayer share of the total revenue. The gradual reduction of the ratepayer share was meant as a proxy for the proportion of total long-term storage revenue that would be derived from new contracts. That is, the ratepayer share of total long-term storage revenue from 2008 to 2010 has already been reduced to eliminate the revenue from new contracts.

8. Although the Board in NGEIR did find that it was not appropriate for ratepayers to continue sharing in revenues from new (that is, post-NGEIR) long-term storage contracts, it also found that ratepayers should continue to share in the revenues from existing contracts [NGEIR Decision, p. 106-107]

9. Since the Board decided that ratepayers would continue to share in revenues from existing contracts, but not share in revenues from new contracts, the Board had to determine how the *total* revenues from long-term storage contracts would be divided. The most obvious method, and the one the Board addressed first, was to have Union track revenue from pre- and post-NGEIR contracts separately. However, the Board found that that seemingly straightforward approach was in fact too complex to monitor and therefore opted for an *alternative* approach:

The Board considered whether to require Union to record the margins on existing long term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining terms of those contracts. *This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.*

The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of “proxy” for the conceptual approach described above. The phase-out of the sharing of margins on Union’s long-term storage transactions will take place over four years. *The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions.* For 2007, forecast margins (on long-term and short term transactions) now included in the determination of Union’s rates will remain unchanged. After 2007, Union’s share of long-term margins will be as follows: 2008 –25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

[NGEIR Decision, p. 107; emphasis added]

10. It is clear, therefore, that the Board found that actually separating "new" and "existing" long-term storage revenue was too complex and that the Board preferred a simpler method whereby revenue from new contracts would be deducted from the ratepayer share by gradually reducing the ratepayer share of the *total* long-term storage revenues. This reduction was used as a "proxy" to reflect the fact that, as time goes on, an increasing percentage of Union's total long-term storage revenues will be generated by "new transactions". Clearly, therefore, ratepayers were meant to share in the total revenues, albeit on a declining basis, and not just revenues from pre-NGEIR contracts, as Union now argues.

11. If, as Union now argues, revenues from new transactions were not to be included in Account 179-72, then there would have been no reason for the Board to have ordered that ratepayers receive a declining share of total long-term storage revenues. Rather, the ratepayer share would have simply remained at 100% until the balance in the account reached zero (as existing contracts expired and were replaced by new ones, the revenues from which would not be recorded in the account). Indeed, this was precisely the approach the Board considered and rejected in favour of a simpler approach where all revenues would be shared on a declining percentage basis.

12. Union's interpretation of the decision would mean that the Board elected to both separate pre- and post-NGEIR contracts *and* reduce the ratepayer share of the revenue. In SEC's submission, that would make no sense given the Board's clearly stated view that ratepayers should continue to share in revenue from existing contracts. The declining balance approach was used because the Board decided not to separate the two types of revenue.

13. In addition, SEC submits that Union's submissions regarding its evidence during the NGEIR hearing or about its expectations in undertaking new unregulated storage investments are irrelevant. In the first place, the record in this motion is not clear as to the nature of those investments, i.e. whether they represent capital outlays or simply renegotiating storage contracts for the use of existing storage assets. In any event, all that is relevant is the Board's decision in NGEIR, and it is clear from the passage set out above that the Board decided to allow ratepayers

to share in a declining proportion of total revenues as an alternative to a "separation" approach whereby revenues from existing and new contracts would be tracked separately; Union now urges the Board to do both.

*ii.) Incorrect Interpretation of 2006 Deferral Decision*

14. SEC submits that Union has incorrectly interpreted the 2006 Deferral Account decision as being inconsistent with the NGEIR decision or the 2007 Deferral Decision, or both.

15. In the 2006 proceeding, Union proposed to deduct the cost of accumulated deferred income taxes when calculating the 2006 net margin in Account 179-72. The basis of Union's argument was that, as a result of the Board's decision in NGEIR to forbear from regulating rates for storage services outside of Union's franchise area, those assets longer qualified for special accounting treatment afforded "rate regulated" assets. As a result, Union argued that the Canadian Generally Accepted Accounting Principles (GAAP) required that the deferred tax deferral account, which had been in place since 1997, could not continue to capture amounts related to those operations. [EB-2006-0598, p. 5]

16. In rejecting Union's proposal, the Board in the 2006 Deferral Account decision stated that the deregulation of Union's storage assets is notionally equivalent to a divestiture and that the liabilities should be associated with the newly formed ex-franchise storage business [EB-2007-0598, p. 9]. Union argues that that finding is inconsistent with the finding in the 2007 Deferral Decision that Union is to record revenue from both pre- and post-NGEIR contracts in the LT storage account.

17. Union also argues that it is unfair for it to have to include the revenue from all long-term storage revenues while not being allowed to record the expenses for operating those assets, namely the deferred taxes.

18. The 2006 Deferral Decision dealt only with the discrete issue of how to deal with deferred taxes now that the assets were no longer regulated. It was not, and is not, disputed that the Board in NGEIR ordered that revenues from new long-term storage contracts no longer be shared with ratepayers.

19. Union's argument, however, assumes that including revenue from new contracts in Account 179-72 means that it is sharing those revenues with ratepayers. As stated above, that is not the case: It is clear from the NGEIR decision that, while the Board found that ratepayers were not entitled to share in revenues from new storage contracts, it took those revenues into account by gradually reducing, to zero, the ratepayer share of total LT revenue. The Board's formula from NGEIR therefore included a proxy deduction for the value of revenue from new contracts.

20. Since the ratepayer share of total LT revenue has already been reduced to take into account the revenue from new contracts, SEC submits there is no inconsistency in ordering Union to record all long-term storage contracts in Account 179-72 while refusing to allow it to record the deferred taxes in that account. Simply put, the formula implemented by the NGEIR panel means that ratepayers are effectively not sharing in revenue from new contracts.

21. In SEC's submission, both the 2006 and 2007 Deferral Account decisions are therefore perfectly consistent with NGEIR and with each other.



**Costs**

22. SEC participated responsibly in this proceeding and sought to contribute to the Board's understanding of the issues. SEC therefore respectfully requests that it be awarded 100% of its reasonably incurred costs.

All of which is respectfully submitted this 30<sup>th</sup> day of July, 2008:

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