

August 1, 2008

Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto, Ontario  
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: Leave to Discontinue Service Application

Dear Ms. Walli:

Please find attached an application by Union Gas Limited (“Union”) pursuant to Section 42(1) of the Ontario Energy Board Act, 1998 for leave to discontinue service to Natural Resource Gas Limited (“NRG”). Union brings its application in the basis of NRG’s failure to provide “Financial Assurances” to Union as required by the terms of the contracts between the parties.

NRG’s failure to provide Financial Assurances has been a persistent source of disagreement for nearly a year. In September 2007, Union requested Financial Assurances from NRG prior to the contracts renewing on October 1, 2007. NRG did not provide the financial assurances, stating that it needed to meet with Union to discuss the issue. Union arranged two meetings in October 2007, both of which NRG failed to attend.

Union emailed and called NRG in February 2008 to again request a meeting to discuss the provision of Financial Assurances. NRG did not respond.

Union sent letters to NRG on June 16, 2008 and June 27, 2008 requesting Financial Assurances. NRG responded to Union on July 2, 2008 finally stating what, by then had become clear, that it would not provide the Financial Assurances requested by Union.

Union has repeatedly tried to contact and discuss the requirement for Financial Assurances from NRG but to no avail. In Union’s view, NRG’s failure to provide the requested assurances constitutes a breach under the General Terms and Conditions of the contracts between the parties. Union therefore has determined that it has no recourse other than to apply to the Board for leave to discontinue service to NRG.

Should you have any questions with respect to this letter or the application, please contact me at 519-436-5275.

Yours truly,

[original signed by]

Mark Kitchen  
Director, Regulatory Affairs

Cc: Mark Bristol, NRG  
Brian Hewson, OEB  
Adrian Pye, OEB  
Crawford Smith, Torys  
Richard King, Ogilvy Renault

## 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 granting it leave to discontinue gas transmission to Natural Resource Gas Limited;

### APPLICATION

1. Union Gas Limited ("Union") is a business corporation, incorporated under the laws of Ontario, with its head office in the Municipality of Chatham-Kent.
2. Union conducts an integrated natural gas utility business that combines the operations of selling, distributing, transmitting and storing gas within the meaning of the *Ontario Energy Board Act, 1998* (the "Act").
3. Natural Resource Gas Limited ("NRG") delivers gas to Union in firm daily even quantities pursuant to a Bundled T Gas Contract (the "BT Contract") first made as of October 2004.
4. Union re-delivers gas, as a gas transmitter, to NRG pursuant to an M9 Delivery Contract (the "Delivery Contract") first made as of October 2006.
5. Section 5.04 of the General Terms and Conditions of both the BT Contract and Delivery Contract provides as follows:

#### **5.04 Financial Assurance**

If at any time during the Term of this contract, Union has reasonable grounds to believe that Customer's creditworthiness under the Contract has become unsatisfactory, then Union may by written Notice request financial assurances from Customer in an amount determined by Union in a commercially reasonable

manner. Upon receipt of such Notice, customer shall have fourteen days to provide such financial assurances.

6. Union has reasonable grounds to believe that NRG's creditworthiness under the Contracts has become unsatisfactory. Union has held this belief for nearly a year and has attempted, without success, to obtain financial assurances from NRG.
7. Recently, on June 16, 2008, Union wrote to NRG to advise it that Union was forecasting a maximum exposure to NRG of \$1,928,138.00 (the "Anticipated Maximum Exposure"). Based upon NRG's then available 2006 financial statements and other financial information, Union determined that it could grant NRG an unsecured credit facility of \$600,000, leaving a balance of \$1,328,138.00.
8. In its letter, Union advised NRG that it could satisfy the Anticipated Maximum Exposure in one of two ways. First, NRG could provide financial assurances in the amount of CDN \$1,328,138, being the difference between the Anticipated Maximum Exposure and the unsecured line of credit Union had assigned to NRG (the "Financial Assurances"). The Financial Assurances could be provided in the form of a cash security deposit or a letter of credit. Second, NRG could make arrangements to change the renewal date of its BT Contract to an annual anniversary date of April 1, the effect of which would be to eliminate any credit issues arising from NRG's Banked Gas Account (the primary cause of NRG's credit exposure) on a going forward basis.
9. Union sought NRG's positive response to its request for Financial Assurances or a change to the terms of the BT Contract prior to June 23, 2008, with such assurances or the change in the renewal date of the BT Contract to be in place by July 30, 2008 failing which NRG would be in default under the General Terms and Conditions. Union informed NRG that such default would entitle Union to certain contractual remedies including suspension of service and/or termination of the Contract(s) between Union and NRG.
10. On June 27, 2008, having not received a response to its letter, Union again wrote to NRG seeking the Financial Assurances. In its June 27, 2008 letter Union informed NRG that it was Union's intention to file an application with the Board to request permission to

suspend service and/or terminate the Contracts between Union and NRG pursuant to section 42.(1) of the Act.

11. On July 2, 2008, NRG, through counsel, responded to Union to advise it that NRG would not provide the requested Financial Assurances, nor would it agree to a change in the renewal date of the BT Contract.
12. Union has been left with no alternative but to apply to the Board pursuant to Section 42(1) of the Act for an order granting Union leave to discontinue service to NRG until such time as it has provided the Financial Assurances. In the alternative, Union requests an order that NRG be directed to provide the Financial Assurances within fourteen days of the date of the order. In the further alternative, Union requests an order that NRG be directed to change the renewal date of its BT Contract to an annual anniversary date of April 1 within sixty days of the date of the order.
13. Absent an order from the Board compelling NRG to provide the Financial Assurances or a change in the renewal date of the BT Contract, it can reasonably be expected that concerns regarding NRG's creditworthiness will recur on a yearly basis.
14. Union further applies to the Board for all necessary orders and directions concerning pre-hearing and hearing procedures for the determination of this application.
15. This application will be supported by written evidence. This evidence will be pre-filed and will be amended from time to time as required by the Board, or as circumstances may require.
16. The persons affected by this application are NRG and the customers resident or located in the municipalities, police villages and Indian reserves served by NRG, together with those to whom Union sells gas, or on whose behalf Union distributes, transmits or stores gas in its franchise area. It is impractical to set out in this application the names and addresses of such persons because they are too numerous.

17. The address of service for Union is:

Union Gas Limited  
P.O. Box 2001  
50 Keil Drive North  
Chatham, Ontario  
N7M 5M1

Attention: Mark Kitchen  
Director, Regulatory Affairs  
Telephone: (519) 436-5275  
Fax: (519) 436-4641  
E-mail: mkitchen@spectraenergy.com

- and -

Torys LLP  
Suite 3000, TD Waterhouse Tower  
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Toronto, Ontario  
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Attention: Crawford G. Smith  
Telephone: (416) 865-8209  
Fax: (416) 865-7380  
email: csmith@torys.com

DATED: August 1, 2008.

UNION GAS LIMITED

By its Solicitors



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