

August 25, 2008

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 26<sup>th</sup> Floor  
Toronto, ON  
M4P 1E4

**Re: EB-2008-0154 – Union Gas Limited Reply Argument**

Dear Ms. Walli:

Enclosed is Union's reply argument concerning the Notice of Motion for a review of the Board's decisions in EB-2008-0034 (the 2007 Deferral Decision) and EB-2007-0598 (the 2006 Deferral Decision).

If you have any questions concerning this application and evidence please contact me at (519) 436-5476.

Yours truly,

[original signed by]

Mark Kitchen  
Director Regulatory Affairs

cc G. Leslie (Blakes)  
S. Wong (Blakes)  
All Parties in EB-2007-0598  
All Parties in EB-2008-0034  
All Parties in EB-2005-0551

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. 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*.

**REPLY ARGUMENT OF  
UNION GAS LIMITED**

1. This is Union's Reply to the written arguments submitted by the interveners and Board Staff.

**PART I: OVERVIEW OF UNION'S REPLY**

2. In this motion Union is asking the Board to review the 2006 Deferral Decision and the 2007 Deferral Decision because the two decisions are based on contradictory interpretations of the NGEIR Decision, and the decisions require Union to calculate its long term peak storage Deferral Account 179-72 in contradictory ways. Union cannot comply with both decisions at the same time. This strongly indicates that one of the two decisions is incorrect. Union submits that this inconsistency can only be resolved by the Board by way of a review of both decisions.

3. The 2006 Deferral Decision found that *none of the liabilities* associated with Union's deregulated storage assets should be accounted for in Deferral Account 179-72. Contrary to the arguments of the interveners, the 2006 Deferral Decision did not find that deferred income tax expenses are a category of costs that ought not to be applied to Deferral Account 179-72 as a matter of regulatory treatment. The 2006 Deferral Decision found that *all costs* associated with Union's unregulated storage business should not be applied to the deferral account. It was as a result of the panel's finding that "any liabilities" associated with Union's unregulated storage business should be treated as separate from Union's regulated business that the panel in the 2006 Deferral Decision found that the deferred income tax costs should not be applied to the deferral account.<sup>1</sup>

4. The finding in the 2006 Deferral Decision that all costs associated with Union's unregulated storage business should not be applied to Deferral Account 179-72 is inconsistent with the finding in the 2007 Deferral Decision that "net revenues" from the unregulated storage business should be applied to Deferral Account 179-72 throughout the four year phase-out period. In order to calculate "net revenues" from the unregulated storage business Union must be able to deduct the costs associated with the unregulated storage business, but the 2006 Deferral Decision prohibits Union from doing so. As a result, Union cannot comply with both the 2006 Deferral Decision and the 2007 Deferral Decision at the same time.

5. In its Argument in Chief, Union submitted that the 2007 Deferral Decision was incorrect because it was contrary to the clearly stated intent of the NGEIR Decision that Union would not be required to share with ratepayers the net revenues from its unregulated Post-NGEIR LSS Contracts. None of the interveners dispute that this was the intent of the NGEIR Decision; rather the interveners take the position that the 2007 Deferral Decision does not result in Union having to share the revenues from its unregulated Post-NGEIR LSS Contracts with ratepayers. The interveners' position is patently wrong. There is no question that the 2007 Deferral Decision results in Union having to share with ratepayers revenue from the Post-NGEIR

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<sup>1</sup> 2006 Deferral Decision, at p. 9,

transactions, and none of the interveners, nor Board Staff, have provided any substantive response to Union's objection to the 2007 Deferral Decision.

6. If the Board nevertheless decides to affirm the 2007 Deferral Decision, then Union submits that the finding in the 2006 Deferral Decision that Union is not entitled to deduct "any liabilities" associated with its unregulated storage assets from the deferral account ought to be set aside because it is wholly contrary to the finding in the 2007 Deferral Decision that Union is to apply "net revenues" from its unregulated storage contracts to the deferral account. By definition, the calculation of "net revenues" requires the deduction of the associated liabilities. If the Board affirms the 2007 Deferral Decision, Union requests a clear direction from the Board that all costs incurred in respect of all Union's long term storage transactions, including deferred income tax expenses, may be applied to the deferral account for the purpose of calculating Union's net revenue during the phase-out period.

## **PART II: THE THRESHOLD QUESTION**

7. IGUA's argument refers to the four heads of review that are set out in Rule 44 of the OEB's Rules of Practice and Procedure. It is clear from the NGEIR Threshold Review Decision (EB-2006-0322, EB-2006-0338 and EB-2006-0340) that the four heads of review set out in Rule 44 are not exclusive.<sup>2</sup> IGUA concedes this point when it states in paragraph 7 of its argument that the panel considering this motion for review must determine whether this is an "appropriate case" for review. The test for what is an "appropriate case" for review is set out in the Board's NGEIR Threshold Review Decision. The test is whether there are grounds for questioning whether the decision is wrong.<sup>3</sup> Union submits that there are grounds for questioning the correctness of the 2006 and the 2007 Deferral Decisions because the decisions rely on two different and inconsistent interpretations of the NGEIR Decision and Union cannot comply with both decisions at the same time.

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<sup>2</sup> On pages 14 – 15 of the NGEIR Threshold Review Decision, the Board found that it should interpret the words "may include" in Rule 44.01 as giving a list of examples of grounds for review, and that the Board has the necessary discretion to supplement this list in an appropriate case.

<sup>3</sup> NGEIR Threshold Review Decision, p. 18.

8. Some parties argue that the finding in the 2006 Deferral Decision that Union is not allowed to apply its deferred tax costs to the deferral account is not necessarily incompatible with the finding in the 2007 Deferral Decision that Union is to apply its “net revenue” to the deferral account because the 2006 decision dealt with the deferred tax costs as discrete issue.<sup>4</sup> This argument is wrong because it misconstrues what the panel actually stated in the 2006 Deferral Decision.

9. As stated in the Overview section above, the panel in the 2006 Deferral Decision did not make a policy determination that deferred income tax expense was a *category* of expense that ought not to be included in the calculation of net revenue for the deferral account. Rather, that panel came to the conclusion that none of the expenses related to the unregulated business should be included in the deferral account because “any liabilities” associated with Union’s unregulated storage business should be treated as separate from Union’s regulated business:

The Board finds that the deregulation of Union’s storage assets is 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 taxes associated with this line of business, including the deferred taxes residing in the account should form a part of this new undertaking. This is the same treatment afforded to like liabilities associated with the divestiture of the ancillary services, detailed in Undertaking J1.3.

(2006 Deferral Decision, at p. 9, emphasis added)

10. It was only as a result of this broad finding disallowing all costs associated with the unregulated business that the 2006 panel found that the deferred tax expenses should not have been applied to the deferral account. That broad finding disallowing all costs of the unregulated business is contrary to the equally broad finding in the 2007 Deferral Decision that Union must apply the “net revenues” from all of its long term storage transactions (including its unregulated transactions) to the deferral account.<sup>5</sup>

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<sup>4</sup> Board Staff Argument at p. 7; IGUA Argument at para. 14-18 and para. 34; and Kitchener Argument at para. 11.

<sup>5</sup> 2007 Deferral Decision, p. 8

11. IGUA argues in paragraph 37 of its argument that Union should have raised any concerns regarding inconsistency or unfairness immediately following release of the 2006 Deferral Decision. Union submits that there is no validity to this argument because there was no apparent grounds on which Union could question the correctness of the 2006 Deferral Decision until it received the 2007 Deferral Decision. It is the inconsistency in the way the two deferral decisions apply the NGEIR Decision that leads to the conclusion that one of the two decisions must be wrong. Union could have complied with the 2006 Deferral Decision until it received the 2007 Deferral Decision, which stipulated a contrary method for calculating the deferral account.

12. In fact, Union did comply with the broad prohibition in the 2006 Deferral Decision against including costs associated with the unregulated storage business in the deferral account when it prepared its 2007 Audited Financial Statements and when it prepared Deferral Account 179-72 in 2007. As stated in paragraph 68 of Union's Argument in Chief (and explained more fully below at paragraphs 30-33), as a result of the Board's ruling in the 2006 Deferral Decision, Union absorbed the impact of all costs associated with the newly-formed unregulated business against the revenues earned from the unregulated Post-NGEIR LSS Contracts. Union did not apply any of the costs of, nor did it apply any of the revenues from, the deregulated storage business to the 2007 Deferral Account.

13. Union agrees that a party cannot seek a review of a Board decision simply because it wants to re-argue a case; that is why Union did not seek a review of the 2006 Deferral Decision until after the release of the inconsistent 2007 Deferral Decision.

14. However, some interveners have argued that a party seeking review cannot submit an argument during a review hearing that was rejected by the panel that made the decision under review<sup>6</sup>, while other interveners have argued that a party cannot raise a new argument at the review hearing.<sup>7</sup> Clearly both propositions cannot be correct, otherwise a party seeking review could make no arguments since it could not rely on previous arguments nor on new arguments. Union submits that both propositions are without merit.

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<sup>6</sup> Kitchener Argument, parag. 10

<sup>7</sup> CME Argument, parag. 17

15. There is no prohibition against re-argument if the party seeking review can establish that there are good grounds to question the correctness of the first decision. If the threshold test is met by establishing grounds for doubting the correctness of the first decision, then all relevant arguments can be relied on, regardless of whether those arguments were made during the initial hearing.

16. Kitchener argues that the motion for review ought not to be granted because the issue is not of sufficient importance. Kitchener's argument is contrary to the Board's NGEIR Threshold Review Decision which found that a review is appropriate if the party seeking the review can show that the alleged error "is material and relevant to the outcome of the decision".<sup>8</sup> The amount in issue is not of primary importance; the primary concern is whether the error affected the outcome. In this case, Union has submitted good grounds for questioning whether there was an error that affected the outcome of the deferral decisions. Moreover, the issue in question is significant and material because it concerns how the ratepayers' share of Union's storage revenues should be calculated throughout the entire four year phase-out period. The issues go well beyond just the 2006 deferred tax expenses of \$10.524 million, which by itself is a material amount. The issues are whether: (a) all post-NGEIR revenues and costs are for Union's account, and (b) if Union is required to share, then is Union generally entitled to apply the costs incurred to earn the unregulated long term storage revenues to Deferral Account 179-72 when it calculates the net revenues to be shared with the ratepayers.

17. Kitchener also argues that the Board ought not to proceed with a review of the 2006 Deferral Decision because the motion was not brought within a "reasonable time" as required by section 21.2(2) of the *Statutory Powers Procedures Act* (the SPPA).<sup>9</sup> Kitchener does not provide any authority for this proposition because there is no authority to that effect. There appears to be no reported cases that consider the meaning of "reasonable time" in the SPPA. However, the Supreme Court of Canada has provided a guideline as to what constitutes a "reasonable decision" in the context of the standard of review of administrative decisions:

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<sup>8</sup> NGEIR Threshold Review Decision, p. 18.

<sup>9</sup> Kitchener Argument, para. 16

“A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere. This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation, even if this explanation is not one that the reviewing court finds compelling.”<sup>10</sup>

18. Union submits that it is appropriate to apply a similar standard to what constitutes a “reasonable time” for seeking a review. If there are valid reasons supporting why a review ought to be allowed at this time then the requirement in s. 21.2(2) of the SPPA that the review be sought within a “reasonable time” is fulfilled. In this case, the valid reason for allowing the review of the 2006 Deferral Decision to proceed is that there was no grounds for questioning the correctness of the decision until the Board issued the 2007 Deferral Decision which stipulated a contrary method for calculating the deferral account balance. Union brought the motion for review promptly after the Board issued the 2007 Deferral Decision which was based on a contradictory application of the NGEIR Decision and which issued contradictory directions as to how Deferral Account 179-72 is to be calculated.

**PART III: SHOULD ALL LONG-TERM STORAGE TRANSACTIONS, PRE AND POST-NGEIR, BE RECORDED TO CALCULATE THE BALANCE IN ACCOUNT 179-72?**

19. In its Argument in Chief Union submitted that the primary reason why the balance in Account 179-72 should only contain net revenue earned from Pre-NGEIR LSS Contracts is that the intent of the NGEIR Decision was to limit the revenues that Union is required to share during the phase-out period to the margins arising from the Pre-NGEIR LSS contracts. The Argument in Chief refers to several excerpts from the NGEIR Decision which makes it clear that this was the intent of the NGEIR Decision.

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<sup>10</sup> *Ryan v. Law Society (New Brunswick)* (2003), 223 D.L.R. (4<sup>th</sup>) 577, p. 596, at para. 55



20. None of the interveners' arguments dispute Union's submission that the intent of the NGEIR Decision is that Union is not required to share any of the revenues from the deregulated Post-NGEIR LSS Contracts. In fact, School Energy Coalition (SEC) acknowledges in paragraph 18 of its argument that this was the intent of the NGEIR Decision. Rather, the interveners argue that the 2007 Deferral Decision does not result in Union having to share revenue from the Post-NGEIR contracts with the ratepayers because Union only has to share the total net revenue from long term storage contracts on a declining balance basis and this formula is supposedly a "proxy deduction for the value of revenue from new contracts".<sup>11</sup> This argument by the interveners is clearly wrong. It is self evident that if Union must include the net revenues from the Post-NGEIR LSS Contracts in Deferral Account 179-72 then the ratepayers will be benefiting from the Post-NGEIR LSS contracts to some extent, regardless of the fact that the ratepayers' percentage share of the total declines over the phase-out period.

21. If the 2007 Deferral Decision is correct, then Union is clearly sharing the revenue from its unregulated Post-NGEIR LSS Contracts because the more money that Union earns from these contracts the greater the amount of subsidy for ratepayers during the phase-out period. For example, if revenue of \$100 from Post-NGEIR LSS Contracts is attributed to the deferral account then the ratepayers will receive a \$75 subsidy in 2008 and a \$50 subsidy in 2009, but if revenue of \$200 is attributed to the deferral account then the ratepayers will receive a \$150 subsidy in 2008 and a \$100 subsidy in 2009. If the interveners' argument that the 2007 Deferral Decision does not require Union to share the revenue from the unregulated Post-NGEIR LSS Contracts with the ratepayers was correct then the amount of revenue that Union earns from those unregulated contracts would make absolutely no difference to the calculation of the deferral account.

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<sup>11</sup> SEC Argument, paras. 18 – 20. To the same effect, see also LPMA Argument at paras. 12-15, and IGUA Argument at paras. 31 to 32.

22. Accordingly, the interveners have not provided any answer to the fundamental objection raised in Union's Argument in Chief that the 2007 Deferral Decision is based on an interpretation of the NGEIR Decision that contradicts the express intent of that decision that Union would not be required to share revenues from its unregulated Post-NGEIR LSS Contracts.

23. The deferral account treatment proposed by the interveners is also inconsistent with the Board's stated objective in the NGEIR Decision to avoid an abrupt change in regulated rates.<sup>12</sup> The Board's stated goal was to phase-out the subsidy from unregulated storage. It is inconsistent with this goal to suggest that the balance in the deferral account that is used to subsidize rates should increase over the phase-out period by including more revenues each year from the post-NGEIR transactions. Even though the ratepayers' percentage share of the deferral account declines each year, under the interveners' proposed method the decline in the percentage will be off-set by the increase in the size of the account with the result that there will be a more abrupt change in rates at the end of the phase out period rather than a gradual decline.

24. CME argues that Union's position in the 2007 deferral case was inconsistent with its position in the 2006 deferral case because Union did not make any distinction between Pre-NGEIR and Post-NGEIR contracts in its 2006 Application.<sup>13</sup> There is a simple explanation why Union did not distinguish the Post-NGEIR revenue in the 2006 application. Union did not have any Post-NGEIR revenue as of December 31, 2006. All of the revenue included in Union's 2006 deferral account was earned from Pre-NGEIR contracts, that is why there was no distinction, between Pre and Post-NGEIR earnings mentioned in the application to clear the 2006 deferral account.<sup>14</sup>

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<sup>12</sup> NGEIR Decision, p. 106 and p. 119

<sup>13</sup> At page 4 paragraph C, and again in para. (h) on p. 6, and para. 22.

<sup>14</sup> While the panel dealing with the 2006 Deferral Account balance characterized the accumulated deferred tax cost of \$10.524 million as a liability associated with Union's deregulated storage business, this liability actually relates to Pre-NGEIR activity in the period 1997 to 2006 (as is explained in paragraph 33 below).

25. For the reasons stated above and in the Argument in Chief, Union believed that it was not required to share revenues on the Post-NGEIR LSS Contracts. Union's belief was subsequently affirmed when it received the 2006 Deferral Decision nine months later that found that the deregulated storage assets should be treated as if they had been divested. This decision appeared to confirm that Union's deregulated business was to be accounted for completely separately from the regulated business.

**PART IV      SHOULD UNION 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?**

26. Nevertheless, if the Board concludes that the 2007 Deferral Decision is correct and that Union must record net revenues from unregulated Post-NGEIR long-term storage transactions to calculate the balance in Account 170-72, then Union submits that the 2006 Deferral Decision should be varied to allow Union to deduct from Account 179-72 all costs of providing storage services, including the 2006 deferred income tax expense of \$10.524 million.

27. The fact that the Board in the 2006 Deferral Decision concluded that the deferred income tax expense was not to be brought into Deferral Account 179-72 does not address the question of whether that was the correct decision. To assess whether it was the correct decision we can only look at the reasons as expressly stated by the panel in the 2006 Deferral Decision. That panel's stated reasons indicate it was operating under a different interpretation of the NGEIR Decision than was the panel in the 2007 Deferral Decision.

28. As explained above in paragraphs 8-10, the interveners' argument that the disallowance of the 2006 deferred income tax expense is not necessarily incompatible with the finding in the 2007 Deferral Decision that Union is to apply its "net revenue" to the deferral account misconstrues what the panel actually stated in the 2006 Deferral Decision. That panel did not decide as a matter of regulatory policy that deferred taxes was a category of expense that

ought to be excluded. Rather, the panel concluded that none of the expenses related to Union's unregulated business should be included in the deferral account:

The Board finds that the deregulation of Union's storage assets is 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 taxes associated with this line of business, including the deferred taxes** residing in the account **should form a part of this new undertaking.** This is the same treatment afforded to like liabilities associated with the divestiture of the ancillary services, detailed in Undertaking J1.3.

(2006 Deferral Decision, at p. 9, emphasis added)

29. The second paragraph in the preceding quotation clearly states that ***all taxes*** associated with the unregulated storage business, not only deferred taxes, should form part of the unregulated business and thus not be included in Deferral Account 179-72. This finding directs Union to exclude all taxes from the calculation of the deferral account, not only for the purpose of calculating the 2006 account, but also for the purpose of calculating the deferral account in the future.

30. In paragraph 13(d), on page 5, of CME's argument, CME states that it was well established when the 2006 Deferral Decision was rendered that deferred taxes are not recoverable from utility ratepayers. This argument is circular, but also irrelevant because the 2006 Deferral Decision excludes all taxes associated with the unregulated storage assets, not just the deferred taxes. There is nothing in the decision that suggests that the panel was treating the deferred income tax expense any differently than any other category of cost incurred to provide long term storage service.

31. The two relevant paragraphs from the 2006 Deferral Decision (set out in paragraph 28 above) when read together direct Union to exclude all costs associated with the unregulated storage business from the deferral account in the future, and that is how Union interpreted the 2006 Deferral Decision in 2007 when it prepared its audited financial statements and calculated Deferral Account 179-72.

32. In addition to the \$10.524 million deferred tax expense excluded by the 2006 Deferral Decision, the costs absorbed by Union in 2007 also included the 2007 deferred tax expense, overhead costs that were previously capitalized and other expenses that were properly matched to unregulated storage revenues.

33. \$10.524 million is the cumulative amount of deferred tax costs in respect of the deregulated storage assets that Union would have had to record as liabilities during the period from 1997 (the year in which the Board authorized Union to change to flow-through accounting) to the end of 2006 (when the storage business was deregulated by the NGEIR Decision) if those storage assets had not been rate regulated during that period. \$10.524 million is the amount needed to recognize all the tax costs that accrued in respect of Pre-NGEIR operations during the 1997 to 2006 period that had been deferred for both tax and accounting purposes but then had to be recognized as liabilities for accounting purposes when Union was no longer entitled to use flow-through accounting because of deregulation.

34. In addition to the accumulated tax cost of \$10.524 million in respect of Pre-NGEIR operations, Union's unregulated storage business will continue to incur deferred tax costs each year that must also be recorded as liabilities. The 2006 Deferral Decision prohibits Union from applying those annual tax costs to the deferral account during the phase-out period just as it disallowed the accumulated deferred tax expense of \$10.524 million.

35. The 2006 panel made it clear that no taxes associated with the unregulated business should be applied to the deferral account. However, tax expenses are routinely included in Union's cost of service for the purpose of calculating Union's rates, and the current year's tax expense is also routinely included in the calculation of net revenue attributed to Deferral Account 179-72. There is nothing in the decision to indicate that the panel intended to change the normal regulatory treatment by excluding taxes as whole from the deferral account; rather the 2006 panel was excluding from the deferral account taxes and other costs **that are associated with the unregulated business**.

36. The finding in the 2006 Deferral Decision that all costs associated with Union's unregulated storage business should not be applied to Deferral Account 179-72 is inconsistent with the finding in the 2007 Deferral Decision that "net revenues" from the unregulated storage business should be applied to Deferral Account 179-72 throughout the four year phase-out period:

The Board finds that the NGEIR decision does not require or permit Union to modify the method of calculating the balance in account 179-72 for 2007. The balance should equal 75% of the excess of (i) actual net revenues (on all long-term storage transactions, that is, transactions that occurred both before and after the publication of the NGEIR decision) for 2007, less (ii) the Board-approved forecast net revenue \$21.405 million.

(2007 Deferral Decision, p. 8, emphasis in original)

37. In order to calculate "net revenues" from the unregulated storage business Union must be able to deduct the costs associated with the unregulated storage business, but the 2006 Deferral Decision prohibits Union from doing so. As a result, Union cannot comply with both the 2006 Deferral Decision and the 2007 Deferral Decision.

38. Moreover, it would be manifestly unfair for Union to have to share the gross revenues from its unregulated storage business while at the same time Union absorbs all of the costs incurred to earn those revenues, and that could not have been the intent of the 2006 Deferral Decision. More plausibly, the panel in the 2006 Deferral Decision intended that both the costs and also the revenues of the unregulated business would be excluded from the deferral account, but that intention is completely contrary to the order in the 2007 Deferral Decision.

39. There is no substance to CME's argument that the Board should not allow Union to include the deferred tax expense in the current deferral account because it would be retroactive rate making. Regulatory precedent is clear that it is not retroactive rate making if a deferral account is authorized and used to recover past costs by charging them to ratepayers prospectively.

40. The deferred tax costs are real tax expenses that were accrued as a result of services delivered to ratepayers in the past before the NGEIR Decision was released but were payable in the future. Prior to the NGEIR Decision, those past tax costs could be charged to future ratepayers as the taxes became payable. None of the interveners objected to that treatment on the basis that it was retroactive rate making or an improper cross-generational subsidy because it resulted in current ratepayers paying lower rates. Because the storage services are no longer rate regulated, Canadian GAAP required Union to recognize the deferred tax expense as a liability. There is no good reason why the expense should not be allowed as a deduction against Union's net revenues like any other expense incurred to provide service.

## **SUMMARY**

41. In its Argument in Chief, Union submitted that the 2007 Deferral Decision was incorrect because it was contrary to the clearly stated intent of the NGEIR Decision that Union would not be required to share the net revenues from its unregulated Post-NGEIR LSS Contracts. None of the interveners dispute that this was the intent of the NGEIR Decision. Instead, the interveners argue that the 2007 Deferral Decision does not result in Union having to share revenues from unregulated long term transactions. That argument is demonstrably wrong. It is very clear that the 2007 Deferral Decision requires Union to share its unregulated revenue with the ratepayers, and none of the interveners have provided any real answer to this fundamental objection to the 2007 Deferral Decision.

42. If the Board nevertheless decides to affirm the 2007 Deferral Decision, then Union submits that the finding in the 2006 Deferral Decision that Union is not entitled to deduct "any liabilities" associated with its unregulated storage assets from the deferral account ought to be set aside because it is wholly contrary to the finding in the 2007 Deferral Decision that Union is to apply "net revenues" from its unregulated storage contracts to the deferral account. By definition, the calculation of "net revenues" requires the deduction of the associated liabilities. If the Board affirms the 2007 Deferral Decision, Union requests a clear direction from the Board that all costs incurred in respect of all Union's long term storage transactions, including the 2006

deferred tax expense of \$10.524 million and all other deferred tax expenses incurred during the phase-out period, may be applied to Deferral Account 179-72 for the purpose of calculating Union's net revenue from the long term storage business during the phase-out period.

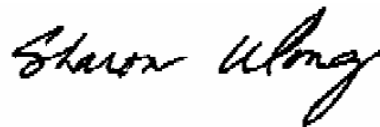
**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

August 25, 2008

A handwritten signature in black ink, appearing to read "Glenn F. Leslie", enclosed within a large, loopy oval stroke.

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Glenn F. Leslie

A handwritten signature in black ink, appearing to read "Sharon S. Wong", written in a cursive style.

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Sharon S. Wong

Counsel for Union Gas Limited