



uniongas

A Spectra Energy Company

August 28, 2008

Ontario Energy Board
2300 Yonge Street,
27th Floor
Toronto, ON
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

**Re: Multi-Year Incentive Rate Regulation for Natural Gas Utilities
EB-2007-0606**

Dear Ms. Walli:

Please find attached Union's motion for a review and variance of the Board's EB-2007-0606 Decision and Order, dated July 31, 2008.

Yours truly,

[original signed by]

Mark Kitchen
Director, Regulatory Affairs

cc: All Intervenors
Michael Penny, Torys

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 approving a multi-year incentive rate mechanism to determine rates for the regulated distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF a combined proceeding Board pursuant to section 21(1) of the *Ontario Energy Board Act*, 1998.

NOTICE OF MOTION

1. Union Gas Limited (“Union”) will make a motion to the Ontario Energy Board (“Board”) on a date and time to be fixed by the Board.
2. The motion is for a review and variance of the Board’s Decision and Order (“Decision”) in this matter dated July 31, 2008 for the purpose of clarifying the Decision on the following issues.

Risk Management – 24 Month Fixed-Price Purchase Plan

3. On page 16 of the Decision, the Board states:

“What is at issue, however, is the narrow activity of financial hedging. The other activities, including Union’s use of rolling 24 month fixed-price contracts, are in the area of gas supply procurement and are not being considered as part of this issue.”

4. Union’s rolling 24 month fixed-price purchase plan is financial in nature and does not involve the physical purchase of gas supply. The rolling 24 month fixed-price purchase plan is not part of Union’s “gas supply procurement”. The rolling 24 month fixed-price purchase plan is facilitated through a financial hedging tool known as a “swap”. The Board recognized this in its EB-2005-0520 Decision at para. 2.3.7 when it found:

“It is important to highlight the fact that the 24-month fixed price contracts form part of Union’s Risk Management program...Insofar as the Board has approved the Risk Management program and the form of hedging instrument represented by the 24-month fixed price contracts, no further Board approval is needed...”

Like other financial hedging tools within Union’s Risk Management program, these swaps contribute to the mark-to-market gains and losses which the Board found, on page 17 of the Decision, to be of no material benefit to consumers.

5. Accordingly, Union seeks clarification and, to the extent the clarification requires, a variance of the Decision to the effect that Union will discontinue all financial commodity risk management activities, including but not limited to, the financial swaps that facilitate the 24-month fixed-price purchase plan.

Risk Management Costs

6. The Board, on page 17 of the Decision, disallowed the recovery of certain costs associated with commodity risk management and directed Union “to record the costs, which are currently embedded in rates” in a deferral account for future disposition at the end of the existing incentive regulation period. The Board also stated that the “appropriate adjustments to distribution rates will be considered at the time of rebasing.”
7. Exhibit J10.03 filed in the EB-2005-0520 proceeding explained that the cost of administering Union’s Risk Management Program is recovered through the gas supply administration charge. The current Board approved gas supply administration charge contains \$103,831 of costs related to the Risk Management program. There are no costs associated with Union’s Risk Management program included in Union’s distribution rates.
8. Union assumes that the Board’s Decision with respect to the disallowance of costs excludes those costs associated with mark-to-market losses that Union may incur as it discontinues its Risk Management program in a prudent manner. It would be unfair and asymmetrical for Union to be required to absorb risk management losses while ratepayers benefit from risk management gains.

9. Currently, both gains and losses associated with financial hedging (including the 24 month fixed price purchase plan) are taken into account in the Union North and South Purchased Gas Variance Accounts which are recovered/refunded prospectively through the QRAM process. As Union discontinues its Risk Management program, Union will continue to reflect risk management gains and losses in the QRAM process until the termination of that program.
10. Union, therefore, seeks clarification and, to the extent the clarification requires, a variance of the Decision to the effect that:
 - (a) the costs of commodity risk management that the Board disallowed are the costs related to the administration of Union's Risk Management Program of \$103,831; and
 - (b) the elimination of those costs should be accomplished, not by a deferral account to record the elimination of an amount "embedded in rates" but through a reduction in the annual gas supply administration charge of \$103,831. Union proposes, subject to Board approval, to reflect the elimination of \$103,831 for annual risk management administration in its gas supply administration charge beginning with its October 1, 2008 QRAM application.

Tax Change Pass Through

11. At page 9 of the Decision, the Board concluded that 50% of the cost consequences of certain federal and provincial tax changes which become effective during the incentive regulation term (as applied to the tax level reflected in 2007 Board approved rates) should be treated as a Z factor and passed through to customers.
12. In coming to this conclusion the Board indicated that:

"The approach in Exhibit E3.1.1 is indicative of how the savings are to be calculated for purposes of the sharing."
13. Exhibit E3.1.1 was Union's answer to an interrogatory to provide a schedule "similar to that in the Enbridge Gas Distribution Settlement Agreement ...Page 52" ("EGD

Settlement”). Union had no involvement in the negotiation or preparation of the schedule shown on page 52 of the EGD Settlement.

14. Union responded to this interrogatory in accordance with its terms and provided a table similar to the table negotiated in the EGD Settlement. No Union witness adopted Exhibit E3.1.1 as a correct or appropriate basis for calculating a 50/50 sharing of possible tax savings during the incentive regulation term, nor was this suggestion ever put to Union during the hearing. Further, Union made it clear throughout the hearing that the amount of tax savings “shown” in Exhibit E3.1.1 was an assumed, rather than a real, number.
15. Lines 2, 6, 10 and 14 of Exhibit E3.1.1 assume that for each of the years 2008 to 2012, the 2007 Board-approved new rate base additions are added to rate base and, accordingly, reflect the tax change effects consequent on those assumed capital additions.
16. During the term of the incentive regulation plan, however, Union will not be making any additions to rate base for rate setting purposes and will, therefore, be recovering nothing in rates for the incremental cost of capital and taxes associated with new capital additions in the years 2008 to 2012.
17. Since Union will be recovering nothing in rates related to new capital additions during the incentive regulation plan, it would be unfair and asymmetrical for Union to be required to credit to customers 50% of any tax reductions associated with those new additions.
18. The impact on the amounts shown in the schedule at Exhibit E3.1.1, all else held constant, would be a reduction in the assumed \$80.5 million of tax reductions of about \$15.2 million (i.e., a tax reduction estimate, based on 2007 rate base, of \$4.1 million as opposed to the \$19.27 million shown at line 20 of Exhibit E3.1.1).
19. Union, therefore, seeks clarification of the Decision from the Board that, in saying Exhibit E3.1.1 is “indicative” of how savings are to be calculated for the purposes of sharing, the Board was not directing Union to share 50% of tax “savings” associated with new capital additions during the incentive regulation term (for which no rate increase for cost of capital and taxes will be available).

20. For this motion, Union will rely on the documentary evidence contained in Union's filing in these proceedings and on Rules 42 to 44 of the Board's Rules of Practice and Procedure.

August 28, 2006

Torys LLP
Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada

Michael Penny LSUC#: 23837N
Tel: 416.865.7526

Solicitors for the Moving Party,
Union Gas Limited

TO: Ontario Energy Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4

Tel: 416.481.1967
Fax: 416.440.765

AND TO: All Intervenors