

RECEIVED

NOV 02 2007

ONTARIO ENERGY BOARD

EB-2007-0606

EB-2007-0615

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 approving or fixing 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 before the Board pursuant to section 21(1) of the *Ontario Energy Board Act*, 1998.

WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

PART 1 - OVERVIEW

1. Union Gas Limited (“Union”) has applied for an order making its current rates interim as of January 1, 2008, and setting new, interim rates pending the Ontario Energy Board’s (Board) final determination of Union’s application for approval of a multi-year incentive rate mechanism to determine rates effective January 1, 2008.

2. It is the position of the Consumers Council of Canada (“Council”) that interim rates should be set, effective January 1, 2008, for the reasons, and subject to the limitations, set out below.

PART 2 - SUMMARY OF FACTS

3. The Council accepts as correct the facts set out in Union’s Written Argument, delivered on October , 2007.

4. It would appear that Union’s estimated 2007 ROE exceeds the allowed ROE of 8.54%. If that is correct, that suggests that Union’s 2007 rates may be too high, and may need to

be trued-up before they become the basis for the operation of the proposed multi-year incentive rate mechanism.

PART 3 - ISSUES

5. In its Written Argument, Union submits that there are two issues to be resolved on the motion, as follows:

- (i) Should the Board issue an order making Union's current rates interim effective January 1, 2008? and
- (ii) Should the Board issue an order implementing new interim rates based on Union's application in this proceeding, specifically as outlined in Exhibit D, Tab 2, of Union's pre-filed evidence?

6. The Council submits that these issues should be resolved on the basis of the following principles:

- (i) As a general rule, interim rates should only be set where there is no contest as to the facts underlying the interim rates;
- (ii) To the extent possible, the risk of retroactive rates should be minimized;
- (iii) The interests of Union and of its ratepayers should, to the extent reasonably possible, be balanced.

Issue 1

7. Union offers no argument as to why its current rates should be continued. It may be the case that Union is operating on the assumption that, since those rates have been approved as just and reasonable, there is no basis upon which they could reasonably be tested.

8. It would appear that Union will, based on the current rates, earn more than its allowed rate of return. If that is the case, the Council submits that the rates would not be just and reasonable, and that the base upon which those rates were set would have to be trued-up.

9. Accordingly, it would appear that there may be a contest as to whether the current rates are just and reasonable. As noted above, as a general rule interim rates should not be

approved where there is a contest as to the underlying facts. Having said that, however, there is at the moment no factual basis upon which the current rates could be re-adjusted. Accordingly, the Council submits that the Board should grant Union the order making the current rates interim, effective January 1, 2008. The Board should only do so, however, on the express understanding that a true-up of the base upon which the current rates are set may be required before those rates are allowed to serve as the basis for a multi-year incentive rate mechanism.

Issue Two

10. Union argues that new rates, effective January 1, 2008, should reflect rate-related changes associated with matters previously approved by the Board. The Council accepts that argument. Those changes include the incremental DSM costs and the GDAR implementation costs.

11. Union also argues, however, that interim rates should be approved based on Union's incentive rate proposal. The Council does not agree with that argument.

12. Union states that the rate-related changes associated with its proposed multi-year incentive regulation mechanism include the following:

- (i) the application of the proposed price cap index;
- (ii) whether normalization methodology has changed;
- (iii) treatment of forecast storage and transportation margins.

13. Those three elements are contested. In addition, the Council, among others, has led evidence that rates should be established based on other considerations, and that there should be what amounts to a rate freeze for the period of the operation of the IR mechanism. Given those things, the Council submits that it would be inappropriate for the Board to approve interim rates which reflect those components. To approve interim rates reflecting those elements, without a full examination of the evidence in support of them, would suggest that the Board has pre-determined Union's application. That, the Council submits, would be unfair to Intervenors. In addition, since, as noted below, Union concedes that it does not need a rate increase because of financial distress, there is no reason for the Board to take the extraordinary step of approving, in advance of an ADR and a hearing, the basic components of Union's application.

14. Union concedes that “this is not a hardship case” and that “it is not seeking interim rate increases due to financial distress”. It states that “the sole issue is the avoidance of having to collect significant retroactive charges later in the year to the detriment of Union and its customers”.

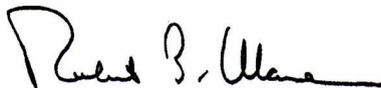
15. The Council agrees that avoiding significant retroactive charges is an important goal. However, the achievement of that goal must be balanced against the interest of insuring that all rates reflect a full and fair consideration of the arguments and evidence of all parties. In order to strike the appropriate balance, the Council submits that the Board should approve interim rates which reflect the matters previously approved by the Board, and therefore no longer contested, but not approve rates based on matters which are still contested.

PART 4 - RELIEF REQUESTED

16. The Council submits that the Board should grant Union’s request for interim rates, effective January 1, 2008, which reflect Union’s currently-approved rates and those matters previously approved by the Board.

17. The Council asks that it be granted 100% of its reasonably-incurred costs for responding to this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Robert B. Warren
Counsel to the Consumers Council of Canada

1009926.1