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November 1, 2007

VIA EMAIL & COURIER

Ontario Energy Board *EW*
P.O. Box 2319 *Nov 1/07*
27th Floor
1300 Yonge Street
Toronto, ON M4P 1E4

Attn: Kirsten Walli, Board Secretary

Re: EB-2007-0606/EB-2007-0615

RECEIVED

NOV - 1 2007

ONTARIO ENERGY BOARD

EB-2007-0606/0615

OEB BOARD SECRETARY	
File No:	Sub File: <i>19</i>
Panel	<i>G.K. / P.S. / C.C.</i>
Licensing	
Other	<i>R.B. / L.K. / M.H. / P.D.</i>
	<i>A.P. / V.C. / M.M.</i>
00/04	<i>factum - Kitchener</i>

We are enclosing 11 hard copies of the Factum on behalf of the City of Kitchener which will also be filed today through the OEB Web Portal.

The Factum relates to Union's motion for Interim Relief scheduled for Tuesday, November 6, 2007. Copies of our Factum have been sent electronically to the participants in this proceeding.

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP


Alick Ryder, Q.C.
AR:lo
Encl.

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All Participants, via email

EB-2007-0606
EB-2007-0615

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.

FACTUM OF THE CITY OF KITCHENER

PART 1 – ADDITIONAL FACTS

1. In addition to the facts outlined by Union, it must be observed that the Board's decision in NGEIR dated November 7, 2006 is the subject of Petitions to the Lt. Governor in Council and no ruling from the Lt. Governor in Council has been issued.

PART II – KITCHENER'S POSITION AND ARGUMENT ON THE ISSUES RAISED BY UNION

Issue 1

2. Kitchener respectfully submits that the Board should allow Union's application on its first issue so as to make Union's current rates interim in order that they can be adjusted effective January 1, 2008 to reflect the final order in this proceeding.

Issue 2

Governing Principles

3. Kitchener submits that the Board should be guided in this application by three principles:

- (a) a general bias against the imposition of retroactive charges on consumers;
- (b) the requirement that any interim increase in rates meet the test of just and reasonable under s.32(2) of the *Ontario Energy Board Act 1998* (the "Act");
- (c) the applicant must show a strong *prime facie* case for the relief requested.

4. Kitchener submits that Union's application on its second issue should be allowed in part so as to make new rates to incorporate those matters previously approved by the Board, as listed in paragraph 23 of Union's factum with the exception of the implementation of the Board decision in NGEIR. Interim rate relief for the items in paragraph 24 of Union's factum should be denied.

Argument

5. Kitchener submits that the above principles are not met with respect to the rate changes listed in paragraph 24 of its factum. In particular, the evidence filed by intervenors contests Union's proposed price cap index and weather normalization methodology change. Accordingly, it cannot be said that there is a *prima facie* case existing on these elements of Union's application sufficient to warrant the pre-determination implicit in an interim Order.

6. Furthermore, Kitchener submits that Union's proposition, implicit in its argument, that the Board need not consider Union's financial status, is wrong. All rate applications are governed by the requirement in s.36(2) of the *Act* for just and reasonable rates. Without a final determination of the incentive regulation plan or without evidence as to whether Union is or is not meeting its allowed return during the interim period, it cannot be said that Union's application meets this requirement.

PART III – ORDER REQUESTED

7. Kitchener respectfully submits that the Board should respond to this application by an Order:

- making Union's rates for the distribution, transmission and storage of natural gas interim effective January 1, 2008; and,

- implementing new rates effective January 1, 2008 to cover the items listed in paragraph 23 of Union's factum with the exception of NGEIR implementation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Alick Ryder, Q.C.
Ryder Wright Blair & Holmes LLP
Counsel for the City of Kitchener