EB-2007-0598

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 amending or varying the rate or rates charged to customers as of July 1, 2007.

ARGUMENT OF THE INDUSTRIAL GAS USERS ASSOCIATION ("IGUA")

1. Apart from matters pertaining to deferred taxes, the Industrial Gas Users Association's ("IGUA") opposition to the proposals made by Union Gas Limited ("Union") in these proceedings is limited to Union's calculation of the customer portion of Union's pre-tax 2006 earnings at $12.879M.

2. There are two aspects of Union's earnings sharing calculation that are of concern to IGUA. The first is the removal of $1.278M from 2006 earnings subject to sharing as an alleged "non-utility" adjustment. The second relates to Union's proposal to reduce the 2006 earnings sharing amount by $8.238M from $12.879M to $4.641M in the event the Board rejects its proposal to charge the ex-franchise storage-related Deferred Tax liability as an expense to the Long Term Storage Premium Revenue Deferral Account No. 179-72.[1]

3. The non-confidential principle on which Union relies in its Confidential Argument with respect to its proposed "non-utility" reduction of 2006 earnings of $1.278M is that "non-utility" items pertaining to its corporate earnings should be excluded from the earnings sharing calculation. IGUA agrees with this principle but submits that Union misapplies it.

4. In determining whether or not a particular tranche of its corporate revenues, expenses, and core earnings should be classified as "utility" or "non-utility", the question to be asked is whether the business activities which give rise to the revenues, expenses and/or earnings are utility-related or "non-utility" business activities. With respect to the $1.278M of corporate earnings which Union

[1] See Exhibits B3.4 and B3.19

proposes to exclude, IGUA submits that the clear and unequivocal answer to this question is that utility-related business activities gave rise to the earnings amount. Further details supporting this conclusion are contained in the Confidential Argument submitted by Mr. Aiken on behalf of LPMA, which IGUA supports and adopts in its entirety, and in the Confidential Argument of IGUA.

5. Based on its re-calculation of the pre-tax earnings sharing amount shown at line 15 on Exhibit A, Tab 1, Schedule 4 to reflect the elimination of the "non-utility" adjustment at line 6, IGUA calculates that the pre-tax earnings sharing amount is about $14.462M, rather than the $12.879M Union calculates.

6. The principle that "non-utility" items pertaining to corporate earnings should be excluded from the 2006 earnings sharing calculation, to which both Union and IGUA subscribe, applies to Union's proposal to reduce the 2006 earnings sharing amount to $4.641M, in the event that the Board rejects its proposal to charge the ex-franchise storage-related Deferred Tax liability as an expense to Union's 2006 S&T Revenue Deferral Account No. 179-72.

7. Before this principle is engaged, there are threshold questions to consider, such as, for regulatory purposes, whether the ex-franchise storage-related Deferred Tax liability should be regarded as a rate-making issue before January 1, 2007, and whether the ex-franchise storage-related Deferred Tax liability, when it is initially recorded, can be characterized as an expense to produce a particular tranche of Union's corporate revenues, rather than an "extraordinary item". These threshold issues will be explored during the oral hearing of the Deferred Taxes feature of Union's Application.

8. For reasons which will become apparent during the oral hearing of the Deferred Taxes feature of Union's Application, IGUA will urge the Board to find that Union never, at any time, asked the Board to cease to regulate its ex-franchise storage operations for the year ending December 31, 2006. IGUA will ask the Board to find that the first fiscal year for which such relief was requested by Union was the January 1 to December 31, 2007 Fiscal Year and that the Board did not cease to regulate Union's ex-franchise storage operations at any time during the year ending December 31, 2006.

9. IGUA will urge the Board to note that the Ernst & Young ("E&Y") opinion letter dated April 27, 2007, states that:

> ***"the change in accounting should be applied in the period the criteria for regulatory accounting were no longer met. The effect of the change in earnings would be recorded as an extraordinary item."***

10. During the course of the oral hearing, IGUA will urge the Board to find that, for regulatory purposes, there is no factual basis for the Deferred Tax liability associated with Union's ex-franchise storage operations to either be recorded or brought into account as an expense to be charged against Union's S&T 2006 Revenue Deferral Account No. 179-72.

11. If the Board accepts that, for regulatory purposes, there is no basis for treating the ex-franchise storage-related Deferred Tax liability as a rate-making issue before January 1, 2007, then the item cannot possibly be brought into account in determining the 2006 earnings sharing amount.

12. In addition, a proper application of the "non-utility" exclusion principle, which Union agrees should be applied, leads to the exclusion of this item as a reduction to the earnings to be shared with ratepayers. The Board's classification of Union's ex-franchise storage sales as "non-utility" gives rise to the liability. In these circumstances, the liability is clearly a "non-utility" item. A proper application of the "non-utility" exclusion principle precludes this item from being brought into account in determining the earnings sharing amount.

13. Having regard to the foregoing, IGUA submits that the 2006 earnings sharing amount to be credited to ratepayers is $14.462M and that there can be no reduction in this amount as a result of a disallowance of Union's proposal to charge the ex-franchise storage-related Deferred Tax liability or any portion thereof as an expense to the 2006 S&T Revenue Deferral Account No. 179-72.

14. With respect to the allocation factors used to allocate Deferral Account balances and the 2006 earnings sharing amount shown in Exhibit A, Tab 2, Schedule 1, IGUA agrees that, subject to its comments below about the allocation of the Demand-Side Management Variance Account ("DSMVA") shown at line 16, Union has used the correct allocation factors.

15. IGUA agrees that the allocation of the DSMVA should respect the principle that costs be allocated to rate classes in proportion to the manner in which the money was spent. Accordingly, Union should be directed to re-allocate the 2006 DSMVA amounts shown in line 16 of Exhibit A, Tab 2, Schedule 1 on the basis of factual 2006 expenditures by rate class, if the use of the 2006 allocation factor produces results which materially differ from the amounts shown in Exhibit A, Tab 2, Schedule 1.

16. IGUA requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of July, 2007.

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street
Suite 1100
Ottawa, ON K1P 1J9

Peter C.P. Thompson, Q.C.
Telephone (613) 237-5160
Facsimile (613) 230-8842
Counsel for IGUA

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