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November 6, 2008

VIA EMAIL & COURIER

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

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0292

We act for the Gas Utility of the City of Kitchener ("Kitchener") in this matter. Pursuant to Procedural Order No. 1 issued by the Board on October 27, 2008, please treat this letter as Kitchener's submissions required by paragraph 4 of the Procedural Order.

Kitchener takes no position on that part of Union's motion which seeks clarification, and to the extent that clarification requires, of a variance of the decision in EB-2007-0605/0615, dated July 31, 2008 (the "Decision"), as it applies to the treatment of Risk Management.

Kitchener opposes Union's request for clarification of the Decision as it relates to the treatment of tax changes during the incentive regulation term. The basis of Kitchener's opposition in this respect can be summarized as follows:

1. It is apparent from a reading of the Decision that the Board intended it to apply to Union as well as to Enbridge. This is particularly clear from the sentence at the bottom of page nine of the Decision which states:

"But it may be some comfort that both gas utilities under the Board's jurisdiction have the same result regarding this particular Z factor."

2. Given that the Decision was intended to apply to Union as well as to Enbridge, it is also apparent that Union's application is not merely seeking a clarification of the Decision, rather it is seeking Board approval of a different accounting treatment of this Z factor; one that excludes the tax impact of new capital additions during the incentive regulation term. In other words, Union is contending that the Decision is incorrect insofar as it applies to Union.

In order to successfully attack a Board Decision, it is necessary for the applicant to raise a question as to the correctness of the Decision. It is submitted that this requirement is lacking in the motion by Union. Moreover, it is submitted that the Decision is fully consistent with the appropriate treatment of new capital additions during the incentive regulation term. This point was noted by the Board at page 11 of its Decision where it states:

"The Board concludes that it is appropriate for these tax reductions to be treated in a manner which is consistent with a treatment afforded tax changes which are implemented during the term of the IR plan."

Based on the above, Kitchener respectfully submits that Union's motion for "clarification" of the Decision respecting the calculation of the cost consequences of the tax changes addressed in the Decision, should be dismissed.

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP

"Alick Ryder"

J. Alick Ryder, Q.C.

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cc: Jim Gruenbauer, via email
All Participants