Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2008-0304

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 Westcoast Energy Inc. and Union Gas Limited for leave pursuant to section 43(2) of the *Ontario Energy Board Act, 1998* (the "Act") for the transfer of a controlling interest in Union Gas Limited to a limited partnership;

AND IN THE MATTER OF an Application by Westcoast Energy Inc. and Union Gas Limited pursuant to section 21(4) of the Act for the Board to dispose of this application without a hearing.

DECISION AND ORDER

On September 15, 2008 Westcoast Energy Inc. ("Westcoast") and Union Gas Limited ("Union") filed an application pursuant to section 43(2) of the *Ontario Energy Board Act, 1998* requesting leave of the Board to transfer a controlling interest in Union from Westcoast to a limited partnership to be organized under the laws of Ontario.

On October 15, 2008, the Board granted intervenor status to four parties, the School Energy Coalition ("SEC"), the City of Kitchener, the Consumers Council of Canada ("CCC") and the Canadian Manufacturers and Exporters Association ("CME"). On November 6th, the Board was advised that the CCC would be taking no position on the matter. On the same day, the Board received a letter from the Industrial Gas Users Association ("IGUA") providing comments pursuant to Rule 24. IGUA is not an intervenor.

For the reasons set out below, the Board approves this application subject to certain conditions.

The Transaction

This application is brought pursuant to Section 43(2) of the *Ontario Energy Board Act*, which provides as follows:

> 43. (2) No person, without first obtaining an order from the Board granting leave, shall,
>
> (a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company; or
>
> (b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, Section 43 (2).

Three steps in the proposed transaction are relevant to this Decision. The first concerns the direct ownership of Union. Union is currently 100% owned by Westcoast. Westcoast in turn is owned by a U.S. corporation, Spectra Energy Corporation, a U.S. corporation based in Houston. The existing structure is set out in Appendix “A”.

The applicants propose to transfer all of the voting shares of Union to a limited partnership to be organized under the laws of Ontario. All of the voting shares of the general partner of the limited partnership would be owned by Westcoast. Westcoast will own 99.999% of the limited partnership units and the wholly owned general partner will own the remaining 00.001% of the limited partnership units as indicated in Appendix “B”.

The second element of the transaction involves Union Gas Limited (UGL), the Ontario corporation, becoming Union Gas Company (UGC), a Nova Scotia unlimited liability company incorporated under the *Nova Scotia Companies Act.* A corporation continued in Nova Scotia and converted to a ULC retains all of the rights and obligations it had prior to the continuance. For Canadian tax purposes, the ULC is the same as any other business corporation and is subject to tax on all of its taxable income. In other words, the Canadian tax status of Union will not change. However, there are significant implications for U.S. tax purposes. The tax liability of the U.S. parent is discussed further in these reasons.

The third element of the transaction is the redemption of the existing preferred shares in Union. Union currently has approximately 4,200,000 preferred shares valued at $110 million held by unrelated parties. Once Union becomes an unlimited liability company, the shareholders on a windup become liable for all the obligations of the company. The existing preferred shareholders, of course, did not contemplate unlimited liability. Accordingly, the existing preferred shares must be redeemed and replaced by an equivalent amount of unrelated third party debt.

Under the terms of one of the series of preferred shares, Union has a redemption option only once every five years. The next redemption option date is January 1, 2009. Notice of the proposed redemption must be given 30 days prior to the redemption date. This is the reason that Union asks that this application be dealt with on an expedited basis.

Rationale for the Transaction

The driving force behind this transaction is the significant tax savings to Spectra, the U.S. parent. When a U.S. corporation receives dividends from a foreign subsidiary, that corporation is subject to U.S. tax laws and the repatriated earnings are considered to be earnings and profit for U.S. tax purposes. Under the current ownership structure, Union’s earnings and profit as determined under

the U.S. tax rules are deemed to move to Westcoast at the time that Union pays the dividend to Westcoast. Inserting a limited partnership between Westcoast and Union provides Spectra with more control over when Union's earnings and profit are moved to Westcoast and up the chain to the U.S. parent, Spectra.

Under the new ownership structure, Union's earnings and profit will be accounted for first by the limited partnership and only taken into account by Westcoast when the limited partnership makes the distribution to Westcoast. Control over the timing of the limited partnership's distribution allows Spectra to utilize tax losses which offset the tax liability. These tax savings are estimated to amount to $50 million[1]. They relate to a loss carried forward resulting from the premium over book value Duke (now Spectra) paid for goodwill when Duke acquired Westcoast in March, 2002.

Impact of the Transaction

Union maintains that the transaction will have no adverse impact on Union, Union's customers, or Union's costs, revenues, rights, obligations, liabilities, management, operations or governance. The evidence supports that conclusion.

It is clear that Union's Canadian tax status will not change. It is also evident that Union's management, Board of Directors and ultimate ownership will not change. Union's head office will remain in Chatham and the company will continue to be operated from there.

There was some discussion in these proceedings whether the obligations of Union Gas Company ("UGC") as a Nova Scotia ULC would be less than those of Union Gas Limited ("UGL") the Ontario Corporation. As counsel for Union points out, Union is being continued as a ULC under Nova Scotia laws and the Nova Scotia Statutes regarding corporate obligations mirror those in Ontario[2].

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[1] Exhibit C.2, pg. 2

[2] See Section 181 of the *Business Corporation Act* (Ontario) and Section 133 of the *Companies Act*

Nor does the continuation have any impact on the Board's jurisdiction. That jurisdiction flows from Section 36 of the *Ontario Energy Board Act*, which grants the Board jurisdiction over gas transmitters and distributors in Ontario. The fact that Union becomes a Nova Scotia unlimited liability company does not reduce the jurisdiction of this Board regarding any of Union's Ontario activities.

There are however, three concerns voiced by the intervenors. The first is whether the undertakings by Union Gas Limited and Westcoast Energy Inc. given to the Lieutenant Governor in Council on December 9, 1998 remain in force. The second is whether the cost of this reorganization and this proceeding should be borne by the ratepayers. The third is whether the cost reductions resulting from this reorganization should be passed on to ratepayers and if so, when. Each of these issues is considered below.

The Undertakings and the Order in Council dated December 9, 1998

On December 9, 1998 Union Gas Limited and West Coast Energy Inc. entered into undertakings with the Lieutenant Governor in Counsel attached as Appendix "C" [3]. The most important of the undertakings is paragraph 3.0 which concerns the maintenance of common equity. That undertaking provides that Union will maintain a level of equity at a level established by the Board. If the equity falls below that level, it must be restored to meet the required level within 90 days. At present, under the Board's most recent Decision, Union is required to maintain its common equity ratio at 36%.

(Nova Scotia)

3 (Exhibit K:1.2). These undertakings date back to undertakings of May 13, 1988 which followed the acquisition of Union by Unicorp Canada Corporation and a Report of the Board on that matter required by an Order in Council issued in 1985. In the Matter of a Reference Respecting Unicorp Canada Corporation, [See EBRLG 28, August 2, 1985]. These undertakings were replaced by undertakings dated November 27, 1992 (approved and accepted by the Lieutenant Governor in Council on December 16, 1992) when Westcoast Energy Inc. acquired control of Union Gas from Unicorp Canada Corporation. The 1992 undertakings were essentially reaffirmed by the December 9, 1998 undertakings which became necessary with passage of the *Energy Competition Act, 1998* on October 10, 1998.

The current signatories include Union and Westcoast. As indicated, Union Gas Limited, the Ontario corporation, will cease to exist and will become Union Gas Company, a ULC under Nova Scotia law. These undertakings, as S.3.1 indicates, apply to Union and Westcoast and its "affiliates". SEC argues that the limited partnership Union intends to create would not be an affiliate because it is not a corporation. The undertakings in S.1.2 define an affiliate as having the same meaning as it does in the *Business Corporations Act,* R.S.O. 1990, Chapter B.16. SEC argues that the *Business Corporations Act* defines an affiliate as a corporation. Accordingly, in their view, it would not (and cannot) include the proposed limited partnership.

In response to an SEC interrogatory[4], Union confirmed that Union and Westcoast intend to abide by the terms of the undertakings, the Affiliate Relations Code and all regulations by which the Board regulates affiliates of regulated utilities. Union states that "the Limited Partnership and the General Partner are wholly owned subsidiaries of Westcoast and thus would be affiliates of Union Gas and would therefore be subject to any requirement of the Board".

SEC asks the Board to make it a condition of approving this transaction that the proposed limited partnership and the Nova Scotia ULC, Union Gas Company, sign the undertakings. Union responds that the Board has no authority because the undertakings are an agreement between Union and the Lieutenant Governor in Council. The Board is not a party. Moreover, Union says that regardless of any condition the Board might direct, the Board has no way of knowing whether the Lieutenant Governor in Council will agree to that condition.

While it is unlikely that the Lieutenant Governor in Council would not agree, Union is technically correct. Moreover, even if steps were taken by the Lieutenant

[4] Exhibit D.1

Governor in Council to add UGC or the partnership to the undertakings, that might take time and the deadline for this transaction might pass.

In the circumstances, the Board asked Westcoast and Union to confirm that they regard the Ontario limited partnership and the general partner as affiliates of Westcoast that will comply with undertakings in the same fashion as Union Gas Limited. It is significant in this regard that Westcoast will control UGC, just as it controlled UGL in the past. The Board accepts that the undertakings provided by Union and Westcoast (attached to this Decision as Appendix “D”) are sufficient evidence that the general partner and the limited partnership will be bound by the undertakings.

The Costs of the Transaction

The second issue relates to whether any of the costs of this transaction will be borne by the ratepayers. Union has agreed that all costs of the transaction will be paid by Westcoast not Union and will not be borne by ratepayers.

The Reduction in Revenue Requirement

An essential element of this transaction is that the preferred shares will be replaced by debt. Because the cost of the debt is less than the cost of preferred shares, there is an annual reduction in the revenue requirement of approximately $1.3 million.

The parties agree that this amount should be reflected in the reduction of rates. However, they question the timing. Union takes the position that this should occur on the rebasing at 2012. The intervenors state that it should take place on January 1, 2009.

Union’s rationale for the 2012 date is that the company entered into a five year Incentive Rate Plan beginning January 1, 2008. This is a five year plan which provides that no adjustments are to be made unless there are unusual

circumstances. Union says the $1.3 million reduction does not constitute an unusual factor or Z factor.

The intervenors respond that if Union had disclosed this transaction in a timely fashion, the cost reductions would have become part of the negotiations and settlement that led to the Board's Decision approving the five year Incentive Rate Plan.

It is important to put the timing of the two events in context.

On May 11, 2007, Union applied under section 36 of the *Ontario Energy Board Act* for an Order approving a multi-year Incentive Rate Plan to determine their rates effective January 1, 2008. This was a unique and important proceeding. Prior to this application, the rates for a period of almost 40 years, were generally set on an annual basis. Rates under this new application will apply for a five year period set by a formula largely determined by the cost of inflation minus a productivity improvement factor.

On August 31, 2007 the Board scheduled a settlement conference which subsequently took place between December 6th and December 17th. On January 2, 2008 Union filed a Settlement Agreement which was approved by the Board on January 17, 2008. [5]

On August 30, 2007, the day before the Board issued the Order scheduling the Settlement Conference in the incentive rate proceeding, Mr. Hebert, a tax planning specialist with Union, delivered to Spectra a five page memorandum entitled "UGL Conversion Step Plans"[6]. The Memorandum identified the transaction at issue here, including the steps by which Union would redeem the

[5] EB-2007-0606, January 17, 2008
[6] Exhibit D.7

existing preference shares held by Third Parties for approximately $110 million, plus a redemption premium[7].

The Board of Directors of Union Gas did not approve the plan formally until a year later on September 5, 2008. Union filed this Application 10 days later.

Union and Spectra first began considering the tax plan in early 2007[8]. That consideration resulted in the memorandum of August 30, 2007. During the period in which Union and Spectra were considering this tax plan, there were extensive negotiations with intervenors regarding the Incentive Rate Plan.

The intervenors say that Union had a duty to disclose the likelihood that Union would reorganize its corporate structure to reduce taxes paid by the parent which in turn would reduce Union's cost of operations.

Union's response is two-fold. First, Union says the amount was not material. Second, Union says that as of August, 2007 no decision had been made to proceed. And even if a decision had been made to proceed it wasn't clear as to what the consequences would be in terms of Union's operating costs.

In my view, these arguments are not persuasive. Nor do I find that the evidence supports them. The first point is that $1.3 million per year is material, particularly when you consider that over the length of a five-year IRM Plan, it amounts to over $5 million.

Secondly, as of August of 2007, Union had identified a tax plan and determined that the restructuring could save the parent company at least $50 million in taxes. The evidence of Union witnesses is that the amount was determined[9]. It wasn't

[7] Exhibit D.7, p. 4
[8] Transcript , p. 8, line 18
[9] Transcript p.7, line 11

hypothetical. It was real because that was the amount of loss carry forward available for this purpose.

Nor was this a complicated or controversial tax planning step. It was well known and understood. In an SEC interrogatory, Union was asked to "produce a copy of each tax or corporate planning letter, opinion, tax ruling or reorganization memorandum that in whole or part formed the basis for the internal reorganization proposed in the application". Union responded as follows:

> "There are no opinions or tax rulings available. The reorganization being proposed for Union is common tax planning that has been employed in respect of many of Westcoast's Canadian affiliates." [10]

The tax implications were well understood and the amount of the loss carried forward was clear, as was the minimum amount of tax savings.

Union responds that even if a decision had been made to proceed, there was no decision as to the timing. But why would Union delay? The tax benefits were real and non-controversial. Moreover, tax carry forwards have a limited life. They can be lost in whole or in part if there was delay.

Most importantly, the reorganization was dependant on the redemption of the preference shares. There was a deadline for that redemption. That deadline was January 1, 2009 and notification 30 days before was required. Failing to meet that deadline would mean that Union could not implement this reorganization until 2014 and Spectra would be denied the tax reduction until then.

In the circumstances, it is reasonable to conclude that in the August, 2007 timeframe there was a real prospect that Union would be reorganized to secure these tax savings on behalf of the U.S. parent. The evidence also suggests that

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[10] Exhibit D.7

Union would proceed with the restructuring in the first year of the Incentive Rate Program which is, in fact, exactly what happened.

A public utility in Ontario with a monopoly franchise is not a garden variety corporation. It has special responsibilities which form part of what the courts have described as the "regulatory compact". One aspect of that regulatory compact is an obligation to disclose material facts on a timely basis. As stated recently by Mr. Justice Lederman in the case of *Toronto Hydro-Electric System Limited v. Ontario Energy Board* [2008] OJ No 3904(QL), para 78.

> "At the heart of a regulator's rate-making authority lies the "regulatory compact" which involves balancing the interests of investors and consumers. In this regard, there is an important distinction between private corporations and publicly regulated corporations. With respect to the latter, in order to achieve the "regulatory compact", it is not unusual to have constraints imposed on utilities that may place some restrictions on the board of directors. That is so because the directors of utility companies have an obligation not only to the company, but to the public at large."

Failure to disclose has at least two unfortunate consequences. First, it can only result in less than optimum Board decisions. Second, it adds to the time and cost of proceedings. Neither of these are in the public interest.

A publicly regulated corporation is under a general duty to disclose all relevant information relating to Board proceedings it is engaged in unless the information is privileged or not under its control. In so doing, a utility should err on the side of inclusion. Furthermore, the utility bears the burden of establishing that there is no reasonable possibility that withholding the information would impair a fair outcome in the proceeding. This onus would not apply where the non-disclosure is justified by the law of privilege but no privilege is claimed here.

It should be understood that this obligation is a corporate responsibility. Mr. Penny and Mr. Packer were both involved with the incentive rate

proceeding. Both are involved in this case. They say that they had no knowledge of the proposed re-organization. I accept that. Both gentlemen have been involved extensively in proceedings before this Board in the past decade and are highly regarded. But I do not accept that the Union organization lacked the relevant knowledge. And they had an obligation to instruct counsel.

Nor can there be any question that the relevant information was within the control of Union. The memorandum of August 30, 2007 was prepared by Dennis Hebert, the General Manager of Canadian taxes with Union Gas. He held positions relating to taxation services with Union Gas since August of 2002 and was involved in investigating the tax consequences of this reorganization since early 2007.

There is also an element of fairness involved here. How can the Board penalize intervenors and the ratepayers they represent because they were late raising an issue where the Utility failed to advise them of essential information in a timely fashion.

Nor can it be said, as Mr. Penny suggests, that this tax plan was “just a gleam in somebody’s eye”. It was much more than that. It is not believable that a sophisticated organization such as Spectra/Union/Westcoast would leave $50 million on the table. In all likelihood once they completed the tax analysis in August of 2007 (which in their own words was “common tax planning for many of Westcoast Canadian affiliates”) the organization would move forward in a timely fashion given the deadline for redemption of the preference shares.

In the result, the Board approves the application subject to three conditions:

1. The costs of the entire transaction, including the hearing costs, will be for the account of Union shareholders and not passed on to the ratepayers;

2. Union and Westcoast will file with the Board a letter confirming that the general partner and the limited partner will be considered affiliates for the purpose of undertakings contained in the Order of Council dated December 9, 1998;

3. Union's rates will be reduced effective January 1, 2009 to reflect the cost reduction of $1.3 million per year resulting from this reorganization.

Mr. Ryder on behalf of the City of Kitchener argued that Union's failure to disclose should be sanctioned by the Board, by way of a cost penalty. He suggested that the costs should be borne by the shareholder, not the ratepayer. I agree. The three intervenors participating in this hearing will be entitled to reasonably incurred costs with costs to be paid by the shareholders of Union.

DATED at Toronto, November 19, 2008.

Ontario Energy Board

_____
Gordon Kaiser
Vice-Chair and Presiding Member

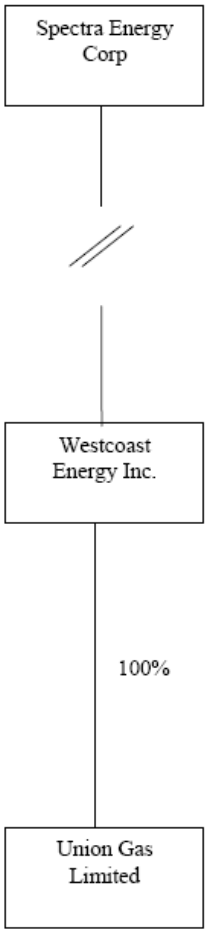
Appendix "A"

To Decision and Order

Dated: November 19, 2008

Current Organization Structure Chart

Attachment 2 **Current Structure**



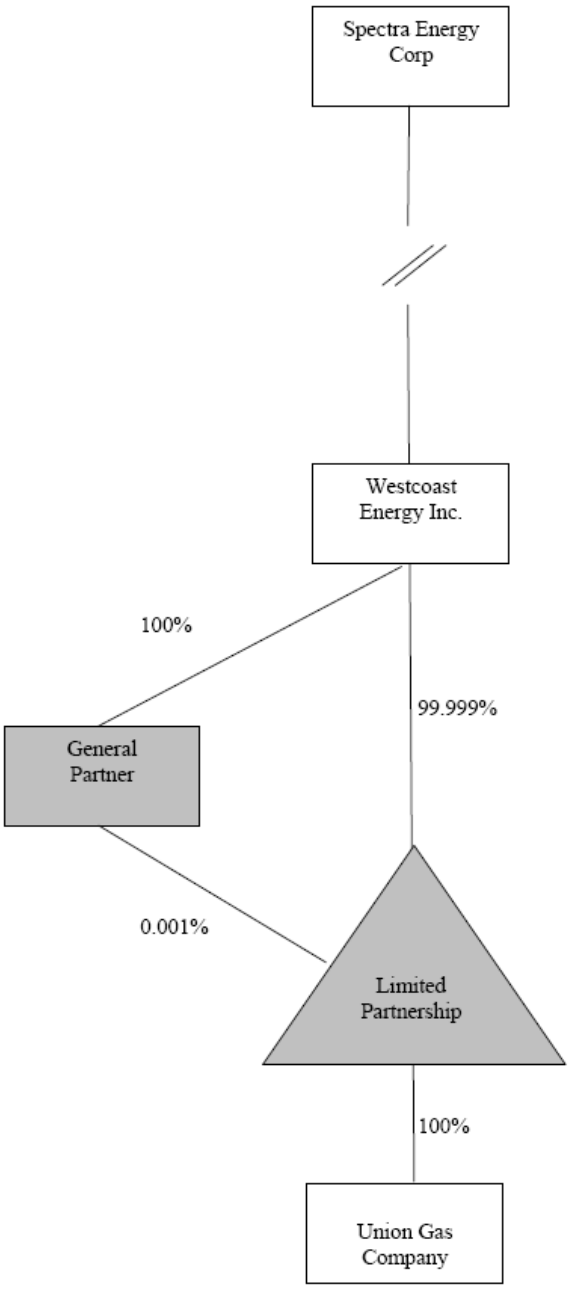
Appendix “B”

To Decision and Order

Dated: November 19, 2008

Proposed Organization Structure Chart

Attachment 3 **Final Structure**



Appendix “C”

To Decision and Order

Dated: November 19, 2008

Order in Council dated December 9, 1998, CC 2865/98

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

WHEREAS Westcoast Energy Inc., 1001142 Ontario Inc., Union Energy Inc., Union Gas Limited, and Union Shield Resources Ltd. provided Undertakings dated the 27th day of November, 1992 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 3639/92;

AND WHEREAS Enbridge Inc. (previously IPL Energy Inc.) and The Consumers' Gas Company Ltd. provided Undertakings dated the 21st day of June, 1994 to the Lieutenant Governor in Council and these Undertakings were referred to in Order in Council No. 1606/94;

AND WHEREAS, with the receipt of Royal Assent for the *Energy Competition Act, 1998* on the 30th day of October, 1998, it is considered expedient to approve new Undertakings provided by Union Gas Limited, Centra Gas Utilities Inc., Centra Gas Holdings Inc., Westcoast Gas Inc., Westcoast Gas Holdings Inc. and Westcoast Energy Inc. and by The Consumers' Gas Company Ltd., Enbridge Consumers Energy Inc., 311594 Alberta Ltd., Enbridge Pipelines (NW) Inc. and Enbridge Inc.(the "New Undertakings");

NOW THEREFORE the New Undertakings, attached hereto, are accepted and approved.

Recommended _____
Minister of Energy, Science & Technology

Concurred _____
Chair of Cabinet

Approved & Ordered DEC 9 - 1998
Date

_____
Lieutenant Governor

O.C./Décret 2865/98

Ontario Energy Board
FILE No. EB-2008-0304
EXHIBIT No. K. 1. 2
DATE NOV 7/2008

/99

UNDERTAKINGS OF UNION GAS LIMITED,

CENTRA GAS UTILITIES INC., CENTRA GAS HOLDINGS INC.,

WESTCOAST GAS INC., WESTCOAST GAS HOLDINGS INC.,

WESTCOAST ENERGY INC.

TO: Her Honour The Lieutenant Governor in Council for the Province of Ontario

WHEREAS Centra Gas Utilities Inc. holds all the issued and outstanding common shares of Union Gas Limited ("Union");

AND WHEREAS Centra Gas Holdings Inc. holds all the issued and outstanding common shares of Centra Gas Utilities Inc.;

AND WHEREAS Westcoast Gas Inc. holds all the issued and outstanding common shares of Centra Gas Holdings Inc.;

AND WHEREAS Westcoast Gas Holdings Inc. holds all the issued and outstanding common shares of Westcoast Gas Inc.;

AND WHEREAS Westcoast Energy Inc. holds all the issued and outstanding common shares of Westcoast Gas Holdings Inc. ("Westcoast");

the above named corporations do hereby agree to the following undertakings:

1.0 Definitions

In these undertakings,

1.1 "Act" means the *Ontario Energy Board Act, 1998*;

1.2 **"affiliate"** has the same meaning as it does in the *Business Corporations Act*;

1.3 **"Board"** means the Ontario Energy Board;

1.4 **"business activity"** has the same meaning as it does under the Act or a regulation made under the Act; and

1.5 **"electronic hearing"**, **"oral hearing"** and **"written hearing"** have the same meaning as they do under the *Statutory Powers Procedure Act*.

2.0 Restriction on Business Activities

2.1 Union shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

3.0 Maintenance of common equity

3.1 Where the level of equity in Union falls below the level which the Board has determined to be appropriate in a proceeding under the Act or a predecessor Act, Union shall raise or Westcoast and its affiliates shall provide within 90 days, or such longer period as the Board may specify, sufficient additional equity capital to restore the level of equity in Union to the appropriate level.

3.2 Any additional equity capital provided to Union by Westcoast or its affiliates sh provided on terms no less favourable to Union than Union could obtain directly capital markets.

4.0 **Head Office**

4.1 The head office of Union shall remain in the Municipality of Chatham-Kent.

5.0 **Prior Undertakings**

5.1 These undertakings supersede, replace and are in substitution for all prior underta Union, Westcoast and their affiliates.

6.0 **Dispensation**

6.1 The Board may dispense, in whole or in part, with future compliance by any of th signatories hereto with any obligation contained in an undertaking.

7.0 **Hearing**

7.1 In determining whether to grant an approval under these undertakings or a dispens under Article 6.1, the Board may proceed without a hearing or by way of an oral, or electronic hearing.

8.0 **Monitoring**

8.1 At the request of the Board, Union, Westcoast and their affiliates will provide to th Board any information the Board may require related to compliance with these undertakings.

9.0 **Enforcement**

9.1 The parties hereto acknowledge that there has been consideration exchanged for the receipt and giving of the undertakings and agree to be bound by these undertakings.

9.2 Any proceeding or proceedings to enforce these undertakings may be brought and enforced in the courts of the Province of Ontario and Westcoast, Union and their affiliates hereby submit to the jurisdiction of the courts of the Province of Ontario in respect of any such proceeding.

9.3 For the purpose of service of any document commencing a proceeding in accordance with Article 9.2, it is agreed that Union is the agent of Westcoast and its affiliates and that personal service of documents on Union will be sufficient to constitute personal service on Westcoast and its affiliates.

10.0 **Release from undertakings**

10.1 Westcoast, Union and their affiliates are released from these undertakings on the day that Westcoast no longer holds, either directly or through its affiliates, more than 50 per cent of the voting securities of Union or on the day that Union sells its gas transmission and gas distribution systems.

11.0 **Effective Date**

11.1 These undertakings become effective on March 31, 1999.

5

DATED this 7th day of December, 1998.

UNION GAS LIMITED

by _____

CENTRA GAS UTILITIES INC.

by _____

CENTRA GAS HOLDINGS INC.

by _____

WESTCOAST GAS INC.

by _____

WESTCOAST GAS HOLDINGS INC.

by _____

WESTCOAST ENERGY INC.

by _____

Appendix “D”

To Decision and Order

Dated: November 19, 2008

Letters by Union Gas Limited and Westcoast Energy Inc. acknowledging Limited Partnership as an Affiliate

uniongas

A Spectra Energy Company

November 12, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0304

The Ontario Energy Board has asked Union Gas Limited ("Union") to provide certain assurances in connection with the Application in EB-2008-0304 (Transcript, November 7, 2008, p.108, lines 21-25).

Union confirms by this letter that the general partner and limited partnership to be formed to hold Union's voting shares, as described in the Application, will be considered "affiliates" for the purpose of Undertakings given by Union to the Lieutenant Governor in Counsel dated December 7, 1998 and accepted by Order In Council December 9, 1998.

Yours truly,

M. Richard Birmingham
Vice President, Finance and Regulatory Affairs

Spectra Energy Transmission
P.O. Box 11162
Suite 1100, 1055 West Georgia Street
Vancouver, BC V6E 3R5

November 11, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0304

The Ontario Energy Board has asked Westcoast Energy Inc. ("WEI") to provide certain assurances in connection with the Application in EB-2008-0304 (Transcript, November 7, 2008, p.108, lines 21-25).

WEI confirms by this letter that the general partner and limited partnership to be formed to hold Union's voting shares, as described in the Application, will be considered "affiliates" for the purpose of Undertakings given by WEI to the Lieutenant Governor in Counsel dated December 7, 1998 and accepted by Order In Council December 9, 1998.

Yours truly,

WESTCOAST ENERGY INC.,
a Spectra Energy Company

Bruce E. Pydee,
Vice President, Regulatory Affairs
and General Counsel