TORYS LLP

Suite 3000
79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Tel 416.865.0040
Fax 416.865.7380

www.torys.com

December 9, 2008

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

Dear Ms. Walli:

Re: EB 2008-0304

I am counsel to the applicants, Westcoast Energy Inc. ("WEI") and Union Gas Limited ("Union"), in connection with this matter. I am responding to correspondence from counsel to the School Energy Coalition ("SEC") and the City of Kitchener ("Kitchener") dated December 3 and 4, 2008, respectively.

On December 1, 2008 Union advised the Board that, due to world-wide economic conditions and, specifically, the developing crisis in North American debt and equity markets, its parent , WEI , was no longer proceeding with its plan to convert Union to a Nova Scotia Unlimited Liability Company and, consequently, would not be redeeming some $110M of outstanding Union preferred shares.

The SEC and Kitchener have taken exception to Union's position that, because there will be: (1) no preferred share redemption; (2) no replacement of preferred shares with debt; and (3) no "tax saving" to Union resulting from interest deductibility, there is no $1.3M cost reduction to be "reflected" in Union's 2009 rates. These parties suggest that Union has "unilaterally" abrogated a condition of the Board and that a new application reflecting the changed circumstances, or a motion for review and variance, is required. Union disagrees with both suggestions.

SEC has taken the position that the purpose of the share transfer that was approved "could only arise" if the NSULC conversion, and related preferred share redemption, took place. SEC has also argued that not proceeding with the NSULC conversion will "prevent" Spectra from achieving the tax savings that were the "sole purpose" of the transaction. This is incorrect.

In the pre-filed evidence, oral testimony and argument, it was made very clear that there were two separate benefits being sought in the proposed transaction. The first, achieved through the insertion of a limited partnership between WEI and Union, was to achieve more flexibility in the timing of when Union dividends paid to WEI had to be brought into Spectra income for U.S. tax purposes (see pre-filed evidence, para. 9, Ex. B.6, Ex. C.2 Addendum p. 2, Tr. pp.6, 43-44, 65 and 71-72).

The second, which would have been achieved (albeit over many years) by the conversion of Union to a NSULC, was to enable Spectra to obtain some tax benefit from available tax loss carry forwards associated with the premium or goodwill Spectra paid to acquire WEI in 2002 (see pre-filed evidence, para. 13, Ex. B.6, Ex. C.2 Addendum p. 2, Tr. pp. 6-7. 43-44. 65 and 71-72).

It is not the case that all three steps of the proposed transaction were required to achieve any tax benefit nor did the applicants ever make any such representation. Benefits may well result to Spectra from proceeding with the limited partnership structure, i.e., the flexibility to defer realization of earnings and profits and to achieve efficiencies through the timing of when Union dividends must be realized as "earnings and profits" in Spectra's hands for U.S. tax purposes.

Given the current credit crisis, however, Spectra has determined that the replacement of Union's preferred shares with debt is not practicable at this time.

SEC has also submitted that the Board approved "the series of transactions." This too is not correct. The Board approved the transfer of Union's voting shares from WEI to the limited partnership under section 43(2)(a) of the Act. It did not approve, and had no jurisdiction to approve, the continuance of Union in Nova Scotia or the redemption of Union's preferred shares.

The suggestion, therefore, that the purpose of the transaction disclosed to the Board in the course of this Application is no longer in effect or that there is some different or "new" purpose that was not disclosed to the Board is simply untrue.

The second argument made by SEC and Kitchener is that Union, by proposing not to pass on a $1.3M tax saving that it is no longer going to enjoy, is somehow acting unilaterally in contravention of a condition imposed by the Board.

Pages 7 - 12 of the Board's Decision in this matter consider the question of an assumed reduction in Union's revenue requirement resulting from the redemption of the preferred shares and their replacement with debt. It is clear from that discussion, and from the words of condition #3 itself, that the contemplated reduction in Union's rates of $1.3M per year was to "reflect the cost reduction" to Union of the preferred share redemption. As Union reads condition #3, it is itself conditional on there being a "cost reduction" to Union of this amount.

Since there is to be no redemption, there will be no cost reduction "to reflect" in Union's 2009 and subsequent rates. Accordingly, the pre-condition to the rate reduction is absent. This, Union submits, is not a unilateral refusal to fulfill condition #3 in the Board's Decision. Nor, in Union's reading of the Decision, is a motion for review and variance required. This is because the condition itself contemplates its own pre-condition; a pre-condition which, because Union's preferred shares are not being redeemed, will not be met.

For the same reasons, Union rejects as wasteful and superfluous the suggestion of SEC and Kitchener that Union should bring a new application reflecting only the share transfer to the limited partnership. No possible beneficial end would be served by such redundant proceedings, other than to those making cost claims.

All the relevant evidence was before the Board in the Application. The proposal had two benefits. Both were described and disclosed. The world economic crisis has undermined one of the two benefits such that it is no longer being pursued. Because there will be no redemption of preferred shares, the collateral cost reduction will not be realized. Accordingly, there is no cost

reduction to reflect in Union's 2009 rates. Neither a motion nor another application is necessary to establish these facts.

The applicants, therefore, submit that the arguments of SEC and Kitchener are without merit and that no further proceedings are necessary in the circumstances.

Yours very truly,

Michael A. Penny

MAP/af