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December 16, 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

I am responding to correspondence forwarded to you on December 12, 2008 from Mr. Thompson of Borden Ladner Gervais LLP on behalf of the Canadian Manufacturers and Exporters regarding the above matter.

Mr. Thompson's correspondence is, in my respectful submission, problematic on at least three levels: first, he grossly misrepresents the facts that were before the Board in the hearing on this matter; second, while he makes repeated references to some issue of "principle," it remains unclear, to say the least, what issue of "principle" has been engaged; and third, he has failed to identify any benefit that would result from further proceedings in this matter.

Like the SEC and Kitchener, Mr. Thompson has chosen to ignore the facts when he asserts that all three organizational steps discussed in the evidence were represented as being necessary to achieve any tax benefit. That was not the evidence. There were two distinct benefits being sought from the proposed reorganization - tax deferral/flexibility and utilization of tax loss carry forwards. The $50 million in tax savings Mr. Thompson refers to on page 1 of his letter is associated solely with the potential realization of tax loss carry forwards stemming from the premium paid on the acquisition of WEI by Duke in 2002. Enabling Spectra to utilize these tax losses required Union to become a "flow through" entity for U.S. tax purposes, i.e., a Nova Scotia ULC. This was clearly described in the prefiled evidence, for example, at para. 13 where it was stated that, for U.S. tax purposes, a ULC "is classified as a "flow through" entity and is therefore treated like a partnership or disregarded entity."

The distinct nature of the two benefits in issue (i.e., tax deferrals through the limited partnership structure and tax loss carry forwards from the NSULC structure) was also described in Exhibit C.2 Addendum, p. 2, which said that "a consequence of the limited partnership structure may be to enable the distribution of Union dividends to be timed with the distributions of other operating subsidiaries so as to achieve minimal double taxation." Later, in the next paragraph, this exhibit went on to describe the different benefit associated with the flow through nature of the NSULC, saying: "the reference in Exhibit D.7 to $50 million is a potential global amount of benefit that might be achieved through the timing of non-regulatory loss carry forwards for U.S. tax accounting purposes."

Indeed, Mr. Thompson's own cross-examination elicited this information at pages 6 and 7 of the transcript. Mr. Thompson asked, "the $50 million appears to be related to a goodwill premium over book value, based on the purchase of WEI. Is that right?" Mr. Hebert replied, "That is the primary driver of that benefit, yes."

The benefit resulting from the limited partnership ownership structure is quite distinct from the "flow through" created by the NSULC which makes the tax loss carry forwards available. The "benefit" from the limited partnership structure is not quantifiable in advance because its benefit derives from a combination of tax deferral and flexibility in the timing of realization of income for U.S. tax purposes related to dividends paid by Union to its shareholder. This was made clear, for example, in Exhibit C.2 Addendum and at pages 43 - 44 of the transcript, among others. During Mr. Shepherd's cross-examination, Mr. Hebert said: "It is a deferral, that's correct. Well, there's two components. One is the $50 million we talked about, and then there is the 35-cent example we talked about." Mr. Hebert went on to say, on page 44, that: "The goodwill generates a loss carry forward for US tax purposes... And if we leave that [current] structure in place, we will never be able to use that loss carry forward. What this structure allows us to do is to utilize that loss carry forward and that loss really was generated by the goodwill".

Further, Mr. Thompson's paraphrasing of and quotations from the transcript in footnote 1 to his letter is misleading because the references are incomplete and taken out of context. Mr. Packer, for example, in fact said, "We have to do all three *to achieve the US tax outcome we're looking for*" [emphasis added]. The tax outcome being "looked for" at the time, of course, included both benefits described above, i.e., both the deferral available from the limited partnership structure and the tax losses available from the NSULC structure. Mr. Packer did not say, nor did the applicant's ever say, that there were no tax benefits if only the limited partnership structure was pursued and that is quite clearly, on the evidence, not the case.

Similarly, Mr. Thompson's selective quote from my argument is thoroughly misleading, again by virtue of being incomplete and taken out of context. In fact, in the sentence on page 65 immediately prior to the passage quoted by Mr. Thompson, I made it clear that there were two tax benefits in issue, each linked to one of the two restructuring steps, and that both the limited partnership structure *and* the NSULC conversion were necessary if *both* benefits were to be achieved. That sentence reads: "In essence, the insertion of the limited partnership into Union's ownership structure and the conversion to a Nova Scotia ULC provides Spectra with more control or with the ability to time the dividends of Union and to realize on this loss carry forward resulting from the goodwill associated with the Westcoast acquisition, to manage those two aspects of the relationship in a way that does not affect Union, does not affect any of the Union's costs or operations, but has the result of placing those two matters under a more advantageous tax treatment structure."

Mr. Thompson's claim, therefore, that he can find that no reference in the evidence or the argument to the two distinct benefits of tax deferrals from the limited partnership structure and tax loss carry forwards from the NSULC structure is demonstrably false, as noted above and in the evidence cited in my earlier correspondence of December 9, 2008.

As to the so-called issue of "principle," Mr. Thompson might have had an argument if the Board's approval of the transfer of shares to the limited partnership had been made unconditionally dependent on the other transactions taking place. But that is, of course, not what happened or what the Board said. Nor does Mr. Thompson even try to make this argument because, in my submission, he recognized that such an argument would clearly be unsustainable and meritless. The Board simply indicated that, if there was to be a collateral cost

reduction stemming from the NSULC conversion (that is, from the related preferred share redemption), it should be credited to Union's customers. The Board did not say (and what possible reason would it have for doing so?) that the NSULC conversion was a necessary condition to the approval of the limited partnership structure.

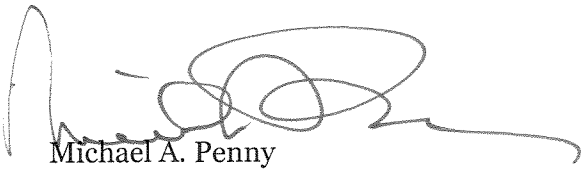
Mr. Thompson's suggestion that recent changes in economic circumstances are not the reason Spectra has decided against redemption of Union's preference shares is baseless and totally improper. Anyone who has read a newspaper in North America in the last five weeks knows that the economic situation, and the credit crisis in particular, has only deepened since November 7. The real point, in any event, is that it is not up to Mr. Thompson, or the Board for that matter, but Union's board of directors and its shareholder, to decide on the terms, amount and timing of share redemptions or the issuance of new debt.

Further, in arguing that Union has "already raised" the $110 million of debt needed to redeem the preferred shares, Mr. Thompson is again misrepresenting the evidence. There are many different factors that influence the amount and timing of new debt. Mr. Packer explained, at page 54 of the transcript, for example, that: "the question whether it has already been placed or not is not straight forward. We did issue 300 million of debt in the - near the end of September we did issue 300 million of debt a few months ago, and based on our current expectation in terms of earnings and capital expenditures and so forth for next year, we don't anticipate needing to issue debt next year. But the forecast is not complete." Circumstances, as anyone who follows current economic news knows, have changed.

Finally, Mr. Thompson has not identified any lack of compliance with the Board's decision in this matter, nor has he pointed to any fact that a further hearing would elicit or to any benefit a further hearing would provide.

Union simply reiterates its earlier submission that neither a motion nor another application is required. The arguments of Mr. Thompson are misleading, ignore the evidence and are without merit. Even if the applicants were to bring a motion to vary the Board's decision and to explain the changed circumstance of no longer proceeding with the preferred share redemption, it would say no more than has, in effect, already been said. In Union's submission, no other proceedings are necessary in the circumstances.

Yours very truly,



Michael A. Penny

MAP/af