



uniongas

A Spectra Energy Company

January 7, 2009

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

Dear Ms. Walli:

Re: EB-2008-0304 – Notice of Motion

Please find attached Union's Notice of Motion in the above noted proceeding.

Yours truly,

[Original signed by]

Chris Ripley
Manager, Regulatory Applications

cc: EB-2008-0304 Intervenors
Michael Penny, Torys

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. for 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.

NOTICE OF MOTION

1. Westcoast Energy Inc. (WEI) and Union Gas Limited (Union) (together, the Applicants) will make a motion to the Ontario Energy Board (Board) on a date and time to be fixed by the Board.
2. The motion is for a review and variance of part of the Board’s Decision and Order in this matter dated November 19, 2008 (Decision), specifically condition #3 set out at page 13 of the Decision.

Background

3. WEI and Union applied under section 43(2) of the *Ontario Energy Board Act*, 1998 (Act) for leave of the Board to transfer the voting shares of Union to a limited partnership, the entire interest in which would be held by WEI. The proposed reorganization also contemplated the conversion of Union into a Nova Scotia unlimited liability company (NSULC). This, in turn, would have required the redemption of \$110 million of outstanding Union preference shares.
4. In its Decision, the Board approved the application subject to three conditions:
 1. the costs of the entire transaction, including the hearing costs, will be for the account of Union’s shareholder 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 Counsel dated December 9, 1998; and,
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.
5. The Applicants fulfilled condition #2 immediately following the hearing. Copies of the letters fulfilling this condition were attached to the Board's Decision. The Applicants have also confirmed that Union's shareholder will bear the entire cost of the Application, as required by condition #1.
6. The cost reduction of \$1.3 million in condition #3 was a reference to the anticipated cost consequences of redeeming Union's preference shares and replacing them with debt, all as discussed in the evidence and in the Decision.
7. By letter of December 1, 2008, the Applicants advised the Board that, as a result of world economic conditions, specifically, the crisis in North American debt and the equity markets, Union's parent, WEI, and its ultimate parent, Spectra Energy, had decided not to proceed with the redemption of Union's preference shares and the conversion of Union into an NSULC. The letter indicated that WEI did, however, propose to transfer Union's voting shares to the limited partnership, as proposed in the Application and as approved by the Board. The Applicants also indicated, however, that because there would be no redemption of Union's preference shares, there would be no \$1.3 million (or any other) cost reduction to reflect in Union's 2009 rates. Accordingly, Union did not propose to reduce its 2009 rates by \$1.3 million.
8. Following submissions in writing from various parties, the Board indicated that a motion requesting a review and variance was required if Union did not propose to fulfill condition #3.

The Relief Sought on the Motion

9. The Applicants seek to vary the Board's Decision by removing condition #3 from the conditions imposed by the Decision.

The Grounds for the Motion

10. The grounds for the motion are that there has been a change in circumstances and that there are new facts that have arisen since the hearing.
11. The changed circumstances and the new facts that have arisen are that there will be no redemption of Union's preference shares and, therefore, no cost of capital reduction to reflect in Union's 2009 rates. This change in circumstance/new fact arose after the release of the Board's Decision on November 18, 2008.
12. Union's preference shares are subject to a condition that they may only be redeemed on 30 days' notice on, at the earliest, January 1, 2009 and at five year intervals thereafter.
13. As a result of Spectra and WEI's decision not to redeem Union's preference shares (and not to proceed with the conversion of Union to NSULC), notice to the preference shareholders was not given. Accordingly, Union's preference shares were not redeemed on January 1, 2009 and cannot be redeemed again until January 1, 2014.
14. Union's owner does, however, intend to proceed with the transfer of Union's voting shares to the limited partnership, as described in the Application and in the evidence.
15. Although the full benefit of the U.S. tax efficiencies described in the original Application will not be achieved with the elimination of the NSULC portion of the reorganization, the limited partnership structure will still provide tax planning benefits by enabling Spectra to defer realization of Union dividends as "earnings and profits" for U.S. tax purposes and to minimize double taxation under cross border taxation rules by seeking to match the dividends coming from Union against tax losses that may arise from other Canadian operations of WEI.

16. This benefit, of deferral and timing flexibility for U.S. tax purposes, was described in the prefiled evidence and in oral testimony before the Board. References to this benefit can be found at:
 1. prefiled evidence, para. 9;
 2. Exhibit C. 2 Addendum, p. 2; and
 3. Transcript, pp. 43-44, 65 and 71-72.
17. The absence of the preference share redemption and conversion to a NSULC have no adverse impact on Union or its customers. Because there will be no preference share redemption, the benefit of a slightly lower cost of capital will not be realized. This feature of the transaction, however, was never a significant factor in the reorganization anyway (Transcript p.9, line 14-17).
18. The reasons advanced by the Applicants for approval of the share transfer and the reasons for the Board's approval of the transfer are equally applicable in the absence of the NSULC conversion and related preference share redemption. There are benefits to Union's shareholder in connection with U. S. tax rules and there is absolutely no harm to Union or its customers.
19. Accordingly, the Applicants ask the Board to vary the Decision by eliminating condition #3 due to these changed circumstances and new facts that arose following the release of the Decision on November 19, 2008, i.e., that there will be no reduced cost of capital from the redemption of Union's preference shares to reflect in Union's 2009 and subsequent rates.

Documentary Evidence

20. Union proposes to rely on the record already filed with the Board, together with Union's letter of December 1, 2008 (attached) and such further material as may be required.

January 7, 2009

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AND TO: All Intervenors