



**RP-2005-0017**  
**EB-2005-0258**  
**EB-2005-0266**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, Sched. B;

**AND IN THE MATTER OF** applications by Union Gas Limited  
for approval of the parties to, the period of, and the storage  
that is the subject of separate long-term gas storage contracts  
between Union Gas Limited and Gaz Metro Limited  
Partnership and Nexen Marketing.

Paul Vlahos  
Presiding Member

Bob Betts,  
Board Member

Paul Sommerville,  
Board Member

## **DECISION AND ORDER**

Union Gas Limited ("Union") and Gaz Metro Limited Partnership ("GazMetro") had entered into a contract (Contract LST014) for gas storage space. This Board-approved contract was for a 10-year period starting April 1, 2001 and ending March 31, 2011. The intent of the original contract was to step down the volume over the total 10-year period from 14,718,600 GJ in the first four-year period to 10,303,020 GJ in the second one-year period, to 5,887,440 GJ in the third one-year period, to 2,943,720 GJ in the fourth four-year period.

On March 22, 2005, Union applied for approval for an amendment to the GazMetro contract to eliminate the first step-down in storage space thus maintaining the contract volume at the original 14,718,600 GJ until April 1, 2006, the scheduled date for the next step-down. The Board assigned this application Board File No. EB-2005-0258.

On April 8, 2005, Union applied for approval of the parties to, the period of, and the gas storage between Union Gas Limited and Nexen Marketing ('the Nexen contract'). The application seeks to replace an expired contract previously approved by the Board. The new Nexen contract was identified as Contract No. LST 042 and involved the contracting of 1,069,099 GJ of gas storage space for the period April 1, 2005 to March 31, 2008. The first contract year of the Nexen contract has already begun under the parameters of Union's current Board-approved blanket storage policy, which allows Union to enter storage contracts for terms of 17 months or less, and for storage space of 2 Bcf or less, without requiring explicit Board approval. The Board assigned this application Board File No. EB-2005-0266.

Union's applications were made pursuant to subsection 39(2) of the Ontario Energy Board Act that allows Board approval without a hearing. Union requested that certain commercial terms in the contracts be held in confidence as per the Board's Rules of Practice and Procedure on the basis that the contracts contain information that is commercially sensitive and will harm the contracting parties' competitive positions.

In the Board's Natural Gas Forum Report, dated March 30, 2005, the Board indicated that it will review the issue of whether it should refrain from regulating some or all matters relating to gas storage by the end of 2006 ("the Storage Review"). In view of that prospective Storage Review, the Board identified the need to determine if any parties, other than Union, Nexen, and GazMetro, would be adversely affected by the outcome of the proceeding and therefore, whether the Board should or should not proceed without a hearing. The Board combined the two proceedings and assigned Board File No. RP-2000-0017/EB-2005-0258/EB-2005-0266 to the combined proceeding.

The notice of applications for the combined proceeding was issued on July 7, 2005 and was served on the all the participants in the Natural Gas Forum. In the Notice, the Board asked for submissions from parties.

## Submissions by Parties

The Board invited submissions on the following issue:

*Is any party adversely affected in a material way by the outcome of the proceeding and if so, what is the impact and how is it material? For example, will a decision to grant the applications adversely affect the Board's consideration and implementation of the Storage Review?*

The Board received submissions from Union, GazMetro, Nexen, Industrial Gas Users Association ("IGUA"), Market Hub Partners ("MHP"), TransCanada PipeLines Limited ("TCPL"), TransCanada Energy Ltd. ("TCEL"), TransAlta Energy Corporation ("TransAlta"), and Enbridge Gas Distribution ("Enbridge"). Reply submissions were received by Union and Nexen.

GazMetro submitted that any further delay in processing the application would have adverse financial and operational effects upon them and urged the Board to consider the current contract within current policy and practice.

Nexen urged the Board to proceed without a hearing as there are no material impact on parties other than Union and the contracting parties.

Both TCEL and TCPL requested intervenor status in the proceeding. To that end, TCEL indicated that it is a market participant in Ontario and its business and operations may be affected by this proceeding. For its part, TCPL indicated that, as a major transporter of natural gas, it may be materially affected by any decision in this proceeding and the impact that such decision may have on future TCPL proceedings, and that the subject-matter of this proceeding may be relevant to TCPL interests in the Natural Gas Forum. Neither TCEL nor TCPL provided any further details as to the nature or materiality of the impact.

TransAlta took no position on the merits of the two applications and stated that the outcome of the proceeding should not prevent or otherwise limit the Board's consideration of issues in the Storage Review.

IGUA's interest was in any potential for cross-subsidy in the event that the negotiated rates for GazMetro and Nexen, being ex-franchise customers, were less than Union's cost of providing services under the contracts.

MHP submitted that the Board should proceed with its review of the two applications and that there should not be any slow-down or freeze on approvals in storage related applications because of the Storage Review.

Enbridge supported the approval of the two applications and indicated that a delay in approval would materially affect gas supply planning and operations of GazMetro. Enbridge was concerned about regulatory uncertainty caused by any change in the storage contract approval process without sufficient opportunity for utilities to establish alternative gas supply arrangements. Enbridge further submitted that approval of the two contracts would not adversely affect the Board's consideration and implementation of the Storage Review.

### **Board Findings**

Under section 39(2) of the *Ontario Energy Board Act*, the Board can approve applications for gas storage contracts without a hearing. The criteria for proceeding without a hearing under this section are not set out in the legislation. The strictest test that may arguably be applied is in section 21(4) of the *Ontario Energy Board Act*, which states that the Board may proceed without a hearing if it determines that no person would be adversely affected in a material way by the outcome of a proceeding. In this case, even if the strict test is applied, the Board has determined that a hearing is not required.

Based on the evidence and submissions of the parties, the Board finds that the nature and specifics of the two applications will not negatively affect in a material way any party or the Board's ability to consider the issues which will be subject to the Storage Review if the Board proceeded to consider Union's two applications without a hearing. In fact, several parties stressed the adverse impact on the contracting parties if the Board did not proceed with the two applications on a timely basis. The Board therefore has determined that it should proceed with the two current applications without a hearing.

The Board accepts Union's submission that the GazMetro and Nexen contracts would not affect Union's ability to meet future gas storage needs for its in-franchise customers. The Board also notes Union's confirmation that the negotiated prices exceed Union's costs.

For all of the reasons above, the Board approves Union's current applications. Specifically, the Board approves the proposed amendment to the GazMetro contract (Contract LST014) and the parties to, the period of, and the storage space to the Nexen contract (Contract LST042) attached to this Decision and Order as Appendix "A" and "B", respectively. Union shall file original signed or certified copies of the executed contracts with the Board as soon as they are available.

Some parties expressed concern about the regulatory uncertainty that this process has caused and that the Board should not change its traditional practices in reviewing gas storage applications because of the prospective Storage Review. While the Board finds merit in that proposition, the determination of how the Board should proceed in future gas storage applications must reflect the appropriate balance, so that neither commerce would be unnecessarily or unduly frustrated, nor that the Storage Review would be unnecessarily or unduly prejudiced. The nature and specifics of future gas storage applications would determine how the Board would proceed.

DATED AT Toronto, August 2, 2005.

ONTARIO ENERGY BOARD

*Original Signed By*

John Zych  
Board Secretary

**APPENDIX "A" TO  
BOARD DECISION AND ORDER  
IN THE MATTER OF RP-2005-0017/EB-2005-0258  
DATED August 2, 2005**

Being a copy of a contract for storage services  
from Union Gas Limited, identified as Contract No. LST014  
from which certain information including Schedule "A" which contains pricing information  
is withheld and not currently available to the public.



THIS STORAGE CONTRACT dated as of the 1st day of June, 2000.

BETWEEN:

UNION GAS LIMITED, a company incorporated under the laws of the Province of Ontario, (hereinafter referred to as "Union")

PARTY OF THE FIRST PART

- and -

GAZ METROPOLITAIN AND COMPANY, LIMITED PARTNERSHIP, a Limited Partnership under the laws of the Province of Quebec, (hereinafter referred to as "Shipper")

PARTY OF THE SECOND PART

WHEREAS, Union owns and operates a natural gas storage system in southwestern Ontario, through which Union offers "Storage Services", as defined in Article V herein;

AND WHEREAS, Shipper wishes to retain Union to provide such Storage Services, as set out herein, and Union has agreed, subject to the terms and conditions of this Contract, to provide the Storage Services requested;

AND WHEREAS, Shipper agreed to purchase and contract for such Storage Services per their correspondence of October 29, 1999, and Union agreed to provide such Storage Services as approved by the Ontario Energy Board ("OEB") on \_\_\_\_\_, 2000, subject to the terms contained herein;

NOW THEREFORE, this Contract witnesses that, in consideration of the mutual covenants and agreements herein contained and the exchange of one (\$1.00) dollar between the parties hereto, the payment and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:



ARTICLE I - INTERPRETATION AND DEFINITIONS

- 1.01 Divisions, Headings and Index: The division of this Contract into Articles, Sections and Subsections, and the insertion of headings and any table of contents or index provided are for convenience of reference only, and shall not affect the construction or interpretation hereof.
- 1.02 Industry Usage: Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the transportation, storage, and distribution or sale of natural gas have an accepted meaning shall have that meaning.
- 1.03 Extended Meaning: Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. The words "herein" and "hereunder" and words of similar import refer to the entirety of this Contract, including the Schedules incorporated into this Contract, and not only to the Section in which such use occurs.
- 1.04 Conflict: In the event of any conflict between the provisions of this Contract and those of Schedule "A" attached to it, Union's C1 and/or M12 Rate Schedules, as defined below, the provisions of Schedule "A" shall prevail over the provisions of this Contract, and the provisions of this Contract shall prevail over those of Union's C1 and/or M12 Rate Schedules.
- 1.05 Measurements: Units set out in Imperial measurement in parentheses beside their SI (metric) equivalent are for reference only and in the event of a conflict between SI (metric) and Imperial measurement herein, SI (metric) shall prevail.
- 1.06 Currency: All reference to dollars in this Contract shall mean Canadian dollars.
- 1.07 Schedules: Refers to the schedules attached hereto which are specifically included as part of this Contract, and include:  
Schedule "A" - Pricing Provisions
- 1.08 (a) "Union's C1 Rate Schedule" or the "C1 Rate Schedule" or "C1" shall mean Union's C1 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.
- (b) "Union's M12 Rate Schedule" or the "M12 Rate Schedule" or "M12" shall mean Union's M12 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.
- 1.09 Definitions: Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in Schedule "A" attached hereto and/or Union's C1 Rate Schedule, General Terms & Conditions and Nominations, unless the context hereof otherwise clearly requires. The following definitions shall be read and interpreted as though included in the aforementioned:





a) "Authorized Quantity" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule;

(b) "Delivery Point" shall mean the point where Union shall deliver gas to Shipper, each described as follows:

Dawn (TCPL) : At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities) : Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(c) "Maximum Storage Balance" shall mean the quantity of storage space held available by Union for Shipper's utilization;

(d) "Receipt Point" shall mean the point where Union shall receive gas from Shipper, each described as follows:

Dawn (TCPL): At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities): Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(e) "Storage Account" shall mean the gas balance held by Union for Shipper and shall equal the quantity of gas received by Union for Shipper's account minus the quantity of gas delivered to Shipper by Union. Where the Storage Account is zero or a positive number, Union is deemed to be providing a Storage Service for Shipper; and, where the Storage Account is a negative number, Union is deemed to be providing a Loan Service for Shipper. Where a Loan Service is being provided, Shipper shall be charged pursuant to Schedule "A" for "Drafted Storage Balance"; and,

(f) "Unauthorized Overrun" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule.

ARTICLE II - GENERAL TERMS & CONDITIONS

2.01 The General Terms & Conditions for the Storage Services provided under this Contract will be those specified in Schedule "A" of Union's C1 Rate Schedule (hereinafter referred to as the "General Terms & Conditions"). The General Terms & Conditions, as specified, are hereby incorporated into and form an integral part of this Contract by reference, as if fully set forth hereto.



For purposes of the General Terms & Conditions, all references to "Customer" shall be deemed to be references to Shipper.

ARTICLE III - CONDITIONS PRECEDENT

3.01 The following conditions precedent shall be satisfied or waived by the party benefiting from the condition, subject to Section 3.03 herein, before the commencement of service obligations hereunder:

i) Conditions benefiting Union:

(a) Union shall have obtained the governmental, regulatory and other approvals or authorizations that are required to enable Union to render the Storage Services contemplated herein, and to render an account in accordance with the provisions of this Contract, including the Schedules attached hereto;

(b) Union shall, where applicable, have obtained all internal and external approvals including the governmental, regulatory and other approvals or authorizations required to construct any facilities necessary to provide the Storage Services hereunder, which approvals and authorizations, if granted upon conditions, shall be conditions satisfactory to Union;

(c) Union shall, where applicable, have completed those facilities necessary to provide the Storage Services hereunder;

(d) Shipper shall provide Union with the requisite security or financial assurances reasonably necessary to ensure its ability to honour the provisions of this Contract as determined solely by Union. Such security or financial assurances will be reasonable and in a form and amount acceptable to Union;

ii) Conditions benefiting Shipper:

(e) Shipper shall, as required, have entered into the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein; and,

(f) Shipper shall, where applicable, have received the governmental, regulatory and other approvals or authorizations that are required from the United States of America ("U.S.A.") and from Canada for the gas quantities handled under this Contract, which authorizations if granted upon conditions, shall be conditions satisfactory to Shipper.

3.02 Union and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfill their respective conditions precedent specified in Section 3.01. Each party shall notify the other forthwith in writing of their respective fulfilment or waiver of such conditions.

3.03 In the event that the conditions precedent as specified in Section 3.01, excluding Subsections 3.01 (b) and (c), are not satisfied, waived by the party deriving the benefit from that condition precedent with Union's consent or extended by mutual agreement, by November 1, 2000, then the



parties hereto shall, upon thirty (30) days written notice by either party, such notice to be made not before November 1, 2000, be released from all their obligations hereunder, and this Contract shall thereupon be terminated.

ARTICLE IV - TERM OF CONTRACT

4.01 This Contract shall be effective as of the date of execution hereof; however, the service obligations, terms and conditions hereunder shall, subject to Article III, commence on the later of April 1, 2001, or, if applicable, the day following the date that the conditions precedent in Section 3.01 are satisfied or waived and shall continue in full force and effect until March 31, 2011 (the "Termination Date").

4.02 Without limiting the generality of the foregoing, this Contract may be terminated in accordance with Section XII of the General Terms & Conditions.

4.03 For the purpose of completing a final determination of the actual quantities of gas handled in any of the Storage Services to Shipper, this Contract shall be deemed to be in effect for an extended period equal to the time during which the companies, that transport the gas contemplated herein for Union and Shipper, retain the right to amend their statements. Such extended period of time shall not exceed three (3) years from the date of termination of this Contract.

ARTICLE V - STORAGE SERVICES

5.01 Services: Shipper agrees to the terms and conditions set out herein upon nomination to Union for the provision of the Storage Services, as follows:

A/ Storage Services:

(a) Union agrees, on any day and subject to Subsections 5.01 B and C, to either receive a quantity of gas from Shipper at the Receipt Point and credit Shipper's Storage Account, or to deliver a quantity of gas to Shipper at the Delivery Point and debit Shipper's Storage Account, such quantity of gas as Shipper may nominate and Union has authorized for Storage Service;

(b) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 14,718,600 GJ (13,950,539 MMBtu) during the period from: April 1, 2001 to March 31, 2005; and,

(c) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 10,303,020 GJ (9,765,377 MMBtu) during the period from: April 1, 2005 to March 31, 2006; and,

(d) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 5,887,440 GJ (5,580,215 MMBtu) during the period from: April 1, 2006 to March 31, 2007; and,

(e) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 2,943,720 GJ (2,790,108 MMBtu) during the period from April 1, 2007 to March 31, 2011; and,

(f) Each reduced volume of the Maximum Storage Balance may be extended to the Termination Date of this Contract upon notice by Shipper two years prior to the end of the reduction period. The extended volume will be priced at the market-based rate as determined by mutual agreement by both parties and will be subject to approval by the Ontario Energy Board.

**B/ Injection Demand:**

Union shall not be obligated to receive a quantity of gas in excess of an "Injection Demand" as hereinafter defined:

(a) from October 1 through and including November 30, on an interruptible basis and subject to Subsection 5.01 B(c), a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(b) from December 1 through and including September 30, on a firm basis and subject to Subsection 5.01 B(c), and provided that the current balance in the Storage Account is:

(i) less than 75% of the Maximum Storage Balance, a daily quantity equal to 0.75% of the Maximum Storage Balance; and,

(ii) greater than or equal to 75% of the Maximum Storage Balance, a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(c) the difference between the Maximum Storage Balance and Shipper's Storage Account.

Under no circumstances shall Union be required to accept receipt of a quantity of gas in excess of the Injection Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to accept receipt of greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

**C/ Withdrawal Demand:**

Union shall not be obligated to deliver a quantity of gas in excess of a "Withdrawal Demand" hereinafter defined as:

(a) from April 1 through and including May 31, on an interruptible basis and subject to Subsection 5.01 C(c), a daily quantity equal to 1.263% of the Maximum Storage Balance; and,

(b) from June 1 through and including March 31, subject to Subsection 5.01 C(c), and provided that the current balance in the Storage Account is:

- (i) less than 20% of the Maximum Storage Balance, a daily quantity equal to .8% of the Maximum Storage Balance on a firm basis, plus .463% of the Maximum Storage Balance on an interruptible basis; and,
  - (ii) greater than or equal to 20% of the Maximum Storage Balance, a daily quantity equal to 1.263% of the Maximum Storage Balance on a firm basis; and,
- (c) except: on those days where the delivery of gas would result in Shipper's Storage Account being reduced to zero (0), in which event the Withdrawal Demand shall be limited to the quantity remaining in Shipper's Storage Account.

Under no circumstances shall Union be required to deliver to Shipper a quantity of gas in excess of the Withdrawal Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to deliver greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

D/ Fuel:

Shipper shall provide the fuel requirements, per the M12 Rate Schedule in effect at the time and as may be amended from time to time.

5.02 Daily Quantity: The Injection Demand and/or Withdrawal Demand, as the case may be on any day, and as defined in Section 5.01, shall be known as the "Daily Quantity".

5.03 Authorized Overrun: The amount by which Shipper's Authorized Quantity exceeds the Daily Quantity.

5.04 Accounting for Storage Services: All quantities of gas handled by Union shall be accounted for on a daily basis. Storage Services provided hereunder shall be in accordance with the prescribed nominations procedures herein.

5.05 Commingling: Union shall have the right to commingle the quantity of gas referenced herein with gas owned by Union or gas being stored and or transported by Union for third parties.

5.06 Termination: Shipper's Storage Account is to be zero as of the Termination Date. It is Shipper's responsibility to schedule its deliveries to ensure that Shipper's Storage Account is zero on the Termination Date, except in the event that a force majeure, as provided for in Section 6.01 and where reasonably proven, has prevented delivery of quantities by Union to Shipper. Any gas remaining in Shipper's Storage Account as of the Termination Date, subject to other agreement of the parties hereto, shall be immediately forfeited to Union without further recourse.

## ARTICLE VI - FORCE MAJEURE

6.01 An event of force majeure on Union's system, as defined in Section XI of the General Terms & Conditions, will excuse a delay in either the delivery of the gas by Union or the acceptance of receipt of the gas by Union hereunder, and will extend the time required for Union's or Shipper's obligation to be fulfilled on a day for day basis.

If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand) by reason of force majeure on Union's system, then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in this Section, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. "Daily Demand Rate" shall mean the Deliverability Rate for firm storage contained in Union's M12 Rate Schedule divided by the number of days in the month for which such rate is being calculated.

6.02 An event of force majeure, as contemplated under Section 6.01, or, upstream or downstream of Union's system, shall not relieve Shipper of any charges payable under Article VIII.

## ARTICLE VII - SERVICE CURTAILMENT

7.01 Capacity Sharing: Where requests for interruptible Storage Services hereunder exceed the capacity available for such Storage Services, Union will accept nominations from shippers and allocate capacity in the order of pricing for Storage Services and prior quantities moved, and shippers shall be so advised. Any interruptible services provided herein are subordinate to any and all firm services supplied by Union.

7.02 Capacity Procedures: Union reserves the right to change its procedures for sharing interruptible capacity and will provide Shipper with two (2) months prior notice of any such change.

7.03 Maintenance: Union's facilities from time to time may require maintenance or construction. In the event that such event occurs and in Union's sole opinion, acting reasonably, may impact its ability to meet Shipper's requirements, Union shall provide at least ten (10) days notice to Shipper. In the event the maintenance impacts Union's ability to meet Shipper's requirements, Union shall not be liable for any damages and shall not be deemed to be in breach of this Contract. To the extent that Union's ability to accept and/or deliver Shipper's gas is impaired, the time required for Union's obligation to be fulfilled on a day for day basis shall be extended. If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand), then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in Section 6.01, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. Union shall use reasonable efforts to determine a mutually acceptable period during which such maintenance or construction will occur and also to limit the extent and duration of any impairments. Union will endeavour to schedule and complete the maintenance and construction, that can be scheduled and completed, and which would normally be expected to impact on Union's ability to meet its obligations of any contract year, during the period from April 1 through to November 15.

## ARTICLE VIII - CHARGES AND RATES

8.01 The charges and rates to be billed by Union and paid for by Shipper for the Storage Services provided under this Contract and as agreed to by the parties, will be those specified in Schedule "A" attached hereto.

8.02 Prices exclude any applicable Goods and Services Tax or other taxes, royalties or levies imposed currently or subsequent to the commencement of this Contract.

8.03 Set Off: If Shipper shall, at any time, be in arrears under any of its payment obligations to Union, under this Contract, or otherwise indebted to Union, then Union shall be entitled to reduce the amount payable by Union to Shipper under this Contract by an amount equal to the amount of such arrears or other indebtedness to Union. In addition to the foregoing remedy, Union may, upon forty-eight (48) hours verbal notice, take possession of any or all of Shipper's gas under this Contract and any enhancements to this Contract, which shall be deemed to have been assigned to Union, to reduce such arrears or other indebtedness to Union.

## ARTICLE IX - PRESSURES

9.01 For Storage Services provided pursuant to Article V hereof:

(a) Receipts of gas by Union for the account of Shipper, at the Receipt Point, shall be made at a pressure of not less than 4.825 kPa; and,

(b) Deliveries of gas by Union for the account of Shipper, at the Delivery Point, shall be made at a pressure of not greater than 4.825 kPa.

Union shall operate its facilities at pressures which will normally permit the receipt and delivery of quantities scheduled for Storage Services hereunder; provided, however, that Union may at its discretion effect such receipts and deliveries by gas displacement. Under no circumstances shall Union be obligated to receive or deliver gas hereunder at pressures exceeding the maximum allowable operating pressures prescribed under any applicable governmental regulations; nor shall Union be required to make any physical deliveries or to accept any physical receipts which its existing facilities cannot accommodate.

## ARTICLE X - MEASUREMENT AND QUALITY

10.01 For Storage Services provided pursuant to Article V hereof:

(a) The quality of the gas and the measurement of the gas to be received by Union hereunder is to be of a merchantable quality and in accordance with the quality standards and measurement standards as set out by Union in the General Terms & Conditions, but, Union will use reasonable efforts to accept gas of a quality that may deviate from the quality standards set out therein. Union will also accept gas of a quality as set out in TCPL's General Terms and Conditions.

(b) Union shall cause Shipper to obtain measurement of the total quantity of gas to be received by Union hereunder from the upstream transporter(s) (or Union where applicable). Such measurement shall be done in accordance with established practices between Union and the upstream transporter(s) (or Union where applicable).

10.02 In the event of an error in metering or a meter failure, (such error or failure being determined through check measurement by Union or any other available method), then Union shall ask Shipper or Shipper's Agent to invoke its rights as Shipper with the upstream transporter(s) (or Union where applicable). Shipper shall exercise due diligence in the enforcement of any inspection and/or verification rights and procedures which Shipper or Shipper's Agent may have in relation to the meters owned and operated by the upstream transporter(s) (or Union where applicable) at the Receipt Point.

#### ARTICLE XI - NOMINATIONS

11.01 Nominations shall be pursuant to Schedule "B" of Union's M12 Rate Schedule. Schedule "B" of Union's M12 Rate Schedule is hereby incorporated into and forms an integral part of this Contract. For purposes of the Nominations Section, all references to "Customer" shall be deemed to be references to Shipper.

#### ARTICLE XII - SHIPPER'S REPRESENTATIONS AND WARRANTIES

12.01 Shipper's Warranty: Shipper warrants that it will, if required, maintain, or have maintained on its behalf, such certificates, permits, licenses and authorizations from regulatory bodies or other governmental agencies in the U.S.A. and Canada, as the case may be, as are necessary to enable Shipper, or others designated by Shipper, to deliver to Union at the Receipt Point and to export from the U.S.A. and import and deliver into Canada and or export from Canada and import and deliver into the U.S.A., the quantities of gas to be handled by Union under this Contract. Shipper further warrants that it shall maintain the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein.

12.02 Financial Representations: Shipper represents and warrants that the financial assurances and representations provided to Union at the commencement of this Contract (if any) shall remain in place throughout the term hereof. Shipper shall notify Union in the event of any changes to the financial assurances and representations throughout the term hereof. Should Union, acting reasonably, solely determine that Shipper's financial condition warrants such, Shipper shall within fourteen (14) days of receipt of such notice by Union, obtain and provide to Union a letter of credit or other security in the form and amount reasonably required by Union (the "Security"). In the event that Shipper does not provide to Union such Security, Union may deem a default under the Default and Termination provisions of Section XII of the General Terms & Conditions.



## ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.01 Assignment: Shipper may not assign this Contract without the written consent of Union, the approval of the OEB, and any financial assurances as required by Union. Should Union consent to the assignment, Union will apply for OEB approval with all costs of the application to be paid by Shipper.

13.02 Notices: Subject to the express provisions of this Contract, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer or other responsible employee of the addressee or sent by registered mail, charges prepaid, or by facsimile or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened, or during any actual, postal strike or other disruption of the postal service. Any communication personally delivered shall be deemed to have been validly and effectively received on the date of such delivery. Any communication so sent by facsimile or other means of telecommunication shall be deemed to have been validly and effectively received on the business day following the day on which it is sent. Any communication so sent by mail shall be deemed to have been validly and effectively received on the seventh business day following the day on which it is postmarked.

Communications to the parties hereto shall be directed as follows:

**IF TO SHIPPER:**

Gaz Metropolitan and Company, Limited Partnership  
1717 du Harve Street  
Montreal, Quebec  
H1K 2X3

**Nominations: Attention:**

Co-ordinator, Operation and G.C.C.  
Telephone: 514-598-3856  
Facsimile: 514-529-2253

**Secondary Contact: Attention:**

Gas Control Centre  
Telephone: 514-598-3328  
Facsimile: 514-598-3613

**IF TO UNION:**

Union Gas Limited.  
50 Keil Drive North,  
CHATHAM, Ontario N7M 5M1

**Nominations: Attention:**

Manager, Gas Control  
Telephone: 519-436-5217  
Facsimile: 519-436-4635

**Secondary Contact: Attention:**

Manager, Marketing and Sales  
Telephone: 519-436-4620  
Facsimile: 519-436-4647

Notwithstanding the above, nominations shall be made by facsimile or other recorded electronic means, subject to execution of the "Agreement for Use of the Secured Portion of Union Gas Limited's Website," or such other agreement, satisfactory to Union, and will be deemed to be received on the same day and same time as sent. Each party may from time to time change its address for the purpose of this Section by giving notice of such change to the other party in accordance with this Section.

13.03 Law of Contract: Union and Shipper agree that this Contract is made in the Province of Ontario and that the courts of the Province of Ontario shall have exclusive jurisdiction in all matters contained herein. The parties further agree this Contract shall be construed exclusively in accordance with the laws of the Province of Ontario.

13.04 Possession of Gas:

a) Union accepts no responsibility for any gas prior to such gas being delivered to Union at the Receipt Point and after its delivery by Union at the Delivery Point. As between the parties hereto, Union shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas enters Union's system until such gas is delivered to Shipper.

b) Shipper and Union shall each indemnify and hold the other harmless against any and all suits, actions, debts, accounts, damages, costs, losses and expenses caused by or resulting from its control and possession of the gas stored hereunder.

13.05 Title to Gas: Shipper represents and warrants to Union that, Shipper shall have good and marketable title or legal authority to all gas delivered to Union hereunder, which gas is not subject to litigation. Furthermore, Shipper hereby agrees to indemnify and save Union harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of claims of any or all third parties to such gas or on account of royalties, taxes, license fees, or other charges thereon.

13.06 Entire Contract: This Contract constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. This Contract supersedes any prior or contemporaneous agreements, understandings, negotiations or discussions, whether oral or written, of the parties in respect of the subject matter hereof.

13.07 Time of Essence: Time shall be of the essence hereof.

13.08 Counterparts: This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an originally executed copy, and it shall not be necessary in making proof of this Contract to produce all of such counterparts.

13.09 Amendments and Waivers: No amendment or waiver of any provision of this Contract nor consent to any departure of either party hereto shall in any event be effective unless the same shall be in writing and signed by each of the Shipper and Union and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Contract shall operate as a waiver thereof.

13.10 Severability: If any provision hereof is invalid or unenforceable in any jurisdiction, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

13.11 General Liability: The liability of the parties hereunder is limited to direct damages only and all other remedies or damages are waived. In no event shall either party be liable for consequential, incidental, punitive, or indirect damages, in tort, contract or otherwise.

THIS CONTRACT SHALL BE BINDING UPON and shall enure to the benefit of the parties hereto and their respective successors and permitted and lawful assigns.

IN WITNESS WHEREOF this Contract has been properly executed by the parties hereto by their duly authorized officers as of the date first above written.

UNION GAS LIMITED

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
Assistant Secretary

GAZ METROPOLITAIN AND COMPANY,  
LIMITED PARTNERSHIP, by its General Partner,  
Gaz Metropolitan, inc.

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

Contract No. LST014

**APPENDIX "B" TO  
BOARD DECISION AND ORDER  
IN THE MATTER OF RP-2005-0017/EB-2005-0266**

**DATED August 2, 2005**

Being a copy of a contract for storage services  
from Union Gas Limited, identified as Contract No. LST042  
from which certain information including Schedule "B" which contains pricing information  
is withheld and not currently available to the public.

**Contract No. LST042**

**STORAGE CONTRACT**

**BETWEEN**

**UNION GAS LIMITED**

**AND**

**NEXEN MARKETING**

**DATED APRIL 1, 2005**

**Schedule "A" Pricing Provisions**

STORAGE CONTRACT

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**THIS STORAGE CONTRACT** dated as of the 1<sup>st</sup> day of April, 2005,

BETWEEN:

**UNION GAS LIMITED**, a company incorporated under the laws of the Province of Ontario, (hereinafter referred to as "Union")

PARTY OF THE FIRST PART

- and -

**NEXEN MARKETING**, a partnership formed under the laws of the Province of Alberta, (hereinafter referred to as "Shipper")

PARTY OF THE SECOND PART

WHEREAS, Union owns and operates a natural gas storage system in southwestern Ontario, through which Union offers "Storage Services", as defined in Article V herein;

AND WHEREAS, Shipper wishes to retain Union to provide such Storage Services, as set out herein, and Union has agreed, subject to the terms and conditions of this Contract, to provide the Storage Services requested;

NOW THEREFORE, this Contract witnesses that, in consideration of the mutual covenants and agreements herein contained and the exchange of one (\$1.00) dollar between the parties hereto, the payment and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## ARTICLE I - INTERPRETATION AND DEFINITIONS

1.01 Divisions, Headings and Index: The division of this Contract into Articles, Sections and Subsections, and the insertion of headings and any table of contents or index provided are for convenience of reference only, and shall not affect the construction or interpretation hereof.

1.02 Industry Usage: Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the transportation, storage, and distribution or sale of natural gas have an accepted meaning shall have that meaning.

1.03 Extended Meaning: Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. The words "herein" and "hereunder" and words of similar import refer to the entirety of this Contract, including the Schedules incorporated into this Contract, and not only to the Section in which such use occurs.

1.04 Conflict: In the event of any conflict between the provisions of this Contract and those of Schedule "A" attached to it, Union's C1 and/or M12 Rate Schedules, as defined below, the provisions of Schedule "A" shall prevail over the provisions of this Contract, and the provisions of this Contract shall prevail over those of Union's C1 and/or M12 Rate Schedules.

1.05 Measurements: Units set out in Imperial measurement in parentheses beside their SI (metric) equivalent are for reference only and in the event of a conflict between SI (metric) and Imperial measurement herein, SI (metric) shall prevail.

1.06 Currency: All reference to dollars in this Contract shall mean Canadian dollars.

1.07 Schedules: Refers to the schedules attached hereto which are specifically included as part of this Contract, and include:

Schedule "A" - Pricing Provisions

1.08 (a) "Union's C1 Rate Schedule" or the "C1 Rate Schedule" or "C1" shall mean Union's C1 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.

(b) "Union's M12 Rate Schedule" or the "M12 Rate Schedule" or "M12" shall mean Union's M12 Rate Schedule, (including Schedules attached thereto), or such other replacement rate schedule which may be applicable to the Storage Services provided hereunder as approved by the Ontario Energy Board from time to time, and is incorporated into this Contract by reference as if fully set forth hereto.

1.09 Definitions: Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in Schedule "A" attached hereto and/or Union's C1 Rate Schedule, General Terms & Conditions and Nominations, unless the context hereof otherwise clearly requires. The following definitions shall be read and interpreted as though included in the aforementioned:

(a) "Authorized Quantity" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule;



(b) "Contract Year" shall have the meaning as defined in Union's C1 Rate Schedule, General Terms & Conditions beginning on April 1, of each year, except for the first Contract Year which shall commence on the date as specified in Section 4.01 herein, and end on March 31, 2006;

(c) "Delivery Point" shall mean the point where Union shall deliver gas to Shipper, each described as follows:

Dawn (TCPL) : At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities): Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(d) "Maximum Storage Balance" shall mean the quantity of storage space held available by Union for Shipper's utilization;

(e) "Receipt Point" shall mean the point where Union shall receive gas from Shipper, each described as follows:

Dawn (TCPL): At the junction of Union's and TCPL's facilities, at or adjacent to Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton; and,

Dawn (Facilities): Union's Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn, in the County of Lambton. This point is applicable for quantities of gas that have been previously transported or stored under other contracts that Shipper may have in place with Union;

(f) "Storage Account" shall mean the gas balance held by Union for Shipper and shall equal the quantity of gas received by Union for Shipper's account minus the quantity of gas delivered to Shipper by Union. Where the Storage Account is zero or a positive number, Union is deemed to be providing a Storage Service for Shipper; and, where the Storage Account is a negative number, Union is deemed to be providing a Loan Service for Shipper. Where a Loan Service is being provided, Shipper shall be charged pursuant to Schedule "A" for "Drafted Storage Balance"; and,

(g) "Unauthorized Overrun" shall have the meaning as set forth in Schedule "B" of Union's C1 Rate Schedule.

## ARTICLE II - GENERAL TERMS & CONDITIONS

2.01 The General Terms & Conditions for the Storage Services provided under this Contract will be those specified in Schedule "A" of Union's C1 Rate Schedule (hereinafter referred to as the "General Terms & Conditions"). The General Terms & Conditions, as specified, are hereby incorporated into and form an integral part of this Contract by reference, as if fully set forth hereto. For purposes of the General Terms & Conditions, all references to "Customer" shall be deemed to be references to Shipper.

## ARTICLE III - CONDITIONS PRECEDENT

3.01 The following conditions precedent shall be satisfied or waived by the party benefiting from the condition, subject to Section 3.03 herein, before the commencement of service obligations hereunder:

i) Conditions benefiting Union:

(a) Union shall have obtained the governmental, regulatory and other approvals or authorizations that are required to enable Union to render the Storage Services contemplated herein, and to render an account in accordance with the provisions of this Contract, including the Schedules attached hereto;

(b) Union shall, where applicable, have obtained all internal and external approvals including the governmental, regulatory and other approvals or authorizations required to construct any facilities necessary to provide the Storage Services hereunder, which approvals and authorizations, if granted upon conditions, shall be conditions satisfactory to Union;

(c) Union shall, where applicable, have completed those facilities necessary to provide the Storage Services hereunder;

(d) Shipper shall provide Union with the requisite security or financial assurances reasonably necessary to ensure its ability to honour the provisions of this Contract as determined solely by Union. Such security or financial assurances will be reasonable and in a form and amount acceptable to Union;

ii) Conditions benefiting Shipper:

(a) Shipper shall, as required, have entered into the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein; and,

(b) Shipper shall, where applicable, have received the governmental, regulatory and other approvals or authorizations that are required from the United States of America ("U.S.A.") and from Canada for the gas quantities handled under this Contract, which authorizations if granted upon conditions, shall be conditions satisfactory to Shipper.

3.02 Union and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfil their respective conditions precedent specified in Section 3.01. Each party shall notify the other forthwith in writing of their respective fulfilment or waiver of such conditions.

3.03 In the event that the conditions precedent as specified in Section 3.01, excluding Subsections 3.01 (b) and (c), are not satisfied, waived by the party deriving the benefit from that condition precedent with Union's consent or extended by mutual agreement, by March 25, 2005, then the parties hereto shall, upon thirty (30) days written notice by either party, such notice to be made not before March 25, 2005, be released from all their obligations hereunder, and this Contract shall thereupon be terminated.

#### ARTICLE IV - TERM OF CONTRACT

4.01 This Contract shall be effective as of the date of execution hereof; however, the service obligations, terms and conditions hereunder shall, subject to Article III, commence on the later of April 1, 2005, or, if applicable, the day following the date that the conditions precedent in Section 3.01 are satisfied or waived and shall continue in full force and effect until March 31, 2008 (the "Termination Date").

4.02 Without limiting the generality of the foregoing, this Contract may be terminated in accordance with Section XII of the General Terms & Conditions.

4.03 For the purpose of completing a final determination of the actual quantities of gas handled in any of the Storage Services to Shipper, this Contract shall be deemed to be in effect for an extended period equal to the time during which the companies, that transport the gas contemplated herein for Union and Shipper, retain the right to amend their statements. Such extended period of time shall not exceed three (3) years from the date of termination of this Contract.

#### ARTICLE V - STORAGE SERVICES

5.01 Services: Shipper agrees to the terms and conditions set out herein upon nomination to Union for the provision of the Storage Services, as follows:

##### A/ Storage Services:

(a) Union agrees, on any day and subject to Subsections 5.01 B and C, to either receive a quantity of gas from Shipper at the Receipt Point and credit Shipper's Storage Account, or to deliver a quantity of gas to Shipper at the Delivery Point and debit Shipper's Storage Account, such quantity of gas as Shipper may nominate and Union has authorized for Storage Service;

(b) The quantity of gas in Shipper's Storage Account shall not exceed a Maximum Storage Balance of 1,069,099 GJ (1,013,310 MMBtu) during the period from April 1, 2005 to March 31, 2008; and,

(c) On June 30<sup>th</sup> of each Contract Year, the quantity of gas in Shipper's Storage Account shall not be below 160,365 GJ (151,997 MMBtu).

##### B/ Injection Demand:

Union shall not be obligated to receive a quantity of gas in excess of an "Injection Demand" as hereinafter defined:

(a) from October 1 through and including November 30, on an interruptible basis and subject to Subsection 5.01 B(c), a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(b) from December 1 through and including September 30, on a firm basis and subject to Subsection 5.01 B(c), and provided that the current balance in the Storage Account is:

(i) less than 75% of the Maximum Storage Balance, a daily quantity equal to 0.75% of the Maximum Storage Balance; and,

(ii) greater than or equal to 75% of the Maximum Storage Balance, a daily quantity equal to 0.5% of the Maximum Storage Balance; and,

(c) the difference between the Maximum Storage Balance and Shipper's Storage Account.

Under no circumstances shall Union be required to accept receipt of a quantity of gas in excess of the Injection Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to accept receipt of greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

C/ Withdrawal Demand:

Union shall not be obligated to deliver a quantity of gas in excess of a "Withdrawal Demand" hereinafter defined as:

(a) from April 1 through and including May 31, on an interruptible basis and subject to Subsection 5.01 C(c), a daily quantity equal to 1.2% of the Maximum Storage Balance; and,

(b) from June 1 through and including March 31, subject to Subsection 5.01 C(c), and provided that the current balance in the Storage Account is:

(i) less than 25% of the Maximum Storage Balance, a daily quantity equal to 0.8% of the Maximum Storage Balance on a firm basis, plus, 0.4% of the Maximum Storage Balance on an interruptible basis; and,

(ii) greater than or equal to 25% of the Maximum Storage Balance, a daily quantity equal to 1.2% of the Maximum Storage Balance on a firm basis; and,

(c) except on those days where the delivery of gas would result in Shipper's Storage Account being reduced to zero (0), in which event the Withdrawal Demand shall be limited to the quantity remaining in Shipper's Storage Account.

Under no circumstances shall Union be required to deliver to Shipper a quantity of gas in excess of the Withdrawal Demand. Union agrees that it shall, upon the request of Shipper, use reasonable efforts to deliver greater daily quantities, on an interruptible basis, if present or possible future operating conditions permit in Union's sole opinion.

D/ Fuel:

Shipper shall provide the fuel requirements, per the M12 Rate Schedule in effect at the time and as may be amended from time to time.

5.02 Daily Quantity: The Injection Demand and/or Withdrawal Demand, as the case may be on any day, and as defined in Section 5.01, shall be known as the "Daily Quantity".

5.03 Authorized Overrun: The amount by which Shipper's Authorized Quantity exceeds the Daily Quantity.

5.04 Accounting for Storage Services: All quantities of gas handled by Union shall be accounted for on a daily basis. Storage Services provided hereunder shall be in accordance with the prescribed nominations procedures herein.

5.05 Commingling: Union shall have the right to commingle the quantity of gas referenced herein with gas owned by Union or gas being stored and/or transported by Union for third parties.

5.06 Termination: Shipper's Storage Account is to be zero as of the Termination Date. It is Shipper's responsibility to schedule its deliveries to ensure that Shipper's Storage Account is zero on the Termination Date, except in the event that a force majeure, as provided for in Section 6.01 and where reasonably proven, has prevented delivery of quantities by Union to Shipper. Any gas remaining in Shipper's Storage Account as of the Termination Date, subject to other agreement of the parties hereto, shall be immediately forfeited to Union without further recourse.

#### ARTICLE VI - FORCE MAJEURE

6.01 An event of force majeure on Union's system, as defined in Section XI of the General Terms & Conditions, will excuse a delay in either the delivery of the gas by Union or the acceptance of receipt of the gas by Union hereunder, and will extend the time required for Union's or Shipper's obligation to be fulfilled on a day for day basis.

If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand) by reason of force majeure on Union's system, then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in this Section, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. "Daily Demand Rate" shall mean the Deliverability Rate for firm storage contained in Union's M12 Rate Schedule divided by the number of days in the month for which such rate is being calculated.

6.02 An event of force majeure, as contemplated under Section 6.01, or, upstream or downstream of Union's system, shall not relieve Shipper of any charges payable under Article VIII.

#### ARTICLE VII - SERVICE CURTAILMENT

7.01 Capacity Sharing: Where requests for interruptible Storage Services hereunder exceed the capacity available for such Storage Services, Union will accept nominations from shippers and allocate capacity in the order of pricing for Storage Services and prior quantities moved, and shippers shall be so advised. Any interruptible services provided herein are subordinate to any and all firm services supplied by Union.

7.02 Capacity Procedures: Union reserves the right to change its procedures for sharing interruptible capacity and will provide Shipper with two (2) months prior notice of any such change.

7.03 Maintenance: Union's facilities from time to time may require maintenance or construction. In the event that such event occurs and in Union's sole opinion, acting reasonably, may impact its ability to meet Shipper's requirements, Union shall provide at least ten (10) days notice to Shipper. In the event the maintenance impacts Union's ability to meet Shipper's requirements, Union shall not be liable for any damages and shall not be deemed to be in breach of this Contract. To the extent that Union's ability to accept and/or deliver Shipper's gas is impaired, the time required for Union's obligation to be fulfilled on a day for day basis shall be extended. If on any day Union fails to deliver the nominated and Authorized Quantity (up to the Withdrawal Demand), then for that day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, as defined in Section 6.01, multiplied by the difference between the quantity of gas actually delivered to Shipper during the said day and the quantity of gas which Shipper in good faith nominated on such day. Union shall use reasonable efforts to determine a mutually acceptable period during which such maintenance or construction will occur and also to limit the extent and duration of any impairments. Union will endeavour to schedule and complete the maintenance and construction, that can be scheduled and completed, and which would normally be expected to impact on Union's ability to meet its obligations of any Contract Year, during the period from April 1 through to November 15.

#### ARTICLE VIII - CHARGES AND RATES

8.01 The charges and rates to be billed by Union and paid for by Shipper for the Storage Services provided under this Contract and as agreed to by the parties, will be those specified in Schedule "A" attached hereto.

8.02 Prices exclude any applicable Goods and Services Tax or other taxes, royalties or levies imposed currently or subsequent to the commencement of this Contract.

8.03 Set Off: If Shipper shall, at any time, be in arrears under any of its payment obligations to Union, under this Contract, or otherwise indebted to Union, then Union shall be entitled to reduce the amount payable by Union to Shipper under this Contract by an amount equal to the amount of such arrears or other indebtedness to Union. In addition to the foregoing remedy, Union may, upon forty-eight (48) hours verbal notice, to be followed by written notice, take possession of any or all of Shipper's gas under this Contract and any enhancements to this Contract, which shall be deemed to have been assigned to Union, to reduce such arrears or other indebtedness to Union. If Union shall, at any time, be in arrears under any of its payment obligations to Shipper, under this Contract, or otherwise indebted to Shipper, then Shipper shall be entitled to reduce the amount payable by Shipper to Union under this Contract by an amount equal to the amount of such arrears or other indebtedness to Shipper.

#### ARTICLE IX - PRESSURES

9.01 For Storage Services provided pursuant to Article V hereof:

(a) Receipts of gas by Union for the account of Shipper, at the Receipt Point, shall be made at a pressure of not less than 4,825 kPa; and,

(b) Deliveries of gas by Union for the account of Shipper, at the Delivery Point, shall be made at a pressure of not greater than 4,825 kPa.

Union shall operate its facilities at pressures which will normally permit the receipt and delivery of quantities scheduled for Storage Services hereunder; provided, however, that Union may at its discretion effect such receipts and deliveries by gas displacement. Under no circumstances shall Union be obligated to receive or deliver gas hereunder at pressures exceeding the maximum allowable operating pressures prescribed under any applicable governmental regulations; nor shall Union be required to make any physical deliveries or to accept any physical receipts which its existing facilities cannot accommodate.

#### ARTICLE X - MEASUREMENT AND QUALITY

10.01 For Storage Services provided pursuant to Article V hereof:

(a) The quality of the gas and the measurement of the gas to be received by Union hereunder is to be of a merchantable quality and in accordance with the quality standards and measurement standards as set out by Union in the General Terms & Conditions, but, Union will use reasonable efforts to accept gas of a quality that may deviate from the quality standards set out therein. Union will also accept gas of a quality as set out in TCPL's General Terms and Conditions.

(b) Union shall cause Shipper to obtain measurement of the total quantity of gas to be received by Union hereunder from the upstream transporter(s) (or Union where applicable). Such measurement shall be done in accordance with established practices between Union and the upstream transporter(s) (or Union where applicable).

10.02 In the event of an error in metering or a meter failure, (such error or failure being determined through check measurement by Union or any other available method), then Union shall ask Shipper or Shipper's Agent to invoke its rights as Shipper with the upstream transporter(s) (or Union where applicable). Shipper shall exercise due diligence in the enforcement of any inspection and/or verification rights and procedures which Shipper or Shipper's Agent may have in relation to the meters owned and operated by the upstream transporter(s) (or Union where applicable) at the Receipt Point.

#### ARTICLE XI - NOMINATIONS

11.01 Nominations shall be pursuant to Schedule "B" of Union's C1 Rate Schedule. Schedule "B" of Union's C1 Rate Schedule is hereby incorporated into and forms an integral part of this Contract. For purposes of the Nominations Section, all references to "Customer" shall be deemed to be references to Shipper.

#### ARTICLE XII - SHIPPER'S REPRESENTATIONS AND WARRANTIES

12.01 Shipper's Warranty: Shipper warrants that it will, if required, maintain, or have maintained on its behalf, such certificates, permits, licenses and authorizations from regulatory bodies or other governmental agencies in the U.S.A. and Canada, as the case may be, as are necessary to enable Shipper, or others designated by Shipper, to deliver to Union at the Receipt Point and to export from the U.S.A. and import and deliver into Canada and/or export from Canada and import and deliver into the U.S.A.,

the quantities of gas to be handled by Union under this Contract. Shipper further warrants that it shall maintain the necessary contracts with Union and/or others to facilitate the Storage Services contemplated herein.

12.02 Financial Representations: Shipper represents and warrants that the financial assurances and representations provided to Union at the commencement of this Contract (if any) shall remain in place throughout the term hereof. Shipper shall notify Union in the event of any changes to the financial assurances and representations throughout the term hereof. Should Union, acting reasonably, solely determine that Shipper's financial condition warrants such, Shipper shall within fourteen (14) days of receipt of such notice by Union, obtain and provide to Union a letter of credit or other security in the form and amount reasonably required by Union (the "Security"). In the event that Shipper does not provide to Union such Security, Union may deem a default under the Default and Termination provisions of Section XII of the General Terms & Conditions.

### ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.01 Assignment: Shipper may not assign this Contract without the written consent of Union, the approval of the OEB, and any financial assurances as required by Union. Should Union consent to the assignment, Union will apply for OEB approval with all costs of the application to be paid by Shipper.

13.02 Notices: Subject to the express provisions of this Contract, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer or other responsible employee of the addressee or sent by registered mail, charges prepaid, or by facsimile or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened, or during any actual, postal strike or other disruption of the postal service. Any communication personally delivered shall be deemed to have been validly and effectively received on the date of such delivery. Any communication so sent by facsimile or other means of telecommunication shall be deemed to have been validly and effectively received on the business day following the day on which it is sent. Any communication so sent by mail shall be deemed to have been validly and effectively received on the seventh business day following the day on which it is postmarked.

Communications to the parties hereto shall be directed as follows:

IF TO SHIPPER: Nexen Marketing  
801 – 7<sup>th</sup> Ave. S.W., Suite 1700  
Calgary, Alberta  
T2P 3P7

Nominations: Attention: Downstream Nominations Group  
Telephone: 403-699-5885  
Facsimile: 403-699-7522

Secondary Contact: Attention: Ms. Tammie Carruthers  
Telephone: 403-699-4029  
Facsimile: 403-699-5752

IF TO UNION: Union Gas Limited,



50 Keil Drive North,  
CHATHAM, Ontario N7M 5M1

Nominations: Attention: Manager, Gas Control  
Telephone: 519-436-5217  
Facsimile: 519-436-4635

Secondary Contact: Attention: Project Director, DEGT  
Telephone: 713-627-5054  
Facsimile: 713-989-3043

Notwithstanding the above, nominations shall be made by facsimile or other recorded electronic means, subject to execution of the "Agreement for Use of the Secured Portion of Union Gas Limited's Website," or such other agreement, satisfactory to Union, and will be deemed to be received on the same day and same time as sent. Each party may from time to time change its address for the purpose of this Section by giving notice of such change to the other party in accordance with this Section.

13.03 Law of Contract: Union and Shipper agree that this Contract is made in the Province of Ontario and that the courts of the Province of Ontario shall have exclusive jurisdiction in all matters contained herein. The parties further agree this Contract shall be construed exclusively in accordance with the laws of the Province of Ontario.

13.04 Possession of Gas:

(a) Union accepts no responsibility for any gas prior to such gas being delivered to Union at the Receipt Point and after its delivery by Union at the Delivery Point. As between the parties hereto, Union shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas enters Union's system until such gas is delivered to Shipper.

(b) Shipper and Union shall each indemnify and hold the other harmless against any and all suits, actions, debts, accounts, damages, costs, losses and expenses caused by or resulting from its control and possession of the gas stored hereunder.

13.05 Title to Gas: Shipper represents and warrants to Union that, Shipper shall have good and marketable title or legal authority to all gas delivered to Union hereunder, which gas is not subject to litigation. Furthermore, Shipper hereby agrees to indemnify and save Union harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of claims of any or all third parties to such gas or on account of royalties, taxes, license fees, or other charges thereon.

13.06 Entire Contract: This Contract constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. This Contract supersedes any prior or contemporaneous agreements, understandings, negotiations or discussions, whether oral or written, of the parties in respect of the subject matter hereof.

13.07 Time of Essence: Time shall be of the essence hereof.

13.08 Counterparts: This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an originally executed copy, and it shall not be necessary in making proof of this Contract to produce all of such counterparts.

13.09 Amendments and Waivers: No amendment or waiver of any provision of this Contract nor consent to any departure of either party hereto shall in any event be effective unless the same shall be in writing and signed by each of the Shipper and Union and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Contract shall operate as a waiver thereof.

13.10 Severability: If any provision hereof is invalid or unenforceable in any jurisdiction, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

13.11 General Liability: The liability of the parties hereunder is limited to direct damages only and all other remedies or damages are waived. In no event shall either party be liable for consequential, incidental, punitive, or indirect damages, in tort, contract or otherwise.

THIS CONTRACT SHALL BE BINDING UPON and shall enure to the benefit of the parties hereto and their respective successors and permitted and lawful assigns.

IN WITNESS WHEREOF this Contract has been properly executed by the parties hereto by their duly authorized officers as of the date first above written.

**UNION GAS LIMITED**

*I have authority to bind Union*

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**NEXEN MARKETING**

*I have authority to bind Shipper*

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Contract No. LST042

**PRICING PROVISIONS  
STORAGE SERVICES**

1. Shipper agrees to pay Union, for the Storage Services provided, pursuant to the terms of this Contract according to the following schedule and in accordance with Union's C1 Rate Schedule and/or Union's M12 Rate Schedule, both of which form part of this Contract, as may be amended from time to time, which more particularly provide as follows:

- (a) A monthly demand charge of [REDACTED] US. shall be invoiced during the period April 1, 2005 to March 31, 2008.
- (b) N/A.
- (c) The charge payable (including fuel in kind) on receipt and delivery of any firm quantities shall be pursuant to the M12 Rate Schedule for injection, withdrawal and dehydration commodity charges as applicable.
- (d) The charge payable (including fuel in kind) on receipt of any interruptible quantities allowed within the Daily Quantity, as defined in Article V of the Contract, shall be pursuant to the M12 Rate Schedule for injection commodity charges plus [REDACTED]  
[REDACTED]

The charge payable (including fuel in kind) on delivery of any interruptible quantities allowed within the Daily Quantity, as defined in Article V of the Contract, shall be pursuant to the M12 commodity charges for dehydration, if applicable, plus the M12 commodity charge for withdrawal, plus [REDACTED]

- (e) The charge payable (including fuel in kind) on receipt of any Authorized Overrun quantities shall be equal to the M12 commodity charge for injection, [REDACTED]. The charge payable (including fuel in kind), on delivery of any Authorized Overrun quantities shall be equal to the M12 commodity charge for dehydration, if applicable, plus the M12 commodity charge for withdrawal, plus [REDACTED]
- (f) The charge payable on the quantity by which the Customer's Storage Balance exceeds the Maximum Storage Balance ("Excess Storage Balance"), shall be pursuant to the Authorized Overrun of Maximum Storage Balance rates, as outlined in the C1 Rate Schedule. The charge payable for any Extension Period shall be equal to the Extension Period rate, as outlined in the C1 Rate Schedule, multiplied by the quantity in the Excess Storage Balance at the date of such extension.

- (g) The charge payable on the quantity in the Drafted Storage Balance shall be pursuant to the Drafted Storage Balance rates, as outlined in the C1 Rate Schedule. The charge payable for any Extension Period shall be equal to the Authorized Extension Period rate as outlined in the C1 Rate Schedule, multiplied by the quantity in the Drafted Storage Balance at the date of such extension.
  - (h) The charge payable on the quantity by which the Shipper's Storage Balance is less than the Minimum Storage Balance ("Shortfall") on June 30<sup>th</sup> of each Contract Year, shall be [REDACTED] multiplied by the Shortfall. In addition to the above charges, Union may, upon forty-eight (48) hours verbal notice to Shipper (to be followed by notice in writing), replace the outstanding quantity of Minimum Storage Balance gas at Shipper's expense (which will include all costs to replace such gas, plus a charge equal to 25% of the incremental cost of the gas purchased for each unit so replaced).
2. For any Unauthorized Overrun quantities the charge shall be pursuant to the C1 Rate Schedule, currently, \$50.00/GJ (\$52.75/MMBtu) during the November 1 to April 15 period and \$9.373/GJ (\$9.889/MMBtu) during the April 16 to October 31 period.
  3. Prices exclude any applicable Goods and Services Tax or other taxes, royalties or levies which may also be payable to Union.

Dated: April 1, 2005