



EB-2013-0109

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 Union Gas Limited for an order or orders clearing certain non-commodity related deferral accounts and sharing utility earnings pursuant to a Board approved earnings sharing mechanism;

AND IN THE MATTER OF an Application by Union Gas Limited for an order approving a deferral account to capture variances between earnings sharing, deferral account and other balances approved for disposition and amounts actually refunded/recovered;

AND IN THE MATTER OF a motion commenced by the Ontario Energy Board pursuant to section 19(4) of the *Ontario Energy Board Act, 1998* and Rule 43.01 of the Board's Rules of Practice and Procedure to review the Board's direction in its EB-2011-0210 Decision and Order requiring Union to annually prepare and file separate audited financial statements for that portion of its business that is subject to rate regulation.

**NOTICE OF MOTION
AND PROCEDURAL ORDER NO. 3
October 25, 2013**

BACKGROUND

Union Gas Limited ("Union") filed an application dated May 9, 2013 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2013 in connection with the sharing of 2012

earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2012 year-end deferral account and other balances (the “Application”).

On June 25, 2013, the Board issued Procedural Order No. 1 which included a process for written interrogatories, and established dates for a Settlement Conference as well as the filing of a Settlement Proposal.

The Settlement Conference was held on August 1, 2013. A letter was filed on August 7, 2013 on behalf of Union and the intervenors that participated in the Settlement Conference. The letter noted that a formal settlement was not reached.

On August 20, 2013, the Board issued Procedural Order No. 2 which established the dates for an Oral Hearing to hear the remaining issues. On October 22 – 24, 2013, the Board held the Oral Hearing.

PREPARATION OF AUDITED UTILITY FINANCIAL STATEMENTS

On the issue of the preparation of audited financial statements for the portion of Union’s business that is subject to rate regulation, Union provided an addendum to its EB-2013-0109 evidence on July 26, 2013 (the “Addendum”). The Addendum, amongst other things, noted the following:

The attached evidence addendum provides an updated estimate of the cost required to prepare these financial statements and respond to the Board’s directive. Union’s estimate is \$1.3 million. The balance in the deferral account as of December 31, 2013 will be submitted for recovery from ratepayers as part of Union’s 2013 deferral disposition proceeding.

As a result of the significant increase in the cost estimate to prepare audited financial statements for the regulated businesses of Union, the Board, on its own motion, determined that it would initiate a motion to review the Board’s direction in its EB-2011-0210 Decision and Order requiring Union to annually prepare and file separate audited financial statements for that portion of its business that is subject to rate regulation (the “Motion”). The Motion is made pursuant to section 19(4) of the *Ontario Energy Board Act, 1998* and Rule 43.01 of the Board’s Rules of Practice and Procedure (the “Rules”). The Board noted that it would hear this motion within the EB-2013-0109 proceeding.

In its October 24, 2012 Decision and Order in the EB-2011-0210 proceeding (Union’s rebasing proceeding), the Board set out the following at page 128:

The Board directs Union to prepare and file separate audited financial statements for that portion of its business that is subject to rate regulation. For the utility business regulated by the Board, the Board directs Union to provide annually a full set of audited financial statements, with all related notes to these financial statements, prepared under the applicable generally accepted accounting principles used to report to financial regulators in Canada and in the USA. These audited financial statements will be filed with the Board as soon as possible after Union releases its financial results to the public, but no later than June 30th each year. The Board believes that this information will assist in both assessing the revenue requirement in future cost of service proceedings, and in monitoring during the course of the IRM term.

The costs of preparing these financial statements shall be collected in a new deferral account (described in more detail elsewhere in this Decision). The Board will establish a Preparation of Audited Financial Statement Deferral Account, which will be reviewed and disposed of with Union's other deferral and variance accounts.

The Board will serve this Notice of Motion and Procedural Order No. 3 on all intervenors of record in the EB-2011-0210 proceeding that are not intervenors of record in the EB-2013-0109 proceeding. Intervenors of record in the EB-2013-0109 proceeding will also receive the Notice of Motion and Procedural Order No. 3 in the normal course.

The Board will require that any party that is not currently an intervenor of record in the EB-2013-0109 proceeding but wishes to intervene as a result of the Motion apply for intervenor status in accordance with the Board's Rules and the Board's Order below. As part of any application for intervenor status, the Board will require the applicant to indicate whether it requires any further discovery on the evidence that is currently part of the record, including the Addendum, the cross-examination by Board staff and the current intervenors in the EB-2013-0109 proceeding with respect to the Addendum¹ and any other relevant evidence on the record of the EB-2013-0109 proceeding.

At the Oral Hearing, the Board set out a tentative schedule for argument on all of the issues in the EB-2013-0109 proceeding (including the issue of the preparation and filing of audited financial statements for that portion of Union's business that is subject to rate regulation, which is the subject of the Board's Motion). This tentative schedule for argument is set out below. The Board notes, however, that the schedule for argument is subject to change by further Order of the Board depending on whether parties avail themselves of the opportunity for additional discovery with respect to the evidence filed in respect of the Motion.

¹ EB-2013-0109, Transcript of Oral Hearing, Vol. 1, October 22, 2013.

THE BOARD ORDERS THAT:

1. Any person that is not currently an intervenor in the proceeding and that wishes to intervene as a result of the Motion shall file an application for intervenor status with the Board and copy Union on or before **November 1, 2013**. Any application for intervenor status shall include a statement as to whether the applicant requires further discovery on the evidence currently on the record of this proceeding that is relevant to the Motion.
2. Union shall file its Argument-in-Chief with the Board and serve it on all other parties on or before **November 8, 2013**.
3. Board staff and intervenors who wish to make written submission must file those submissions with the Board, and deliver it to Union and other intervenors, on or before **November 20, 2013**.
4. If Union wishes to reply to the submissions of other parties, the response must be filed with the Board and delivered to intervenors on or before **November 27, 2013**.

All filings to the Board must quote file number **EB-2013-0109**, be made electronically through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below.

Persons who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

For all electronic correspondence and materials related to this proceeding, parties must include in their distribution lists the Case Manager, Munir Madhavji at

munir.madhavji@ontarioenergyboard.ca and Senior Legal Counsel, Kristi Sebalj at kristi.sebalj@ontarioenergyboard.ca

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

ADDRESS:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

Filings: <https://www.pes.ontarioenergyboard.ca/eservice/>
E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, October 25, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary