E.B.R.O. 494-03

IN THE MATTER OF the Ontario Energy Board Act, R.S.O. 1990, c. O.13;

AND IN THE MATTER OF a Motion by Union Gas Limited for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 1997;

AND IN THE MATTER OF an Application by Union Gas Limited for approval of the parties to, the period of, and the storage that is the subject of certain proposed storage agreements.

BEFORE: R.M.R. Higgin
Presiding Member

G.A. Dominy
Vice Chair and Member

F.A. Drozd
Member

DECISION WITH REASONS

September 26, 1997

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1. NOTICE OF MOTION AND HEARING

1.1 NOTICE OF MOTION

1.1.1 The Ontario Energy Board ("the Board") received a Notice of Motion ("the Motion") dated April 10, 1997 from Union Gas Limited ("Union" or "the Company") pursuant to sections 19, 22 and 30 of the Ontario Energy Board Act ("the Act"). The Motion and Union's prefiled evidence were served on all parties of record in E.B.R.O. 493/494 and on all parties currently in Union's long-term storage queue.

1.1.2 The Motion was for an order pursuant to section 30 of the Act varying the Board's E.B.R.O. 493/494 Decision with Reasons, dated March 25, 1997, and for an order pursuant to section 19 of the Act approving a range of rates for long-term peak storage services, and for an order pursuant to section 22(2) of the Act approving the parties to, the term of and the storage capacity that is the subject of, certain proposed agreements between Union and customers for the storage of gas resulting from an open season bidding or tender process, and any other order or orders deemed appropriate by the Board.

1.1.3 Specifically Union sought the following relief:

- amendment of the C1 rate schedule to extend its applicability to long-term storage services (>one year);
- approval of the storage space, term and parties to four long-term storage contracts, which resulted from an open season bidding process, for a total of up to 178,466 10^3m^3 of peak storage for periods of five or ten years between Union and CoEnergy Trading Company ("CoEnergy") and between Union and Renaissance Energy Ltd.("Renaissance");
- approval to establish a new long-term peak storage deferral account to record the difference between revenues from charging market-based rates under the C1 rate schedule compared to cost-based rates under the M12 rate schedule;
- amendment of the renewal policy for existing M12 storage contracts; and
- replacement of the queues for short and long-term storage with a storage allocation policy based on an open season bidding process.

1.1.4 On April 22, 1997 the Board issued Procedural Order No. 1, which requested written submissions, by May 2, 1997, from the parties on the hearing of the Motion and Union's written reply to submissions, by May 9, 1997.

1.1.5 On June 23, 1997 the Board issued Procedural Order No. 2 noting that, while important broad policy questions requiring further examination were encompassed in Union's Motion, the injection season was underway and the parties to the proposed storage contracts required a timely response to enable them to adequately plan their operational activities. The Board therefore determined that it would hear Union's Motion and, in order to expedite the process, established an issues list and the schedule for the hearing. As the Motion was considered to be an extension of the E.B.R.O. 494 proceeding, all intervenors of record in that proceeding were requested to indicate their intention to actively participate in this hearing. Union was also directed to serve notice on all parties to the long-term storage queue.

1.2 THE HEARING

1.2.1 The hearing of the Motion was held in the Board's Hearing Room from July 28 to July 30, 1997. Oral and written arguments were presented on July 30 and August 1, 1997

Appearances

1.2.2 The active parties to the hearing and their representatives were:

Union	G.F. Leslie
Association of Municipalities of Ontario ("AMO") ECNG Inc. ("ECNG")	P.F. Scully
CanEnerco Limited ("CanEnerco") PanCanadian Petroleum Limited ("PanCanadian") Natural Resource Gas Limited ("NRG")	P. Budd
Consumers' Association of Canada ("CAC")	R.B. Warren
The Consumers' Gas Company Ltd. ("Consumers Gas")	F.D. Cass
City of Kitchener ("Kitchener")	D. Wright
Enron Capital & Trade Resources Canada Corp. ("Enron")	M. Jamal D.A. Dadson
Industrial Gas Users Association ("IGUA")	P.C.P. Thompson
Suncor Energy Inc. ("Suncor")	G. Vegh

1.2.3 Board Staff was represented by Mark Rodger, Counsel. Energy Probe provided Counsel to Board Staff with questions for Suncor's witness.

Late Interventions

1.2.4 The following active party requested and was granted late intervenor status:

Gaz Metropolitain and Company, Limited Partnership ("GMCLP", "GMI")	M. Petersen S. Tarek

1.2.5 The following parties requested and were granted late intervenor status but were not represented in the hearing:

Petro-Canada Oil and Gas ("Petro-Canada")	J. MacPherson
Express Energy Corp. ("Express")	J.T. Schoenmakers

Witnesses

1.2.6 The following witnesses appeared in the hearing:

Union

G. Black	General Manager, Marketing and Sales, Storage and Transportation Services
J. Bracken	Vice President, Marketing, Storage and Transportation Services
L. Edwards	Manager, Marketing and Sales, Storage and Transportation Services

Consumers Gas

J. Holder	Vice President, Energy Services
J. Otsason	Director, Transportation and Transactional Services

Suncor

S. Chown Partner, Industrial Economics Incorporated

1.3 PARTIAL DECISION

1.3.1 On August 29, 1997 the Board issued a written Partial Decision on Union's Motion. In that document, the Board approved the parties to, the period of and the amount of storage space that is the subject of, letters of intent with CoEnergy and Renaissance, dated January 8, 1997 and January 3, 1997 respectively. If Union proceeded with the proposed contracts, the Board directed Union, pending the release of this Decision with Reasons, to apply the rates, terms and conditions of the existing Board-approved C1 rate schedule, except that referring to the period of the contracts. Further, Union was directed to record all revenues associated with the CoEnergy and Renaissance contracts as separate line items in the Board-approved C1 Peak Storage deferral account.

2. STORAGE RATES, CONTRACTS AND POLICIES

2.0.1 The Board concluded that, in order to address Union's Motion, it must make determinations on:

- in-franchise storage needs;
- long-term peak storage contracts;
- amendments to the C1 rate schedule;
- deferral account;
- renewal of M12 storage contracts;
- storage allocation policy; and
- confidentiality of bid prices and contracts.

2.1 IN-FRANCHISE STORAGE NEEDS

2.1.1 Union provided its latest 10-year throughput and storage space requirements forecast, which is reproduced in Table 2.1. The forecast indicates that, after in-franchise and M12 requirements are met, there is an expected available amount of storage space of 283.3 10^6m^3 in 1997, declining to 141.6 10^6m^3 in 2002.

2.1.2 Union indicated that the Company's policy was to retain a minimum contingency of 140,000 10^3m^3 of short-term storage in order to address year-to-year changes in in-franchise requirements.

Table 2.1: Forecast of Peak Storage Availability and Utilization 1996-2005 (10^6m^3)

Particulars	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Space Available	3,544.2	3,529.7	3,539.7	3,539.7	3,539.7	3,539.7	3,539.7	3,539.7	3,539.7	3,539.7
Reserve	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)	(19.3)
Net available	**3,524.9**	**3,510.4**	**3,520.4**	**3,520.4**	**3,520.4**	**3,520.4**	**3,520.4**	**3,520.4**	**3,520.4**	**3,520.4**
Union Requirement(1)	1,979.4	1,737.1	1,797.2	1,832.1	1,832.1	1,831.5	1,901.8	1,901.2	1,900.6	1,900.0
M12 Contracts	1,338.3	1,338.3	1,338.3	1,338.3	1,338.3	1338.3	1,338.3	1,338.3	1,338.3	1,338.3
T-Service	80.2	108.5	108.5	108.5	108.5	108.5	108.5	108.5	108.5	108.5
Bundled-T	23.6	43.2	35.6	29.0	29.0	29.6	30.2	30.8	31.4	32.0
Total Requirement	**3,421.5**	**3,227.1**	**3,279.6**	**3,307.9**	**3,307.9**	**3,307.9**	**3,378.8**	**3,378.8**	**3,378.8**	**3,378.8**
C1 Contracts(2)	103.4	283.3	240.8	212.5	212.5	212.5	141.6	141.6	141.6	141.6
Total Utilization	3,524.9	3,510.4	3,520.4	3,520.4	3,520.4	3,520.4	3,520.4	3,520.4	3,520.4	3,520.4

Notes:
1. Includes contingency of 142 10^6m^3
2. Includes 283 10^6m^3 from Bentpath-Rosedale Pool in 1997

2.1.3 Union proposed two contracts with CoEnergy: one for 56.656 10^6m^3 for 5 years and one for 82.151 10^6m^3 for 10 years. It also proposed two contracts with Renaissance for a total of 39.659 10^6m^3 for 10 years. The total space under the four proposed long-term contracts would be 178.466 10^6m^3 in the period 1997-2001 and 121.810 10^6m^3 in the period 2002-2007.

2.1.4 Union indicated that it had no immediate plans to sell any more long-term storage and any remaining space, together with any surplus of the Union in-franchise allocation, would be sold on the short-term market.

Positions of the Parties

2.1.5 None of the parties to the hearing disagreed with Union's throughput forecast or its storage forecast. In fact, only CAC commented at all, indicating its acceptance of Union's estimate of its storage requirements.

Board Findings

2.1.6 The Board notes that Union's storage space, synthetic storage (substitutes for storage) and related facilities serve the requirements of several groups of customers:

- load balancing services for in-franchise system gas, buy/sell and bundled T-service customers;
- contract space requirements of in-franchise and T-service customers;
- storage or synthetic storage to optimize operation of the Dawn-Trafalgar transmission system; and
- contracted space requirements of ex-franchise customers including Ontario, Canadian and U.S. Local Distribution Companies ("LDCs") and gas brokers, transporters and marketers.

2.1.7 The Board finds Union's throughput forecast and storage space utilization forecast to be reasonable given a "business as usual" scenario. However, it is unlikely that the future will be business as usual. If full deregulation of the gas commodity is permitted by legislation and the role of the distribution utilities changes significantly, the storage required by the utility to provide core delivery services may change. Equally if Union proceeds with its longer term plans to separate some or all of its Storage and Transportation services from the regulated distribution function, there may be a segregation of the storage assets. These factors, in the Board's view, are more likely to reduce the storage space required to provide core delivery services than to increase it and support Union's forecast of only modest increases in in-franchise requirements.

2.1.8 The Board accepts Union's evidence that the storage space associated with the Bentpath-Rosedale Pool enhancement has made space available that is surplus to Union's requirements for the provision of regulated services.

2.2 LONG-TERM PEAK STORAGE CONTRACTS

2.2.1 The proposed contracts with CoEnergy and Renaissance resulted from an open season bidding process initiated by Union in October 1995. At that time, Union concluded that up to 368,264 10^3m^3 of storage space in excess of the Company's needs would be available on a long-term basis, i.e. for two, five and ten years.

2.2.2 The open season bid package explained that bidders had a choice, not only in the period of the contract, but also in the type of deliverability. Union proposed four different injection/withdrawal services UGS-10, UGS-30, UGS-60, and UGS-90. The distinguishing characteristic of each of these services is the number of days (10, 30, 60 or 90) for withdrawals from the contracted storage space, with UGS-10 providing peak day deliveries over 10 days and UGS-90 equating to a seasonal service with withdrawals over 90 days.

2.2.3 Union received 50 individual tenders from 24 companies. The Company evaluated the bids by considering:

- the net present value, using Union's rate of return, of their revenue streams;
- the net present value of their cost streams;
- the period for which storage space would be required;
- the creditworthiness of the bidder; and
- the Union storage facilities that might be left vacant, although this factor was not relevant in this particular case.

2.2.4 In calculating the net present value ("NPV") of revenue streams for bids with periods between two and five or five and ten years, Union used the price that the

party had bid for the actual period of the bid and made the assumption of revenue at cost-based (M12) rates for the remaining period to five or ten years. The Company also converted all bids to the equivalent of 90-day service, regardless of whether 10-, 30-, 60-, or 90-day service was actually requested.

2.2.5 Union's witnesses said that only one party tendered for a two-year term and, as the bid was not accepted, the Company did not propose to award any contracts for two-year storage. Instead Union will make this storage space available on the short-term market.

2.2.6 Union's witnesses stated that the standard terms and conditions offered to bidders on long-term storage space included a price escalation clause, which stated that:

> *For contract terms longer than 2 years, the storage demand charge will increase each year on April 1 at 1/2 the annual change in the Canadian Consumer Price Index, commencing at the beginning of the third contract year.*

2.2.7 This clause was included in the proposed contracts with CoEnergy. However, in the case of the proposed contracts with Renaissance, since the NPV was appropriate Union had accepted the bidder's condition that the contracts, when finalized, contain no price escalation clause. As stated by Union's witnesses, Renaissance "bid a pretty nice price."

2.2.8 In addition, Union's witnesses stated that the proposed contracts did not contain any clauses that would allow for or facilitate the reopening of the contracts, once approved by the Board and signed by the parties, until their expiry dates or any clauses that would permit the assignment of the storage rights to others.

2.2.9 Union indicated that the proposed contracts were expected to generate revenue of approximately $3.7 million in each of the first five years, which was $1.6 million more than would have been received for similar storage provided under the M12 cost-based rate for long-term storage. According to the Company, this annual premium would decrease to a difference of $1.1 million in years six through ten, reflecting the expiry of the five year contract with CoEnergy.

2.2.10 Union's witnesses also indicated that the market prices for long-term storage had fallen since the CoEnergy and Renaissance letters of intent had been signed. Further, the Company stated that the charges for storage included in the proposed contracts fell within the range of rates currently existing for C1 short-term storage contracts. Specifically the average price of the four contracts was equivalent to $21.99 per 10^3m^3.

2.2.11 Consumers Gas' witnesses, Ms. Holder and Mr. Otsason, agreed that the terms and conditions of the proposed contracts were appropriate.

2.2.12 Suncor's witness, Ms. Chown, cautioned that if the Board was going to change the clauses in the proposed contracts with CoEnergy and Renaissance, the bidding would have to be re-opened. However, she also stated that the Board should not just "rubber stamp" the agreements.

Positions of the Parties

2.2.13 Union argued that the proposed contracts with CoEnergy and Renaissance had been reached under an appropriate bidding and evaluation process, and that the Board should approve them as presented or risk their abrogation. According to Union the latter would result in the Company either having to attempt to renegotiate long-term storage at the current prices, or making the space available in the short-term storage market. The first option would result in less revenue for the Company; the second might temporarily result in greater revenue, but was not expected by Union to do so in the long run. The Company also argued that inserting rights of recall in the proposed storage contracts was not practical.

2.2.14 CAC argued that the proposed contracts between Union and CoEnergy and Union and Renaissance should be approved, because there was no evidence that harm would arise from the approval. In CAC's opinion, while there were risks inherent in approval of the proposed contracts, the Board had mechanisms available to deal with those risks. CAC identified the risk as being:

> *... ratepayers may suffer if it develops over time either that (a) there is insufficient storage left in Union's system to meet its in-franchise needs,*

or (b) that the price which is being paid under the contracts falls below the cost.

2.2.15 CAC stated, however, that the existence of such risks should not militate against approving the contracts. In CAC's opinion, a clause providing Union with the right of recall of the storage space was not necessary.

2.2.16 CAC also stated that, in its view, there was no evidence that the process of evaluation of the bids for long-term storage was not appropriate or had not been appropriately applied in evaluating the proposed contracts.

2.2.17 Consumers Gas argued in favour of approval of the proposed contracts with CoEnergy and Renaissance. Consumers Gas opposed the concept of rights of recall. In its view, such provisions were fundamentally at odds with the objectives of a long-term contract, since the parties to such a contract are looking for the security resulting from longer term arrangements.

2.2.18 CanEnerco, PanCanadian and NRG stated their support, in general, for approval of the proposed contracts, except for certain terms contained therein. They submitted that it would be unwise to approve the terms of 10 years, and that the Board should "impose interim relief for the contracting parties by making the contracts effective for a shorter term, or subject to a re-opening by the Board."

2.2.19 Kitchener argued that the proposed contracts with CoEnergy and Renaissance should not be approved prior to resolution of the various related public policy issues and because of the lack of a compelling reason to act at this time.

2.2.20 Energy Probe recommended approval of the proposed contracts on the grounds that they are "substantially more efficient than arrangements under the existing rates will allow".

2.2.21 IGUA's position was that the Board could approve the features of the proposed contracts with CoEnergy and Renaissance subject to compliance with the C1 short-term rate schedule with a redefinition of the phrase "short-term". IGUA stated that the proposed ten-year terms were unacceptable. IGUA argued that the contracts should only be for a short-term in order to allow the volumes to be

recalled to meet in-franchise requirements. In IGUA's view, at the very least, the contracts should have a review clause with recall provisions.

2.2.22 GMCLP took no position with respect to the CoEnergy and Renaissance contracts.

2.2.23 Suncor stated that it did not object to approval of the proposed contracts with CoEnergy and Renaissance, subject to caveats regarding the freedom of contract and protection of the public. It was Suncor's position that:

> *... the contracting parties should be specifically advised that this Board could vary the price terms of the contracts. And I say that this is necessary because if these prices are to be varied then the parties should agree to that up front. So that's the freedom of contract issue.*

and that:

> *... if it turns out that these rates are below market, then the Board could deem revenue into Union's revenue account and Suncor supports that proposal so the ratepayer is protected.*

2.2.24 Suncor also argued that the Motion with regard to the CoEnergy and Renaissance contracts fell under subsection 19(7)(b) of the Act, which permits different treatment where there is a matter of limited application, and that the Board could "approve the contracts without approving the proposal on market-based rates."

2.2.25 AMO and ECNG adopted the position put forward by IGUA. However, these parties noted that they were "not in a position to judge, at all, whether the deliverability provisions and other provisions outside of price affect the interests of consumers and the Province."

2.2.26 In reply, Union did not specifically refer to its request for approval of the proposed contracts with CoEnergy and Renaissance, but did state that the "prices" for storage, whether long or short-term were being set by an open market that existed for the service.

Board Findings

2.2.27 The Board agrees with the position put forward by Suncor that approval of the parties to, the period of and the amount of storage space that is the subject of the proposed contracts with CoEnergy and Renaissance can be given without approving, as a matter of policy, the adoption of market-based rates for long-term storage. It also agrees with the risks inherent in approval as identified by CAC and that mechanisms are available to deal with those risks.

2.2.28 The Board notes the concerns of the parties that conclusions on public policy issues related to gas storage may be reached before the expiry of the proposed contracts.

2.2.29 The Board believes that there is no need for a clause in the proposed contracts to allow Union the right of recall, since it has found elsewhere in this Decision that the Company's forecast of its in-franchise storage needs is reasonable.

2.2.30 The Board finds that while a clause indicating that the proposed contracts may be reopened under specific circumstances is not necessary, it may be unwise to enter into ten-year contracts at this time. The Board therefore wishes to put Union on notice that the appropriateness of the value of the contracts may be re-reviewed if the charges for storage under the contracts fall below the cost-based rate for long-term storage and when decisions have been made about the status of utility storage services.

2.2.31 The Board notes that no evidence was offered to indicate that Union's bid evaluation process was inappropriate. The Board finds that the evaluation process applied to the open season bids from which these proposed contracts resulted was appropriate.

2.2.32 The Board approves the parties to, the period of and the amount of storage space that is the subject of the letters of intent with CoEnergy and Renaissance, dated January 8, 1997 and January 3, 1997 respectively.

2.3 AMENDMENTS TO THE C1 RATE SCHEDULE

2.3.1 Union's current C1 storage rate, as approved by the Board in E.B.R.O. 494, is a range rate applicable to short-term storage services available on a short-term basis (< one year) for release to ex-franchise customers who require either peak (summer-winter) or off-peak service. The C1 rate schedule also covers related Transportation Service on Union facilities such as the Ojibway, St. Clair and the Bluewater lines to and from Dawn. Cross-franchise transportation from Dawn to Kirkwall or Parkway on the Dawn-Trafalgar transmission system, for contract terms of less than 10 years, can also be provided under the C1 transportation rate, although the majority of cross-franchise service is under the M12 rate schedule.

2.3.2 In E.B.R.O. 494, the Board approved C1 storage rates that result in a rate per unit of contracted storage space in the range of \$1.483 per 10^3m^3 to \$89.19 per10^3m^3 for interruptible service and \$3.56 per 10^3m^3 to \$110.39 per 10^3m^3 for firm service.

2.3.3 Union in its current Motion proposed that both short and long-term storage services be marketed under the same rate schedule. Union stated that this was consistent with the Board's Decision in E.B.R.O. 492 (Consumers Gas, dated September 1996) that approved Rate 330 for application to that company's storage services, regardless of the period of a contract.

2.3.4 Union proposed a number of specific changes to the approved C1 rate schedule for storage services:

- the deletion of any reference to "short term" to allow applicability to any contract, regardless of its period;
- the addition of a fifth criterion, "term" (period), to the matters to be considered when negotiating the rate within the range;
- the addition of a provision that the rate may be applied in any combination of monthly demand charge and injection/withdrawal charge, and that the

revenue divided by the space contracted must yield an average rate within the range for each year or the term, whichever is less; and

- the addition of a provision that the authorized overrun rate would apply to interruptible service (except the firm deliverability charge).

2.3.5 In addition, Union proposed a number of administrative changes to the rate schedule, including changing all references to Oakville to "Parkway" and presenting the rates as the total charge for injection and withdrawal, rather than separately for each. No changes were proposed to the rates for C1 transportation service.

2.3.6 The main issues were whether the C1 storage rate schedule was appropriate for long-term storage services and whether the bottom of the C1 range or 'floor', which was below the M12 cost-based rate and reflected the marginal cost only, was appropriate as the bottom of the proposed range rate for longer term storage services offered at market-based rates.

2.3.7 Union's evidence was that the application of the C1 short-term storage rate to longer term storage service arrangements was appropriate and consistent with Consumers Gas' Rate 330 and with the rates of other competitors offering storage services in the geographic area of the north central and northeastern United States. Some of the latter had rates in which the top of the range was "unlimited". Union indicated that if market prices exceeded the top of the approved C1 range at any point it would apply for an increase to the upper end to accommodate market conditions and capture the full economic rent from its storage facilities.

2.3.8 With respect to the floor of the C1 range, Union indicated that a floor equivalent to the M12 cost-based rate was appropriate rather than the lower floor of marginal cost in the current C1 rate that included interruptible and off-peak services. Union indicated that it would use the M12 rate as its notional floor in negotiations with storage customers for long-term storage contracts under an amended C1 rate schedule. Union's witnesses also stated that the Company would not object to a clause being inserted into the contracts for long-term storage specifying that the price charged would not fall below the cost-based floor.

Positions of the Parties

2.3.9 Some of the parties advocated rejection of Union's proposal for amendment of the C1 rate schedule and several concerns were expressed about certain aspects of the amended rate as it would apply to long-term storage services.

2.3.10 IGUA expressed concern that endorsement of Union's proposed market-based rates for ex-franchise storage services would lead to market-based rates for all storage services, since the distinction between rates for in-franchise and ex-franchise customers was not sustainable. In IGUA's view, the clear implication of approving Union's Motion was that, as soon as contracts permitted, M12 customers would move to market-based rates.

2.3.11 IGUA submitted that the issues must be decided by application of the 'no discrimination' principle set out in the Board's E.B.R.O. 486-02 Decision. In IGUA's opinion, a revision of the C1 rate schedule would be appropriate. The revision would allow the C1 rate schedule to encompass terms longer than one year so long as the relationship between Union and the storage services acquirer was structured in a way that complied with the Board's directive in E.B.R.O. 492. That directive in IGUA's view was to the effect that if storage was needed to serve in-franchise customers it would, after some reasonable notice period, become available to in-franchise users. In other words, the C1 rate schedule should not be made applicable to long-term "firm" storage, but could be made applicable to long-term "interruptible" or "recallable" storage.

2.3.12 GMCLP submitted that the Board was required by its legislation to set rates based on a rate base and cost recovery principles. In its view, the C1 rate schedule was of limited application in terms of the amount of storage offered, unlike Rate M12 or the proposed long-term storage contracts that involved large amounts of storage. Therefore, until the legislation was amended, market-based rates for significant storage transactions should not be allowed. In GMCLP's view, Union's proposals were the equivalent of deregulating storage rates, which was not permitted by the present legislation.

2.3.13 Suncor submitted that approval of Union's proposals to offer long-term storage at market-based rates under an amended C1 rate schedule was premature. Union had not developed long-term plans for the use and pricing of storage because these issues were being addressed as part of the Market Review process. Until the rules for deregulation were clear and impediments to burner tip sales were removed, there was no way to get a clear picture of the value of storage.

2.3.14 AMO and ECNG submitted that the Board should not approve the proposed changes to the C1 rate schedule.

2.3.15 Energy Probe submitted that range rates for long-term storage should be approved.

2.3.16 Union replied that, if the prices charged by Union for short or long-term storage to ex-franchise customers were set by the Board at cost, the discussion would be finished. However, in Union's view, the evidence was clear that there was a market for storage. Notwithstanding the outcome of this proceeding, storage would trade at market prices through the secondary market. Union's reason for proposing market-based rates was that this was the best way to recognize the facts and to capture the value of storage in the rate so that the value could be returned to the users of Union's system.

2.3.17 Union argued that the Board was not constrained to setting cost-based rates, but merely to ensuring the overall rates were at least equal to costs. Union was also careful to indicate that market-based rates would be applied to ex-franchise customers only and that in-franchise rates for storage would continue to be cost based.

Board Findings

2.3.18 The Board is not convinced that the application of the C1 rate schedule is the appropriate way to address the issue of a suitable rate for long-term storage services. Equally, the Board is not convinced that the current rate design for C1 service is appropriate for this type of service.

2.3.19 Short-term storage for ex-franchise customers has been marketed on the basis that it is space required to provide in-franchise service. Due to weather and other variables part of the space is temporarily surplus to in-franchise needs. Customers already pay the costs of this storage in rates. Any revenue from short-term sales of storage services that is beyond the direct marginal cost to provide the service, is a benefit to in-franchise ratepayers. Thus the C1 rates are designed to capture at least marginal costs.

2.3.20 Long-term storage for ex-franchise customers, by company policy, is also surplus to in-franchise requirements, but has its own distinct cost structure associated with the development of the space and required facilities for injection, withdrawal and deliverability. The Board accepts Union's evidence that the Bentpath-Rosedale storage space now being contracted to ex-franchise customers has no incremental costs of development. However, the rate design principle that the Board believes appropriate is that any storage sold under long-term arrangements to ex-franchise customers must, as a minimum, recover the fully allocated costs of the space and storage.

2.3.21 Application of this principle requires a different rate design floor than that for short-term storage. If a rolled-in approach to all ex-franchise storage is deemed to be just and reasonable, the M12 cost-based rate is a good proxy of the appropriate floor. In the case of new storage developments for ex-franchise customers, however, it may be appropriate that the floor of the range equal incremental, rather than rolled-in, costs. Consequently, the floor of the range might change as new storage is developed.

2.3.22 The Board finds that Union's proposal to amend the C1 rate schedule does not meet the Board's principle for sound rate design for long-term storage services in that the floor of the range is below the cost-based M12 rate and the issue of rolled-in versus incremental costing has not been addressed.

2.3.23 Since Union stated that it had no immediate plans to sell more long-term storage, there is no pressing need for the C1 rate schedule amendment at this time. Therefore, the Board denies Union's Motion to amend the C1 rate schedule.

2.3.24 The Board believes there is merit in considering the rate design for long-term storage services in the next rates case, so that an alternative rate design can be advanced for consideration.

2.3.25 When considering long-term storage arrangements, the Board believes that there is no statutory or public interest impediment to market-based rates for ex-franchise storage services. It agrees with Union and Consumers Gas that the policy principles that have been found appropriate for short-term storage services apply equally to long-term storage services.

2.3.26 However, the nature of long-term arrangements raises additional considerations, including a greater surety that the space is not going to be required for the provision of regulated core utility services within the life of the contract and reasonable surety that the term and rates charged under a long-term arrangement will achieve the value maximization objective of the utility and its ratepayers.

2.3.27 The Board has considered the impact of its decision regarding the C1 rate on the proposed storage contracts with CoEnergy and Renaissance. The Board finds that the most expeditious approach is to approve specific charges corresponding to the negotiated average contract prices for the space and authorized overruns and to require that the other terms of the existing approved C1 rate schedule (except that referring to the period of the contract) shall apply.

2.3.28 The Board extends the application of the C1 rate schedule, as identified in the preceding paragraph, to the proposed storage contracts with CoEnergy and Renaissance until such time as an appropriate rate schedule of general applicability to contracts for long-term storage is approved.

2.4 DEFERRAL ACCOUNT

2.4.1 In its pre-filed evidence, Union suggested that 100% of the market premium should be allocated to a deferral account, to be used to offset the cost to customers

of future storage and transmission facility developments. The rationale given for this proposal was that the Board, in E.B.R.O. 486-02, had:

> *... expressed concern with the allocation of the storage premium to the in-franchise customers that it "could make the rates of in-franchise customers less cost based and subject to greater variability from year to year."*

2.4.2 Union's witnesses stated that the Board did not need to deal with the issue of disposition of this deferral account in this hearing as the Company was seeking only approval of the creation of a deferral account at this time. It was the Company's position that the Board would, in a future proceeding, determine the disposition methodology to be applied to this deferral account.

2.4.3 It was, however, also the Company's position that there was nothing in the relevant legislation that would have prevented bringing forward a proposal for disposition of the deferral account at this time. Union's conclusion was that it was simply more appropriate to wait until there were, in fact, funds in the account.

2.4.4 Union noted that its proposal for disposition of the deferral account would likely be made during its next main rates hearing, unless a hearing for leave to construct storage facilities took place prior to that event. It was the Company's position that the suggestion for disposition of the deferral account as an "aid to construction" credit to future storage development was not a "firm" one, but simply an indication of the direction of the Company's thinking.

2.4.5 According to Union, the amounts to be credited to the deferral account would be the difference between the market-based storage charge under the long-term storage contracts and the cost-based rate for storage under the M12 rate. Even if the M12 rate was eliminated, the storage premium to be credited to the deferral account would be based on a calculation of cost-based storage rates. Neither over-run charges nor unanticipated transportation revenue would be recorded in this new account.

2.4.6 With regard to the existence of similar deferral accounts in other regulated utilities, Union's witnesses testified that Consumers Power Co. had a deferral

account similar to the one being proposed by Union, but indicated that the Michigan Public Service Commission had made no finding on its disposition.

2.4.7 Ms. Holder and Mr. Otsason testified that Consumers Gas did not record storage-related revenue in a deferral account, in the manner proposed by Union. Instead, these revenues flowed back to customers with a one-year lag.

2.4.8 Ms. Chown testified that, since the storage premium revenues were not forecast by Union in its last rates hearing, the Company would need a deferral account until there was another rates hearing. Ms. Chown stated that:

> *Once Union has another rate hearing they could forecast the revenues from these contracts and flow it through at that time and, in my view, that would be preferable in the future than having the deferral account.*

2.4.9 In Ms. Chown's view, implementation of Union's proposal for disposition of the deferral account would distort long-run economic decisions on storage, resulting in subsidized storage development, the wrong economic signals, and the possibility that Union would undertake storage projects that no one else could develop because the others would not have the use of the funds in the deferral account.

Positions of the Parties

2.4.10 CAC supported Union's request for approval of the creation of a deferral account. With regard to the need for the Board to make a finding on rules for disposition of the account, CAC stated that, in its opinion, "it would only be relevant to determine those rules if there were evidence that the ultimate disposition would have a material adverse impact on the market or some participant in the market" but that there was no such evidence.

2.4.11 Consumers Gas also supported Union's request for creation of a deferral account, although they did not agree with the suggestion made by Union for its disposition. In the opinion of Consumers Gas, "it would be a mistake at this point in time to try to pre-establish a disposition mechanism", because of the likelihood of the Board's revisiting its decision in this regard in the future.

2.4.12 CanEnerco, PanCanadian and NRG argued that these parties were "firmly against Union's loose proposal for the deferral account to aid in its own storage development" and urged the Board to pay close attention to the disposition of this deferral account, whether in this hearing or in the future. The position of these parties was that "establishment of a deferral account is acceptable to capture the market premium, but that it would not be appropriate for the market premium to be used to subsidize as an aid to construct in the future...."

2.4.13 Kitchener was opposed to the granting of this or any of the orders and relief that Union sought in this hearing.

2.4.14 IGUA opposed the creation of a deferral account. Since IGUA was recommending that service be provided under the existing C1 rates, it argued that "the existing C1 revenue deferral account should suffice." AMO and ECNG adopted this position.

2.4.15 GMCLP was silent on the creation of a deferral account and stated that it "took no position with respect to the disposition of an eventual deferral account."

2.4.16 Suncor argued that the suggested treatment for the deferral account was not an appropriate approach.

2.4.17 Energy Probe argued that the creation of the proposed deferral account should be approved, but urged the Board to find that Union's suggestion that the deferral account funds be used to reduce the cost of future facilities was inappropriate.

2.4.18 Union replied that arguments against the deferral account tended to focus on the disposition of the account and argued that the disposition would, in fact, be up to the Board at a future hearing.

Board Findings

2.4.19 The Board finds that, should Union proceed with the proposed contracts with CoEnergy and Renaissance, the market premium generated by the sale of long-term storage under the approved contracts should be captured in a deferral account

until Union's next rates hearing. This premium should be calculated as the difference between the storage charges under the contracts and the forecast revenues per unit of space approved in the E.B.R.O. 494 Decision and Rate Order which Union stated corresponded to the cost-based storage charges under Union's M12 rates.

2.4.20 The Board notes that the "premium" related to the awarding of long-term storage contracts to CoEnergy and Renaissance at market-based rates was not included in the revenue forecasts approved by the Board during Union's last rates case. This "premium" is therefore in the nature of unanticipated revenue that should be held as a separate line entry in the C1 Peak Storage deferral account only until Union's next rates case, when proposals for its disposition can be approved.

2.4.21 For future periods, the Board directs Union to estimate the market premium arising from long-term storage contracts, including that from the contracts with CoEnergy and Renaissance if these proceed, and to include the estimate in its revenue requirement calculation.

2.4.22 The Board is unconvinced that any general deferral account is required for long-term storage revenues. The Board is also unconvinced that any revenue sharing beyond in-franchise customers is appropriate.

2.4.23 The Board will not make a finding on the disposition of the deferral arising from the proposed contracts with CoEnergy and Renaissance at this time. However, the Board notes the opposition expressed during this hearing to Union's suggestion for disposition of the balances arising from long-term storage "market premium" deferrals. The Board therefore expects that Union's proposal for disposition of the deferral, presented at its next main rates hearing, will explicitly comment on and take into consideration the concerns expressed. In particular, the Board will be concerned about any proposal that the balance, arising from the proposed contracts with CoEnergy and Renaissance or from any future contracts for long-term storage space, be used to subsidize storage development.

2.4.24 The Board directs Union to prepare a draft accounting order, for the Board's approval, reflecting this Decision and to file this with the Board. The Board also

expects Union to seek an accounting order for the establishment of a deferral account or extension of the C1 Peak Storage Revenue deferral account, at the completion of any future open season bidding process at the time Union applies for the approval, as required under section 22 of the Act, of any contracts that result from such a process.

2.5 RENEWAL OF M12 STORAGE CONTRACTS

2.5.1 As indicated in Table 2.2, Union currently had 1,338.3 10^6m^3 of storage space under long-term contracts pursuant to the M12 cost-based rate schedule. Of this storage 150,000 10^3m^3 was under contract to Centra and should no longer be considered an ex-franchise contract since Centra and Union were in the process of merging.

2.5.2 The remaining M12 long-term storage contracts for 1,188,320 10^3m^3 of space are summarized in Table 2.2.

Table 2.2: Union's Existing M12 Long-term Storage Contracts

COMPANY	SPACE (10^3m^3)	EXPIRY DATE	ASSOCIATED TRANSPORTATION ($10^3m^3/d$)
GMI	390,000 155,000 55,000	04/01/99 04/01/03 04/01/04	2,460 1,688 600
GMI (Transport only)			680
CONSUMERS GAS	563,320	10/31/03	9,010
CONSUMERS GAS (Transport only)			40,300
KPUC	25,000	04/01/04	346

2.5.3 The existing long-term M12 storage contracts contain no rights of renewal. Union stated it did not intend to renew these storage contracts at M12 rates upon expiry

but intended to take this storage to the marketplace by way of an open season bidding process.

2.5.4 Union proposed that storage capacity and associated deliverability related to expiring M12 contracts would be put on the market for bid 30 months prior to expiry of the contract, with terms and conditions similar to those in the expiring contract, except in a situation where the deliverability level was at a ratio of 1% or less to the space.

2.5.5 The existing contracting party would be expected to bid, and provided its bid price was at least 60% of the highest bid received, that party would have the right to match the highest bid in order to retain its entitlements to the storage/deliverability capacity. However, the right to match would only be for an amount equal to the ratio of the party's bid to the highest bid times the space/deliverability amount. Union expected the bid process to be completed 24 months before the expiry date of the requisite M12 contract, thereby providing the expiring contract customer with sufficient time to make alternate arrangements should it decide not to match the winning bids.

2.5.6 Union's witness panel stated that its design for the right of first refusal for expiring M12 contracts was to ensure that all bids were made with sincerity and with consideration of the true economic value of the storage. They believed that a conventional right of first refusal would discourage active bidding by third parties and that it was necessary to impose some minimum requirement before those storage rights accrued to an existing contractee. Union stated that the M12 customer should be bidding a price that was at least as good as its next best alternative to the storage offered.

2.5.7 Union noted that all contracts resulting from its proposal would be subject to Board approval under section 22 of the Act and that this approval requirement extended to any renewals of existing storage agreements.

2.5.8 Union's witnesses stated that it was inappropriate to compare its proposed storage contract renewal policy and TransCanada's policy of an automatic right to one-year renewal at cost-based tariffs for long-term firm transportation capacity.

Union's rationale was that storage is a competitive business, whereas the TransCanada pipeline system is a monopoly transmission system.

2.5.9 The GMI contract for 390,000 10^3m^3 of storage space expires on April 1, 1999. Union noted that this contract has transportation capacity associated with the storage and whether or not GMI maintains this transportation capacity commitment has significant planning implications for Union's Dawn-Trafalgar system.

2.5.10 Consumers Gas' witnesses proposed that until "the uncertainty surrounding storage in an unbundled environment" is resolved, existing M12 contracts should be extended on a yearly basis at cost-based rates with a rolling 24 to 30 month notice period. The witnesses stated that this notice period was required to make alternative arrangements in the face of a potentially significant change. Consumers Gas also noted that it was difficult to enter into long-term commitments for storage space until the role of LDCs in the new competitive environment had been clarified.

2.5.11 Consumers Gas proposed that, as a second best alternative, any bidding process should include a conventional right of first refusal, which would allow existing M12 storage contract customers to match the highest bid in order to retain the entire amount of the capacity released for bid. Consumers Gas' witnesses stated that Union would have the ability, after review of its own in-franchise requirements, to reduce the amount of storage that is offered for bid. The witnesses disagreed with Union's proposal for proportional rights for matching the high bids, since in order to retain access to the full amount of storage on offer, it would be necessary to bid at the extreme high end of the likely market range.

2.5.12 Consumers Gas stated that, as recently as E.B.R.O. 486-02, it was contemplated that if an existing M12 storage customer was willing to contract for the transportation capacity along with the storage capacity, Union would renew the expiring contract under the M12 cost-based rate. The current proposal for renewal under market-based rates was a recent development and illustrated the changing market place. The witnesses submitted that the renewal issue should be examined in the larger context of how storage will be regulated and operated in the future.

2.5.13 Ms. Chown stated that there was no contractual provision preventing the Board from adopting market-based rates for all M12 storage prior to contract renewal. However, Ms. Chown stated that, if the Board did not approve a move to market-based rates for all M12 customers at this time, Consumers Gas' proposal that the contracts be renewed on a yearly basis, until such time as the uncertainties were resolved, would be a reasonable approach for the Board to adopt. In addition, Ms. Chown stated that a 24 to 36-month notice period would not be necessary for a move to market-based rates but this notice period was necessary if the renewing party might not gain access to the storage.

2.5.14 Ms. Chown also stated that she was familiar with GMCLP's situation and that GMCLP had not needed as much storage as was available to them in one or two of the recent years, since they were running at 100 percent load factor on TCPL.

Positions of the Parties

2.5.15 CAC, while it acknowledged the need for transitional rules for existing M12 storage customers, submitted that it was not necessary in this case for the Board to deal with this matter as a prerequisite to granting Union the relief it sought with regard to the approval of the specific contracts.

2.5.16 Consumers Gas submitted that its preferred position was that the Board not deal with the question of the expiry of M12 contracts now. Consumers Gas suggested that existing contracts should be rolled over on cost-based rates until such time as the issue of potential legislative change to allow burner-tip sales had been clarified and there had been a fuller examination of the M12 contract renewal issue. Consumers Gas argued that, until the legislative change issue had been resolved, it was unable to determine the extent of its future role in the storage business.

2.5.17 Consumers Gas also argued that existing M12 storage contract customers should have a conventional right of first refusal should the storage volumes underlying their expiring contracts be put to bid. Consumers Gas argued that Union's proposal to relate the volumes that could be renewed to the ratio of the bid prices was unnecessarily complicated, would satisfy no party's requirements, was not adequately supported, and would put the renewing customer at a bidding

adequately supported, and would put the renewing customer at a bidding disadvantage. In addition, the utility stated that, for customers with large amounts of storage, such as Consumers Gas, there was uncertainty about whether there would be an acceptable range of alternatives available at the time a contract came up for renewal.

2.5.18 CanEnerco, PanCanadian and NRG took no specific position on M12 contract renewals. However, these parties suggested that the Board consider that one M12 customer (GMi) may not have a sufficient planning horizon to deal with renewals and that all renewals should be afforded as uniform treatment as possible.

2.5.19 IGUA submitted that the distinction between in-franchise and ex-franchise users did not justify different treatment for the same type of service. IGUA submitted that if the Board rolled over existing M12 storage contracts at cost-based rates, it should not broaden the existing C1 rate schedule to accommodate market-based rates for long-term storage offered to other potential customers. In the alternative, if market-based rates were applicable to long-term storage offered to other potential customers, rates for M12 storage should become market-based.

2.5.20 IGUA submitted that Union's proposal to bring market-based rates into M12 contracts upon their renewal should be rejected. IGUA submitted that:

- the Board should find that existing M12 customers were entitled to a renewal right at the prevailing cost-based tolls;
- notice of exercise of their renewal right should be provided at a reasonable time before contract expiry; and
- the term of the renewal should be subject to negotiation between the parties.

In the absence of an agreement either party could come before the Board to fix any item in dispute.

2.5.21 GMCLP submitted that it was premature for Union to apply for the application of market-based rates to long-term storage services when the Board's Market Review

was not complete. Further, it questioned whether the use of market-based range rates for storage was permitted under the current legislation. Consequently, GMCLP supported Consumers Gas' proposal for interim renewal of expiring M12 storage contracts, should the Board find it appropriate to go forward with market-based rates for long-term storage to other potential customers. In support of its position, GMCPL argued that, given the uncertainty regarding the future structure of the markets, it was difficult to plan its strategy and the utility was concerned that Union might take the "huge" blocks of storage associated with expiring M12 contracts to the market, while these uncertainties were still unresolved.

2.5.22 Suncor argued that, without a clear path towards deregulation, the appropriate treatment for M12 contracts upon renewal could not be determined at this time.

2.5.23 AMO and ECNG supported the positions taken by Consumers Gas and IGUA with regard to the treatment of expiring M12 contracts.

2.5.24 Kitchener submitted that the Board should refuse to grant any of the approvals requested by Union in this proceeding.

2.5.25 With regard to M12 contract renewals, Union replied that all parties agreed that there should be renewal rights, the issue was whether they should be at cost-based rates and what the appropriate notice period should be. Union characterized IGUA's proposal to renew the existing M12 contracts at cost-based rates for GMI, Consumers Gas and other M12 customers as a "gift". It supported as more realistic Consumers Gas' proposal for continuation of the M12 contracts on a rolling basis with a two-year reciprocal notice of termination that could be effected by either party.

2.5.26 Union submitted that Consumers Gas in making its proposal had recognized that storage rates will have to move to market prices. Union, however, restated its belief that its proposed qualifications on the right of first refusal were necessary in order to ensure sincere bidding takes place.

2.5.27 Union also submitted that GMI had no contractual right to renew at cost-based rates and that if GMI were required to bid on the value for the resource at the end

of its existing contract, the Board would not be removing from GMI a right to which it was entitled. Union further challenged GMI's contention that the Board may not have the appropriate jurisdictional authority to set market-based rates for long-term storage, stating that, in its view, there was no merit to the argument.

Board Findings

2.5.28 The Board observes that there are no renewal rights in the existing M12 contracts. Such a provision would be inappropriate in view of the requirement in section 22 (2) of the Act that the Board set a specific term.

2.5.29 The Board recognizes the concerns of parties about the uncertainties regarding the future structure of the Ontario natural gas market and the role of Ontario LDCs. In addition, the Board understands that the uncertainties create difficulties for such parties in determining both the volumes for which they should contract and the price they would be willing to bid in an open season bidding process.

2.5.30 The Board recognizes that it cannot remove the uncertainties that face any party that wishes to participate in a competitive natural gas market. However the Board believes that at this time the uncertainty regarding the future natural gas market structure is of sufficient concern that there may be a need for an interim policy to address the issue of the renewal of M12 storage contracts.

2.5.31 The Board agrees with the concerns raised by Consumers Gas that Union's proposal in this regard was unnecessarily complex and could put a renewing party with large storage volumes at a competitive disadvantage in the bidding process. Therefore, the Board does not accept the specific proposal put forward by Union with regard to the form of first right of refusal for parties with expiring M12 contracts.

2.5.32 The Board is aware that the current regulated environment for storage and transportation may change to a market-oriented environment as a result of the completion of the Board's Market Review and any amendments to legislation brought forward. Consequently, the Board considers the following renewal policy

to be an interim arrangement until questions related to the Market Review have been resolved.

2.5.33 In the transition period described in the preceding paragraph, the Board finds that before large volumes related to M12 contract renewals are put out for bid, there must be an opportunity for the party with the expiring contract to have a right of first refusal. The Board directs Union to provide the parties with existing M12 contracts with the opportunity to renew their M12 contracts for a period of up to two years, provided that they give notice of such renewal 18 months prior to the date of expiry of the existing contracts. Contracts for such renewal shall be completed and filed with the Board as required by section 22 of the Act for approval no later than 6 months from the date of notice, i.e., one year prior to expiry. The renewal will be at the approved M12 rate applicable at the time of renewal, whether that be a cost-based rate or a market-based rate. The renewal shall be for volumes no greater than existing contract volumes after adjustment for any volumes not required to serve the in-franchise needs of the renewing LDC.

2.5.34 The Board agrees that there is a close relationship between the disposition of expiring long-term storage contracts and associated transportation contracts. The Board therefore requires that any contracted transportation capacity that is associated with the storage capacity, be renewed at the same time for the same period and for equivalent volumes.

2.5.35 The Board notes that all three M12 storage customers are Canadian LDCs and the Board accepts that, for the most part, these contracted storage volumes are required to serve their in-franchise customer needs and are not contracted for the purpose of resale to the secondary market. The simultaneous contracting for transportation capacity to the LDC's franchise area provides for greater certainty in this regard.

2.5.36 The Board recognizes that in any transition there is the prospect for perceived discriminatory treatment of different customers with similar service requirements. The Board is of the view that the existing M12 customers are different from potential new customers for Union's storage services since they have established their existing business arrangements based on their historic access to Union's

storage services at cost-based rates. The Board believes such customers should be provided an opportunity to make necessary adjustments to their supply arrangements to reflect a new market structure and storage allocation philosophy. Equally because of the concerns of discrimination the Board believes such customers should not be provided more relief than that necessary to make such new arrangements.

2.5.37 According to the evidence, some 18 months to three years lead time is required to make alternate arrangements for large volumes of storage, should this be necessary. Consequently, the Board's finding in this section means that GMI would have to provide Union with its notice of intention to renew the contract that is due to expire on April 1, 1999, by October 1, 1997. The renewal contract will have to be completed and filed with the Board by April 1, 1998. The renewal period would be for a period of up to two years from April 1, 1999. The rates underpinning the contract would be the approved M12 rates for the years in question. Such rate approvals are usually on a yearly basis as part of the Board's approval of Union's rates.

2.5.38 Given the timing of the Board's Decision the Board accepts the need for flexibility in the date certain for notices of intention to renew, but given the consequences of not having the contract in place by April 1998, finds that no extension of the contract date is appropriate.

2.6 STORAGE ALLOCATION POLICY

2.6.1 The Board previously directed Union to establish both a long-term queue and a short-term queue for the allocation of peak storage services using excess storage space. The short-term queue was used to allocate service for less than one year under the C1 short-term range rate. The long-term queue applied to requests for storage services for periods of ten years or more and was for storage service under the firm M12 storage rate, a cost-based rate.

2.6.2 Union's short-term queue was updated annually and was comprised of various end users, LDCs, marketing companies and producers who advised Union by November 1 of each year, of their interest in storage for the following year.

Parties were required to make a $5,000 deposit, which was refundable to the customer provided they actually bid on storage offers. The queue was established on a "first come, first served" basis and in the event of a tie, the applications were prioritized in the order of: Ontario LDCs and end users not in Union's franchise, other Canadian LDCs or end-users, others who submitted a storage request form prior to November 1, and on a "first come, first served" basis for those that submitted a request form after November 1. For administrative ease, all requests received prior to November 1 were deemed to have been submitted at the same time.

2.6.3 Short-term peak storage was made available to those companies that submitted a bid price within Union's approved short-term storage C1 range rate. Parties with higher priority had a right to match the highest offers submitted by companies with lower priority prior to Union allocating the storage space.

2.6.4 On April 2, 1997 Union issued an invitation to tender to 68 potential customers in the short-term peak storage queue for the 1997/98 storage season. All but one of these customers responded. As a result of this bidding process, in early April Union released, to six companies, a total volume of 157,219 10^3m^3 with an average price of $27.53 per 10^3m^3. Union stated it was in the process of finalizing contracts with these six companies. The contracts will be filed with the Board.

2.6.5 Union stated that the current short-term procedure created a sense of unfairness among bidders that bid the highest price only to find themselves displaced by someone who had a right of first refusal to match that price. Union further stated that the procedure was unfair to new market entrants that were not in a position to meet the November 1 queue deadline. Union believed that since the short-term storage market was competitive, there was no need to favour one group of participants through ranking procedures and that such procedures tended to depress the bid prices. Further, Union stated that the procedures were inconsistent with those of other storage providers in its competitive market areas, namely: Ontario, Michigan and New York, and with the treatment of substitutes for storage, such as winter peaking supply that could be negotiated one-on-one.

2.6.6 Union's long-term queue, established in 1988, comprised those companies that had formally expressed desire for long-term storage at Union's cost-based, rolled-in rates and was prioritized by the timing of the request. There was no charge to a company for maintaining its position in the queue year after year.

2.6.7 Union filed a copy of the long-term queue, which contained 14 parties with requests for storage totalling 965,566 $10^3 m^3$. The most recent request was two years old. GMI was at the top of the list with a request submitted in 1988 for 114,000 $10^3 m^3$ of storage for a term greater than 10 years starting in April 1990. Kingston Public Utilities Commission was the next party with a request submitted in November 1988 for 600 $10^3 m^3$ of storage for a term greater than 10 years starting in April 1990 .

2.6.8 Union's opinion was that the long-term queue is no longer an appropriate mechanism to allocate access to storage and did not reflect current market conditions. Union agreed with Board Staff's characterization in E.B.R.O. 486-02 that the queue represented "a list of interested parties rather than parties with rights to storage". Union stated that the competitive bidding or open season bidding process was the best way to allocate storage space in the current market environment. Union also stated that if the Board were to deny Union's request for market-based rates for long-term storage, a new mechanism would be required for the allocation of access to long-term storage capacity since the existing queuing policy did not work.

2.6.9 Union proposed to eliminate its current long-term and short-term storage queuing policies and replace them with a new peak storage allocation policy. The proposed policy is:

1. *Availability of Peak Storage and Long-Term Storage service may be communicated through notices to parties who have indicated to the Company that they have an interest in such services and who, in the Company's opinion, may have such interest. The Company may also, at its option, use other methods to publicize the availability of Peak Storage service.*

2. *Available Peak Storage and Long-Term Storage capacity will be allocated on the basis of maximizing value to the Company.*

3. *If multiple parties have entered bids for Peak Storage and Long-Term Storage service which have equal value to the Company, the service will be allocated in the following order of priority:*

   (1) Ontario gas distribution companies and Ontario end-users, for their own use;

   (2) Canadian gas distribution companies and Canadian end-users, for their own use; and

   (3) all others.

2.6.10 Union stated that its proposal did not change its planning process, which would continue to protect the needs of in-franchise customers, by taking in-franchise needs into account before any storage is marketed to ex-franchise customers.

2.6.11 Consumers Gas' witnesses stated that, with the Board's approval in E.B.R.O. 492, Consumers Gas' queuing policy had been replaced by an allocation policy that was "very similar" to the policy proposed by Union.

2.6.12 Ms. Chown stated that in her view, a queuing process of "first come, first served" was a tremendously inefficient way to allocate available storage capacity. With market-based pricing, a queuing policy was unnecessary since the storage was allocated to the party that placed the highest value on the storage.

Positions of the Parties

2.6.13 CAC adopted Union's position that the long-term queue is no longer necessary or appropriate and expressed its support for Union's proposed storage allocation policy, stating that the policy was appropriate to protect in-franchise and Ontario interests.

2.6.14 Other than the evidence given by its witnesses, Consumers Gas made no specific submission regarding Union's proposed storage allocation policy.

2.6.15 NRG wished to be assured that, as a utility dependent on Union for bundled services, there would be sufficient storage available to it at all times at the lowest possible cost.

2.6.16 IGUA supported Union's proposed changes to its short-term peak storage queuing policy, noting that the changes recognize the priority of Ontario customers in the event of a tied bid. With regard to the long-term queuing policy, IGUA submitted that, since it supported the continuation of cost-based rates for storage, the existing queue policy should remain in place until Union brought forward an alternative. IGUA suggested that Union should remain free to allocate any excess capacity to the short-term market, subject to the conditions of the C1 rate schedule.

2.6.17 GMCLP argued that, rather than throwing out the long-term queue, Union should make the necessary changes to make it operate effectively. GMCLP argued that, having been in the queue since 1988, it had acquired some rights, even if these were only renewal rights of some kind. GMCLP also argued that, having been a long-term storage contract customer of Union, they should be entitled to some rights on the system and those rights should rank immediately behind those of in-franchise customers.

2.6.18 Suncor argued that without a clear path towards natural gas deregulation, issues related to storage queuing policies could not be determined at this time.

2.6.19 Energy Probe recommended that the Board approve Union's proposal to replace the short-term and the long-term storage queue policies with a storage allocation policy.

2.6.20 Kitchener submitted that the Board should refuse to grant any of the approvals requested by Union in this proceeding.

2.6.21 In reply, Union argued that its proposal was the most efficient way to allocate the available space. Union further pointed out that Ms. Chown had contended that

short-term and long-term storage trade in the same market and are ultimately substitutes for one another.

2.6.22 In addition, Union submitted that the position, espoused by Suncor, that the Board should not take any action until all problems had been resolved was not tenable and pointed to the initiatives with regard to direct purchase and Agent Billing and Collection ("ABC") T-service that have been taken to recognize and facilitate competition without legislative change.

Board Findings

2.6.23 The Board notes that no parties raised specific objections to the changes proposed by Union with regard to its short-term peak storage queuing policy. The Board finds that the peak storage allocation policy proposed by Union is a fair and reasonable approach. The Board therefore accepts Union's proposal to eliminate its short-term peak storage queuing policy by removing the $5,000 registration deposit, removing the ranking of matching rights but retaining a preference for Ontario users in the event of equal bids.

2.6.24 The Board also agrees with Union's position that the existing long-term peak storage queue is inappropriate and should also be eliminated. The Board accepts the view that the queue is no more than a listing of parties that have expressed an interest in obtaining long-term storage should it become available.

2.6.25 The Board also believes that the use of an open season bidding process is a fair way to allocate storage capacity that is surplus to in-franchise needs and certainly fairer than a process based on the "first come, first served" principle when there is a significant discrepancy between what could be the cost-based rate and the value of storage in the market place.

2.6.26 The Board, however, directs that Union clarify the intent of the policy by:

- changing the title of the policy, so that it reads "Peak Storage Allocation Policy (Long-term and Short-term)"; and

- changing "may" to "will" in the first clause and inserting the phrase " to others" before the word "who", so that the clause reads:

    1. Availability of Peak Storage and Long-Term Storage service using space surplus to in-franchise requirements, will be communicated through notices to parties who have indicated to the Company that they have an interest in such services and to others who, in the Company's opinion, may have such interest.

2.6.27 With these changes in wording to improve clarification, the Board approves Union's proposed short and long-term storage allocation policy for storage that is surplus to both in-franchise needs and to existing M12 storage contracts, as discussed previously in this Decision.

2.6.28 The Board would expect any capacity, which is surplus to any forecast in-franchise needs for Union including contracted requirements for Centra customers and M12 renewals, will be brought to market under the Board-approved storage allocation policy.

2.7 CONFIDENTIALITY OF BID PRICES AND CONTRACTS

2.7.1 Union proposed that the details of bid prices and contracts should remain confidential. Union was prepared to provide aggregate information and commented that, if the Board required details of specific contracts, it could have the details reviewed by the Energy Returns Officer ("ERO") on a confidential basis. Union stated that the bids are treated on a confidential basis in the same manner as bids for other services offered by Union under market-based or range rates. Union stated that this information could be commercially sensitive to bidders and disclosure could harm the economic interests of Union and negatively impact its future dealings with customers, who valued their ability to obtain service from Union on a confidential basis. Union stated its belief that this practice was consistent with common business practice in other industries.

2.7.2 Consumers Gas stated that there are other competitors offering storage services that are not required to divulge the details of their storage contracts. Consumers

Gas therefore submitted that, in order to maintain a level playing field, disclosure of the prices of winning bids should not be required.

2.7.3 In addition, Consumers Gas stated that, although its short-term peak storage contracts were filed with the Board, the delays between the filing and timing of the offering process, mitigated the negative impacts of public filing of pricing information.

2.7.4 Ms. Chown stated that winning bids should be made public to improve transparency of the process and enable customers to protect their own interest through being able to challenge the awarding of a contract before the Board.

2.7.5 CanEnerco, PanCanadian and NRG in argument supported access to final bidding information, if necessary on a coded basis to protect some level of confidentiality since, in their view, there may well be benefits from increased transparency in the market and better information resulting from disclosure of the contract prices.

Board Findings

2.7.6 The Board notes that, although Consumers Gas did not address the question of confidentiality in its argument, its witness panel was in agreement with the position put forward by Union.

2.7.7 The Board is aware that the utilities are required to file their short-term storage contracts, including the names of the parties, the terms, the prices and any contract conditions, with the Board. These contracts are placed in the public file. The Board also notes the views of Consumers Gas' witnesses that the timing of filing reduces any negative impact that disclosure of this information could have on the market.

2.7.8 The Board believes that, for the time that storage remains a regulated activity of the utility, there is justification for requiring that the details of winning bids for long-term storage also be made public, in the interests of transparency and the benefits to the working of the marketplace. The Board is not persuaded that knowledge of the specific bid price will significantly influence the transactions of

other market players or harm the relationship between Union and its storage customers.

2.7.9 The Board does not foresee Union going to the market with long-term storage offerings in rapid succession, so that the release of the results of one open season bidding process should not unduly affect the bidding process for the next open season.

2.7.10 With regard to the proposed contracts with CoEnergy and Renaissance, the Board directs that, if Union proceeds to finalize these, copies, including the names, terms, prices and contract conditions, be filed with the Board.

3. COSTS AND COMPLETION OF THE PROCEEDINGS

3.1 COSTS

3.1.1 The following parties submitted that they should receive 100 percent of their reasonably incurred costs: ECNG and AMO, CAC, CanEnerco, PanCanadian, NRG, Energy Probe, IGUA, Kitchener and Suncor.

Positions of the Parties

3.1.2 Union submitted that Kitchener's argument contained errors of fact in citing the evidence, but otherwise had no submissions in respect of other parties.

Board Findings

3.1.3 The Board found the evidence of Suncor's witness, Ms. Chown, to be helpful to its understanding of the storage market and policy directions and options for deregulation. Accordingly the Board awards Suncor 100% of its reasonably incurred costs with regard to the evidence of Ms. Chown and 80% of its other reasonably incurred costs.

3.1.4 The Board found the cross examination and submissions of CAC and IGUA to be helpful to its understanding of the issues and the positions represented by these parties. Accordingly the Board awards CAC and IGUA 100% of their reasonably incurred costs.

3.1.5 The Board finds that, while AMO, ECNG, CanEnerco, PanCanadian, NRG and Kitchener assisted in its understanding of the storage market, these parties did not address several of the broader policy issues and were therefore of less assistance to the Board. Accordingly the Board awards AMO, ECNG, CanEnerco, PanCanadian, NRG and Kitchener 80% of their reasonably incurred costs.

3.1.6 The Board orders Union to pay the costs of the above parties following a review of their cost submissions by the Board's Assessment Officer and to pay the Board's costs of, and incidental to, the proceeding immediately upon receipt of the Board's invoice.

3.2 COMPLETION OF THE PROCEEDINGS

3.2.1 The Board's Order approving the parties to, the period of, and the storage that is the subject of proposed storage agreements between Union and CoEnergy Trading Company and Union and Renaissance Energy Ltd., including the requirement that Union file copies of the executed contracts with the Board, will issue in due course.

DATED AT TORONTO, September 26, 1997

R.M.R. Higgin
Presiding Member

G.A. Dominy
Vice Chair

F.A. Drozd
Member