

## Appendix B

### Department of Public Works, Utilities Division

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August 24, 2000

Union Gas  
50 Keil Dr. N  
Chatham On N7M 5M1

Attention: Mr. D. Simpson, P. Eng.

Thank you for your letter of August 9<sup>th</sup>, 2000. Most of the interpretation issues in our contract are difficult due to their unprecedented nature and complexity. A contract can only be so detailed in its language. I believe that this difficulty can be overcome by going back to the intent with which the contract was negotiated and, most importantly, the underlying principle of equitable interpretations for mutual benefit.

In response to your letter, I will be outlining our perspective on each of the topics. I understand that further dialogue may need to occur on implementation of certain topics but when you return next week, I will be away on vacation myself. Please review our perspective and we can discuss the first week of September.

1. 20% Flexibility

Our understanding of Union's policy was to provide shippers and customers with the flexibility to move 20% of their Parkway commitments to Dawn. This flexibility is being funded by customers through their delivery rates. As we demonstrated, Kitchener is paying a significant portion of this flexibility with only a limited ability to capture the benefits of the flexibility. We appreciate that Union Gas will provide us with an equitable portion (20%) of Dawn deliveries based upon our varying Parkway commitments as defined by the T-3 contract up to November 1<sup>st</sup>, 2002.

2. T3 CD Bandwidth

This issue is "Exhibit A" in problems with the interpretation issues as described in my opening. After the contract was signed, Union Gas was of the view that incremental deliveries are over and above our Delivery Commitments (DCQ) as defined by the contract. Kitchener was of the view that incremental deliveries were over and above our Contract Demand (CD).

In your letter, you state that "the interpretation of this clause is well defined within the clause itself". The clause reads: "The CD can be exceeded by the Bandwidth provided that the Customer delivers an amount of gas equal to the difference between the CD and the Bandwidth (the "Incremental Gas") to Union at Parkway or any other point authorized by Union on the day." The CD is defined in that paragraph as a minimum of 72,121 GJ/day and the Bandwidth, 3,774 GJ/day. The resulting difference is 68,347 GJ/day which, of course, is absurd as a delivery obligation. So even in our contract language, a key component of this contract is incorrectly defined.

During the winter when the CD bandwidth would be employed, Kitchener is committed to provide 33,966 GJ/day in deliveries and has the contractual right to deliver an additional 53,923 GJ/day from storage. Since the sum of these figures minus the CD is 15,768 GJ/day, we have believed that we would be meeting our commitment to incremental gas, as we saw it, 3,774 GJ/day. Even if Union were to define the incremental gas as that delivered to franchise, Kitchener will be delivering 6,303 GJ/day over an above an annualized DCQ. These incremental franchise deliveries will reduce Union Gas delivery commitments. Under a PBR regime, these reduced commitments result in incremental revenues accruing directly to the shareholder. Since Union was already enjoying a benefit and were greatly exceeding our CD, Kitchener was not planning on acquiring a peaking service.

However, as I indicated in my opening comments, the intent with which the contract was negotiated is important, from our perspective, in interpreting the contract. I believe that this is clearly a difference in perspective that in no way was clarified throughout the negotiations or contract development. I believe that Union Gas negotiator, Ron Collins, had reason to believe Union's view because of some of the dialogue in our negotiations. Ron and I shook hands after writing out the specific parameters (without the detail) and I now believe that Ron believed he was committing to Union's view of this topic. In the spirit of honouring the integrity of negotiation and working together going forward, Kitchener is willing to accept Union's view of this clause without reservation for this year. We will be putting in place a peaking service for this year and would like to have further discussions on delivery obligations for the winter of 2001-2.

3. Joint CCK/Union Letter

As you are likely aware, Union Gas and Kitchener submitted a joint letter to the Board on August 16<sup>th</sup>. I appreciate your suggesting the approach and Union Gas willingness to work with us on initiating the T3 Contract and deferring the permanent allocation issue.

4. Aggregate Excess Storage Calculation

You have developed some numbers and a methodology to support that aggregate excess was used to determine our storage allocation. This is the first time that I have seen these figures. Ron Collins and myself tried to develop a forecast as a reference for negotiating contract parameters. Your figures are different. Ron and I tried to develop a weather-normalized forecast with a reasonable growth to support the storage allocation but we were not successful.

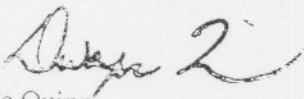
Our view has always maintained that Kitchener should receive an allocation of storage which underpins the historical M9 rates. From Union's evidence submitted to the OEB, Union allocated 91,507 cubic meters of storage space to Kitchener. This figure was Kitchener's request in the negotiation. Due to the resistance from Union to agree to that number, Kitchener proposed a compromise. In Union Gas' unbundling evidence, Union proposed a storage factor of 0.976 to account for its needs in the event of complete unbundling. Even though Kitchener did not agree with the reasonings behind this factor, Kitchener proposed its use to strike a compromise. When you multiply 91,507 by 0.976, you get 89,311 cubic meters. Kitchener proposed 89,300 cubic meters which was, eventually, accepted by Union Gas as a package with other parameters and agreements in the Letter of Agreement dated April 7, 2000.

5. Storage Assignments

I think we both understand that this area will need some dialogue to come to an agreement that is clear. In the interim, however, I would appreciate understanding why Union would need to approve a storage assignment if the assignee is bound by the same terms, constraints and parameters held inside Kitchener's T3 contract. An explanation of your need to approve on a case by case basis would be appreciated.

Dave, I believe that we have set the foundation for moving forward with this contract and, more importantly, our relationship as channel partners in bringing the gas to our customers. I look forward to resolution of any other outstanding matters in the first week of September. Thank you.

Sincerely,



Dwayne Quinn  
Director of Utilities – City of Kitchener

- c. A. Ryder
- E. Kovacs
- L. Baillargeon