

Appendix E

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2005-0559

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

AND IN THE MATTER OF an Application by the
Corporation of the City of Kitchener for approval of the
parties to, the period of, and the storage that is the subject
of a T3 carriage service gas contract between Union Gas
Limited and the Corporation of the City of Kitchener.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

DECISION AND ORDER

Application

In an application dated December 22, 2006, the Corporation of the City of Kitchener ("Kitchener") applied, pursuant to subsection 39(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, for an order for approval of a T3 Carriage Service Contract with Union Gas Limited ("Union"). The Board assigned a Board file number EB-2005-0559 to this application.

Kitchener is applying for an extension of its existing contractual storage space of 3,370,182 GJ (3.2 Bcf) from April 1, 2006 to March 31, 2007.

Kitchener is an embedded gas distribution utility within Union's Southern Area and is long-standing Union's in-franchise customer receiving transportation and storage service under the T3 rate since 1998.

Kitchener and Union entered into a five year contract on April 1, 2000 which expired on March 31, 2005. The Board, by a decision and order (EB-2005-0191) dated March 15, 2005, extended the contract for an additional year from April 1, 2005 to March 31, 2006.

Representatives of Union Gas and Kitchener by a letter of March 2, 2006 agreed that:

1. the second overholding period of the Current T3 Contract will start April 1, 2006 and expire March 31, 2007;
2. the contract parameters from the 5th year of the current T3 contract (i.e. April 1, 2004 - March 31, 2005) will apply during the second overholding period;
3. consumption overruns that Union Gas authorized on January 19, 2004 will apply during the second overholding period.

Kitchener submitted that the only parties affected by continuing the existing storage space allocation to Kitchener to March 31, 2007 are Kitchener and Union.

Kitchener and Union requested that certain commercial terms in the contract be held in confidence pursuant to the Board's *Rules of Practice and Procedure* on the basis that the contract contains information that is commercially sensitive and will harm the contracting parties' competitive positions. The confidential information pertains largely to the pricing provisions in the contract.

The Board issued a Notice of Application on March 15, 2006. The persons who received this Notice were those who participated in the Natural Gas Forum, those participating in the Natural Gas Electricity Interface Review (NGEIR) and Union's 2007 rates proceeding. In the Notice of Application, the Board invited interested persons to file, by March 20, 2006, written submissions addressing the merits of the application.

Kitchener was given until March 24, 2006 to file a reply submission if any. No party filed submissions.

Board Findings

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

The Board finds that given the nature and specifics of the application, no party will be adversely affected in a material way by the outcome of the application, and the Board's ability to consider the issues which will be subject to the Natural Gas Electricity Interface Review will remain unimpaired.

The Board will grant the confidentiality requested by Kitchener and Union Gas, in accordance with the Board's Rules of Practice and Procedures.

The Board finds that approval of the contract extension is in the public interest.

THE BOARD THEREFORE ORDERS THAT:

Subject to the conditions set out in this Order, the Board approves:

1. a second overholding period for the T3 Contract starting April 1, 2006 and expiring March 31, 2007;
2. that the contract parameters from the 5th year of the current T3 contract (i.e. April 1, 2004 - March 31, 2005) will apply during the second overholding period;

3. that the consumption overruns that Union Gas authorized on January 19, 2004 will apply during the second overholding period;
4. the storage space that is the subject of the T3 Carriage Service Contract as set out in the contract, attached to this Order as Appendix "A".

This approval is conditional upon the Corporation of the City of Kitchener filing with the Board, as soon as possible, an original signed copy or a certified copy of the amended T3 Carriage Service Contract it concludes with Union Gas Limited in reliance upon this Decision and Order.

DATED AT Toronto, March 27, 2006.

ONTARIO ENERGY BOARD

Original signed by

Gordon Kaiser
Presiding Member and Vice Chair

APPENDIX "A"
TO BOARD DECISION AND ORDER
IN THE MATTER OF EB-2005-0559

Being a copy of a contract for storage services from Union Gas Limited, identified as Carriage Service Contract from which certain information is withheld and not currently available to the public.