

**PREFILED EVIDENCE OF  
THE CITY OF KITCHENER  
NATURAL GAS ELECTRICITY INTERFACE REVIEW (“NGEIR”)  
ISSUES I & II**

**1. INTRODUCTION**

This evidence is filed on behalf of the City of Kitchener (“Kitchener”) by Dwayne Quinn, Director of Utilities and James A. Gruenbauer, Manager, Regulatory Affairs and Supply. Curriculum vitae for these witnesses are found at Appendix A.

Kitchener’s evidence addresses the following subsets of Issues I and II per Appendix C of the Board’s Procedural Order No. 2 issued in these proceedings:

1. I.4 Inter-franchise movement of gas (i.e., the ability to access services across Ontario, whether to a customer’s own account or as a sale to a third party).
2. II.4 “...specifically, should there be a constraining allocation of physical storage facilities to some types of customers based on measures such as aggregate excess...”.

With respect to the latter sub-set of issue II.4, the primary purpose of Kitchener’s evidence is to demonstrate to the Board and other parties that, while the allocation of

physical storage facilities should be constrained in an equitable manner (as gas storage in Ontario is a valuable and scarce resource), the following conclusions can be drawn from Kitchener's experience about the use of aggregate excess as a measure to achieve that constraint:

1. Aggregate excess provides an insufficient allocation of storage to a Local Distribution Company ("LDC") such as Kitchener with a firm obligation to serve demands of customers; and,
2. Kitchener's current allocation of storage under its T3 contract with Union is properly not based on aggregate excess.

Kitchener has limited its evidence herein to those issues of importance to it in these proceedings. The absence of evidence by Kitchener on other issues within the scope of these proceedings should not be construed as a lack of interest in those issues or imply support of any particular evidence or position advanced by other parties, with one exception at this time. Kitchener supports and is a joint sponsor of the evidence of Mark Stauff with respect to Issue II - Storage Regulation.

Kitchener respectfully submits that the Board ought not to contemplate forbearance until it is satisfied that conditions exist such that there would be non-discriminatory access to storage and transportation services. The Board started the process to establish such conditions under the original Gas Distribution Access Rule ("Rule"). However, the

Board chose to defer the storage and transportation aspects of the Rule so as not to prejudice the open rate case of Union Gas in RP-1999-0017. While the Decision in RP-1999-0017 accepted an agreement between Union Gas and its Interveners, the attractiveness of the unbundled offerings is measured by the fact that after five years, no customer has moved to this service. Clearly, the unbundled service as currently structured is not an effective alternative to non-discriminatory access.

In the interim, the Board has not returned to its original initiative to complete a Storage and Transportation Access Rule. It has been said the Board needs to establish conditions and a framework in the industry and then get out of the way of business. It is Kitchener's respectful submission that those conditions are not present and that the Board's role in regulation in the public interest must be maintained until it is clear that non-discriminatory access to storage and transportation services is available.

The remainder of Kitchener's evidence is organized as follows:

2. Summary of Evidence
3. Background
4. Aggregate Excess Methodology Fails to Meet Storage Needs of an LDC
5. Alternative Storage Allocation Methodologies for an Embedded LDC
6. Proposed Storage Allocation Methodology for Kitchener
7. Inter-franchise Movement of Gas ("Diversion Rights")
8. Direction Sought From the Board in NGEIR Decision



9. Appendices

**2. SUMMARY OF EVIDENCE**

Kitchener is an LDC. Similar to Union and Enbridge, Kitchener has an ongoing obligation as an LDC to serve the demands for gas by its customers as they arise which sets it completely apart from end users.

Prior to 1998, Kitchener was a “system gas” customer of Union served under Rate M9. Kitchener migrated from Rate M9 to T3 during 1999, contracting with Union for firm storage space, storage deliverability and transportation. Kitchener’s migration from Rate M9 to T3 was grounded on the preservation of service entitlements and existing asset allocations under Rate M9. Kitchener’s storage allocation of 89,300,000 m<sup>3</sup> under its original T3 contract was determined by negotiation and not by the aggregate excess methodology.

An extension of Kitchener’s existing storage allocation of 89,300,000 m<sup>3</sup> to March 31, 2007 was agreed by Kitchener and Union, and approved by the Board. Kitchener’s evidence herein, and the evidence to follow by way of reply and / or presentation at the oral hearing for NGEIR, is expected to assist the Board in determining an appropriate longer-term allocation methodology for Kitchener and other embedded distributors.

In its current form, the aggregate excess methodology provides no buffer for colder than normal weather. This creates an inequitable risk of insufficient storage and storage



deliverability at and beyond March 1<sup>st</sup> for an LDC such as Kitchener. An LDC has an obligation to meet the total firm demand of its customers under *design* conditions which, by definition, exceed *average* conditions and must, for prudent planning purposes, be anticipated to occur with some degree of probability over various planning horizons. This is precisely why Union, as an LDC, retains system integrity space.

By constraining Kitchener's allocation of storage space based solely on aggregate excess, Kitchener and its customers are exposed to price risks which Union, for good reason, itself will not accept. Union manages that risk by retaining system integrity space for itself. Union's application of aggregate excess to Kitchener or, potentially, to other embedded distributors is an inappropriate "one size fits all" approach. Kitchener's interpretation of the relevant Decisions of the Board to date on the issue of storage allocation is that the Board never intended for a "one size fits all" approach such as aggregate excess.

*"March 1 Control Point"* and *"March 1 Control Point + System Integrity"* are two alternatives to the aggregate excess methodology to allocate gas storage to an embedded LDC such as Kitchener.

The March 1 control point methodology has been used by Union for more than 25 years. The key principle is that adequate gas is planned to be available in storage on March 1 to meet firm customer requirements under design day conditions. Based on the requirement for a minimum 20% storage balance at March 1 in order to have full deliverability to

meet a firm design day demand, Kitchener can determine its planned control point at March 1. Based on the forecast of gas demand agreed upon by Kitchener and Union to underpin a new longer-term contract, the storage allocation at November 1, 2007 under the March 1 control point methodology would be 90,324,500 m<sup>3</sup> or about 1% more than the existing allocation.

Union does not allocate physical system integrity space to any customer and reserves it solely for its own use as “system operator”. From the perspective of Kitchener’s customer base, Kitchener, not Union, is the “system operator”. To level the playing field, system integrity space costs for its Rate M2, M4 and M5 customers should be allocated to Kitchener under the T3 rate and the corresponding amount of system integrity space for temperature risk should be added to the allocation derived from the March 1 control point methodology. Based on a proportional allocation of system integrity space for temperature risk only, this methodology would result in a storage allocation to Kitchener of  $90,324,500 \text{ m}^3 + 4,215,000 \text{ m}^3 = 94,539,500 \text{ m}^3$  for November 1, 2007.

At a minimum, Kitchener believes its storage allocation should be based on the March 1 control point methodology. If the Board is persuaded that it is prudent for Union, as an LDC with a firm obligation to serve, to hold system integrity space to manage temperature risk, then it is equitable and reasonable for Kitchener, as an LDC with a similar obligation, to have system integrity space to manage temperature risk. Thus, the most appropriate storage allocation methodology is March 1 control point plus system integrity. This methodology would place Kitchener on a similar footing to Union with

respect to the availability and use of system integrity space to discharge its obligation to serve and manage temperature risk.

Union continues to claim the right, by way of policy, to treat ex-franchise transactions that are fully within Kitchener's firm rights under contract as interruptible and subject to prior approval. Provided that Kitchener remains within firm contractual parameters, its right to divert gas should not be constrained or impeded by Union unless there are physical constraints on Union's system.

Kitchener respectfully seeks the Board to direct Union to apply the March 1 control point plus system integrity methodology (described later) to allocate an equitable amount of storage to embedded distributors such as Kitchener.

### **3. BACKGROUND**

Kitchener owns and operates a natural gas utility on behalf of its taxpayers. Kitchener provides natural gas to about 60,000 customers in its service territory. Annual deliveries of natural gas to its customers exceed 300 million m<sup>3</sup>. This represents about 1% of the current annual demand for natural gas in Ontario. While Kitchener is a significant supplier of system gas to customers, many customers in its service territory purchase their gas supply directly.



The provision of gas distribution and other related gas services to its customers is facilitated by Kitchener's "semi-unbundled" wholesale storage and transportation service under Rate T3 with Union Gas. This service is currently provided under an extension of a longer-term contract between Kitchener and Union Gas.

Unlike almost all of Union's other in-franchise customers, Kitchener is not an end user of gas. Kitchener is a gas utility. Unlike end users of gas, but similar to other utilities such as Union and Enbridge, Kitchener has no control whatsoever over its gas demand on a daily, seasonal or annual basis. With the exception of a handful of relatively small interruptible customers, Kitchener is fully and firmly obligated to meet the demands of its customers for gas as they arise. This utility obligation to serve sets Kitchener and other embedded distributors in Union's franchise area completely apart from end users served by Union.

Prior to 1998, Kitchener was a "system gas" customer of Union served under Rate M9. In fact, Kitchener was likely the largest system gas customer of Union at that time. Rate M9 was, and continues to be, a fully "bundled" service for embedded distributors; combining gas commodity, transportation, storage and load balancing services by a single provider, i.e. Union.

Kitchener migrated from Rate M9 to T3 during 1999, contracting with Union for firm storage space, storage deliverability and transportation. Kitchener assumed responsibility for purchasing the gas commodity requirements of its system gas customers from

suppliers and ensuring those supplies were delivered to Union under the T3 contract. Kitchener's obligations to provide bundled direct purchase options to its customers were and continue to be managed under the T3 contract. No end users in Ontario have similar obligations to provide direct purchase options to unrelated parties under an unbundled contract.

Kitchener's migration from Rate M9 to T3 was grounded by the preservation of service entitlements and existing asset allocations under Rate M9. The Board's legacy Decision in EBRO 412 required that Union create unbundled service in a way that the customer would be indifferent between bundled and unbundled rates. This "keep whole" principle was paramount throughout the migration to T3. Kitchener's storage allocation of 89,300,000 m<sup>3</sup> under its original T3 contract was determined by negotiation and not by the aggregate excess methodology. Please refer to Appendix B (which was Exhibit M19.3 filed in RP-2003-0063) and the table below which summarizes the storage allocation to Kitchener prior to and subsequent to its migration to T3.

	<u>Storage m<sup>3</sup></u>
Under M9	91,507,000 (1)
Under T3	89,300,000

Note: (1) Components included 81,585,000 m<sup>3</sup> based on aggregate excess + unspecified contingency space (per EBRO 499)

Kitchener's interpretation of the relevant Decisions of the Board to date on the issue of storage allocation is that the Board never intended for a "one size fits all" approach such as aggregate excess. If that was the Board's intent, then in its recent RP-2003-0063 Decision, the Board would simply have said to Kitchener that aggregate excess was the only method available to allocate storage space. There was sufficient evidence on the record in that case for the Board to impose a solution on Union and Kitchener. The Board chose not to do that. Instead, the Board stated at page 62 of its Decision, "...the Board urges Kitchener and Union to work together, again in a timely fashion, to resolve such specific issues as normalization of load and asset allocations." [emphasis added – excerpt attached as Appendix C]

In the preceding paragraph of the RP-2003-0063 Decision, the Board established a process by which Union and Kitchener would attempt to resolve differences in customer forecasts, including "requesting any staff assistance that may bring the parties to agreement." [emphasis added – excerpt attached as Appendix C] In other words, disagreement by the parties was contemplated by the Board and implicitly accepted as a potential outcome.

To Kitchener, this is deliberate and entirely in accordance with previous Decisions of the Board, in particular, RP-1999-0017 where the Board stated at paragraph 6.33 under "Unbundling Overview and Rationale" as follows: "The Board agrees with the many parties who indicated that Union's proposal should be viewed as a continued evolution of new services in support of a competitive market in natural gas commodity and other non-



monopoly services, should not be considered to be “set in stone”, and that there should be some flexibility surrounding it.” (Excerpt attached as Appendix D)

Kitchener’s original T3 contract had a primary term of five years, expiring on March 31, 2005. An overholding provision in the contract was exercised prior to expiry which extended the contract parameters in place during the fifth year of the contract to March 31, 2006. The existing storage space of 89,300,000 m<sup>3</sup> was approved by the Board in its EB-2005-0191 Order, dated March 15, 2005. Efforts by Kitchener and Union to negotiate a new longer-term T3 contract commencing April 1, 2006 resulted in an impasse on the appropriate storage allocation.

Pursuant to the three stage process set out at page 61 in the Board’s RP-2003-0063 Decision, Board Staff was engaged during 2005 to facilitate a resolution of the impasse. These efforts were unsuccessful. Kitchener and Union filed separate Applications under Section 39(2) of the Ontario Energy Board Act in late 2005 and early 2006, respectively, to seek an Order from the Board which would, among other things, fix the amount of storage for Kitchener under T3 service.

Subsequent to the filing of these Applications, Kitchener and Union agreed to extend the existing contract parameters, including the storage allocation of 89,300,000 m<sup>3</sup>, for an additional one year period ending March 31, 2007. By its Decision and Order under EB-2005-0559 dated March 27, 2006, the Board approved this extension. A copy of this Decision and Order is attached as Appendix E.

The extension of Kitchener's existing storage allocation of 89,300,000 m<sup>3</sup> to March 31, 2007 was agreed by Kitchener and Union, and approved by the Board. Kitchener's evidence herein, and the evidence to follow by way of reply and / or presentation at the oral hearing for NGEIR, is expected to assist the Board in determining an appropriate longer-term allocation methodology for Kitchener and other embedded distributors.

#### **4. AGGREGATE EXCESS METHODOLOGY FAILS TO MEET STORAGE NEEDS OF AN LDC**

Union uses the aggregate excess methodology to allocate gas storage space to customers when unbundled service is chosen. The cumulative difference between the customer's *average* winter and average *annual* demand over the 151 day winter period from November 1<sup>st</sup> to March 31<sup>st</sup>, based on a demand forecast assuming *normal* weather, determines the storage allocation under aggregate excess. An adjustment factor is applied by Union to the aggregate excess in order to not "over-allocate" storage. The factor adjusts for so-called "negative storage" customers (such as grain dryers and asphalt plants) whose seasonal load reduces the aggregate excess in total.

The aggregate excess methodology provides no buffer for colder than normal weather. Under this methodology, the aggregate difference in "weather normal" average winter demand from average annual demand over the winter season determines the maximum storage available for use at the start of the winter season. This creates an inequitable risk of insufficient storage and storage deliverability at and beyond March 1<sup>st</sup> for an LDC such

as Kitchener which is not an end user but has an obligation to meet the firm demands of end use customers.

In fact, on a forecast basis, the aggregate excess methodology assumes that storage would be depleted to exactly zero at March 31<sup>st</sup>, and that replenishment of storage would commence on April 1<sup>st</sup> and build thereafter. For an LDC with no control whatsoever over its demand, this is a potentially critical flaw in the allocation methodology.

As an LDC, Union has an obligation to meet the total firm demand of its customers under *design* conditions which, by definition, exceed *average* conditions and must, for prudent planning purposes, be anticipated to occur with some degree of probability over every seasonal, annual or long-term planning horizon. In other words, it would be reckless for an LDC to simply “wish away” or otherwise ignore the real risk of design conditions before they occur, i.e. at the beginning of the winter season. This is precisely why Union, as an LDC, retains system integrity space for temperature risk (refer to Exhibit D1 filed in EB-2005-0520 – excerpt attached as Appendix F).

As an LDC, Kitchener’s obligations to meet firm demand under uncertain and uncontrollable weather conditions are identical to Union. Kitchener’s risks are exactly similar in nature and differ only in scope (meeting demand for 60,000 customers instead of 1,300,000 customers).



If the storage space available to Union at the beginning of the winter season was constrained to aggregate excess, Union would be unable to prudently manage and meet its primarily weather-driven demand risk. Yet, by constraining Kitchener's allocation of storage space based solely on aggregate excess, Kitchener and its customers are exposed to price risks which Union, for good reason, itself will not accept. Union manages that risk by retaining system integrity space for itself.

While there is usually merit in a uniform, formulaic approach to allocate an asset among the parties that use it (primarily to achieve fairness and transparency), in this case, Union's application of aggregate excess to Kitchener or, potentially, to other embedded distributors is an inappropriate "one size fits all" approach.

## **5. ALTERNATIVE STORAGE ALLOCATION METHODOLOGIES FOR AN EMBEDDED LDC**

### *1. March 1 Control Point*

This methodology has been used by Union for more than 25 years. The key principle is that adequate gas is planned to be available in storage on March 1 to meet firm customer requirements under design day conditions (44 DDD)<sup>1</sup>. The March 1 control point for Kitchener (or other embedded LDC in Union's Southern Area) would be based on a

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<sup>1</sup> The March 1 planned control point will change from year to year based on requirements under design day conditions. [refer to Exhibit J5.03 in EB-2005-0520]

design day of 44 DDD with full deliverability from storage (minimum 20% storage balance as required under T3 contract<sup>2</sup>).

Kitchener is unable to precisely determine its planned March 1 control point in a manner consistent with Union's methodology (as the detailed calculations for Union are not currently available). However, based on the requirement for a minimum 20% storage balance at March 1 in order to have full deliverability to meet a firm design day demand, Kitchener can determine its planned control point at March 1.

Based on a forecast of winter demand and supply, the beginning November 1 storage allocation can be determined by "working backwards" from the March 1 control point determined above. The calculation is straightforward:

November 1 Storage Allocation = March 1 Control Point + (November to February Demand less Supply)

An illustration of the March 1 control point methodology as applied to Kitchener is found at Appendix G. Based on the forecast of gas demand that has been agreed upon by Kitchener and Union to underpin a new longer-term contract, the storage allocation at November 1, 2007 would be 90,324,500 m<sup>3</sup> or about 1% more than the existing allocation. Note that this calculation is based on a weather normal forecast of demand. It

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<sup>2</sup> Under Kitchener's T3 contract, deliverability from storage is reduced on a proportionate basis ("ratchet") as the storage balance declines below 20%. For example, if storage was at 10% of capacity, deliverability from storage is reduced by 50%.

would provide sufficient storage for an “average” or “below average” winter, but insufficient storage for an “above average” winter.

The March 1 control point methodology is clearly appropriate for an LDC, such as Union or Kitchener, with a firm obligation to serve end users.

2. *March 1 Control Point + System Integrity*

In its evidence for 2007 rates as pre-filed under EB-2005-0520 at Exhibit G3, Tab 5, Schedule 26, pages 5 through 7 (attached as Appendix H), Union provides a detailed allocation of system integrity space to rate classes by component. The three general components of system integrity space are as follows:

	<u>10<sup>3</sup> m<sup>3</sup></u>	<u>%</u>
1. Temperature Risk	84,984	33
2. Supply Backstopping	39,659	15
3. Operational	<u>133,140</u>	<u>52</u>
4. Total	<u>257,783</u>	<u>100</u>

The operational component of total system integrity space includes line pack, OBA, UFG, storage hystersis and LNG. Under Union’s current cost allocation methodology, as the sole T3 customer, Kitchener is only allocated costs for the operational component of system integrity space. The storage space associated with the system integrity costs



allocated to Kitchener is  $1,267 \times 10^3 \text{ m}^3$ , or roughly one half of one percent of the total system integrity space for Union.

Non-daily metered customers served under Rate M2 by Union are allocated costs for all three components of system integrity. Rate M2 is the only rate class that is allocated costs for the temperature risk component of system integrity space, which is the largest single component of system integrity space that appears on Exhibit G3, Tab 5, Schedule 26 in EB-2005-0520. Union does not allocate physical system integrity space to any customer and reserves it solely for its own use as “system operator”.

Kitchener’s customer classes and rates very closely parallel Union’s customer classes and rates design. Like Union, Kitchener serves Rate M2, M4 and M5 customers. The majority of those customers are “non-daily metered”. Operationally, Kitchener’s daily meters at its two gate stations which record aggregate load under the T3 service are no different than Union’s flow meters located at laterals served from the Dawn Trafalgar system.

Notionally, gas simply “flows through” Kitchener’s city gate stations to tens of thousands of non-daily metered customers. If Kitchener’s daily aggregate meters were not “in the way”, Kitchener’s customers would be treated the same as all other in-franchise customers of Union with respect to system integrity space. They would be allocated costs for the temperature risk and supply backstopping components of system integrity space (along with the operational component).

From the perspective of Kitchener's customer base, Kitchener, not Union, is the "system operator". To level the playing field, system integrity space costs for its Rate M2, M4 and M5 customers should be allocated to Kitchener under the T3 rate and the corresponding amount of system integrity space for temperature risk should be added to the allocation derived from the March 1 control point methodology.

Based on a proportional allocation of system integrity space for temperature risk only<sup>3</sup>, this methodology would result in a storage allocation to Kitchener of 90,324,500 m<sup>3</sup> + 4,215,000 m<sup>3</sup> = 94,539,500 m<sup>3</sup> for November 1, 2007.

Based on 2007 forecast winter volumes, the proportional allocation of system integrity space for temperature risk to Kitchener is derived as follows:

Winter Volumes - Union M2 (10 <sup>3</sup> m <sup>3</sup> )	2,789,375
Winter Volumes – Kitchener M2 (10 <sup>3</sup> m <sup>3</sup> )	<u>145,550</u>
Winter Volumes – Total M2 (10 <sup>3</sup> m <sup>3</sup> )	<u>2,934,925</u>
Kitchener M2 - % of Total M2	4.96
System Integrity – Temperature Risk (10 <sup>3</sup> m <sup>3</sup> )	84,984
System Integrity – Temperature Risk – Kitchener (10 <sup>3</sup> m <sup>3</sup> )	4,215

We would expect that system integrity costs allocated to Union's other M2 customers would be reduced under this methodology.

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<sup>3</sup> Kitchener acknowledges that it is fully responsible for managing the risk of failures by both system and direct purchase suppliers, and will backstop any failures accordingly.

## **6. PROPOSED STORAGE ALLOCATION METHODOLOGY FOR KITCHENER**

At a minimum, Kitchener believes its storage allocation should be based on the March 1 control point methodology. As a first step, this would be initially consistent with Union's own methodology in its planning as an LDC.

However, if the Board is persuaded that it is prudent for Union, as an LDC with a firm obligation to serve, to hold system integrity space to manage temperature risk, then it is equitable and reasonable for Kitchener, as an LDC with a similar obligation, to have system integrity space to manage temperature risk. Thus, the most appropriate storage allocation methodology is March 1 control point plus system integrity. This methodology would place Kitchener on a similar footing to Union with respect to the availability and use of system integrity space to discharge its obligation to serve and manage temperature risk.

## **7. INTER-FRANCHISE MOVEMENT OF GAS ("DIVERSION RIGHTS")**

Kitchener is economically responsible for its various contractual arrangements for the supply, storage and transportation of gas. Under its storage and transportation contract with Union, Kitchener pays for the majority of its firm service entitlements by monthly fixed demand and customer charges under the T3 rate schedule. These entitlements are paid for regardless of use. As described above, Kitchener's demand for gas is primarily



driven by weather. Circumstances can and do arise where it becomes necessary for Kitchener to mitigate its exposure to unutilized capacity costs.

These mitigation efforts can include diversion of gas from delivery to Union under the T3 contract to a third party. Such efforts have been impeded or impacted from time to time by Union due to its insistence on prior approval of any changes in the amount of gas delivered or the delivery points. To meet its responsibilities as a utility, Kitchener must be able to exercise its full contractual rights under its storage and transportation contract with Union.

Union continues to claim the right, by way of policy, to treat ex-franchise transactions that are fully within Kitchener's firm rights under contract as interruptible and subject to prior approval. Diversions are described as a right that is available to Kitchener under the T3 rate schedule, subject only to Union's "ability to accommodate". Contractually, this ability to accommodate a diversion is not to be "unreasonably withheld" by Union.

At the risk of stating the obvious, something that is acknowledged as a "right" (in part, because it is paid for 365 days of the year) should not be subject to an "ability to accommodate".

Fortunately, Kitchener has a provision in its T3 contract that Authorizations "should not be unreasonably withheld". In Appendix I, Kitchener provides an exchange of letters from December of 2003 that demonstrates an example of the types of barriers that can

limit a customer from accessing firm contractual rights. Recognizing that Kitchener's quantity of gas in storage exceeded its needs for the next few months, Kitchener transacted to sell excess gas in December and buy the same amount back in March. The result of the transaction would allow Kitchener to reduce the risk of withdrawal overruns in the late in the withdrawal season. As described in the Introduction, Kitchener points to examples such as the experience described in this exchange of letters to emphasize to the Board that conditions of non-discriminatory access are not present.

Provided that Kitchener remains within firm contractual parameters, its right to divert gas should not be constrained or impeded by Union unless there are physical constraints on Union's system.

#### **8. DIRECTION SOUGHT FROM BOARD IN NGEIR DECISION**

With respect to Issue I.4, Kitchener asks the Board to conclude that the conditions to insure non-discriminatory access do not exist and that the Board should defer the question of forbearance until it has developed rules for non-discriminatory access. Until then, Kitchener respectfully requests that the Board affirm that utilities providing cross-franchise or ex-franchise services ought not to constrain firmly contracted asset rights unless they have physical constraints that would impede those rights for all parties including themselves.

With respect to Issue II.4, Kitchener respectfully seeks the Board to direct Union to apply the March 1 control point plus system integrity methodology to allocate an equitable amount of storage to embedded distributors such as Kitchener.

#### **APPENDICES**

- A. Curriculum Vitae
- B. Exhibit M19.3 filed in RP-2003-0063 (letter dated August 24, 2000 from D. Quinn to D. Simpson of Union Gas)
- C. Excerpt from RP-2003-0063 Decision with Reasons
- D. Excerpt from RP-1999-0017 Decision with Reasons
- E. Decision and Order in EB-2005-0559 dated March 27, 2006
- F. Exhibit D1, pages 3 and 4 filed in EB-2005-0520 (Gas Supply Plan)
- G. Storage Allocation for Kitchener – March 1 Control Point



H. Exhibit G3, Tab 5, Schedule 26, pages 5 through 7 filed in EB-2005-0520  
(Union Gas Limited, Blended Allocator Detail Report – System Integrity,  
Year Ending December 31, 2007)

I. Exchange of December 8, 2003 letters between Kitchener and Union