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IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers) and whether the Board should refrain from regulating the rates for storage of gas.

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**ARGUMENT OF NEXEN MARKETING
AUGUST 25, 2006**

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By Procedural Order No. 9 released July 13, 2006, the Ontario Energy Board set the schedule for the final argument and cost awards process relating to the above proceeding. Nexen submits that it is unable to provide its argument orally on August 28, 2006 and hereby provides its written argument in accordance with Board instructions contained in Procedural Order No. 9.

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Preamble

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Nexen Inc. is a Canadian company, headquartered in Calgary, Alberta, with oil and gas exploration and production worldwide. As part of Nexen Inc., Nexen Marketing (Nexen) is responsible for the marketing and trading of Nexen Inc.'s production of oil, natural gas and liquids, as well as third party energy products including power. Nexen is consistently in the Top 10 North American gas marketers by volume, as published by Gas Daily. Nexen not only sells the natural gas commodity, but also provides bundled and unbundled transportation, exchange, balancing, peaking and other structured natural gas services. Nexen is a large shipper on both the TransCanada Mainline and Great Lakes Gas Transmission systems, and also holds long-term capacity on the Vector Pipeline and Panhandle Eastern Pipeline – all of which enable us to move our supply and storage gas into Ontario and other Eastern Canadian markets. Nexen is also a major supplier to Manitoba, Ontario and Quebec LDCs, as well as to industrial, commercial, power generation and aggregator customers in these areas.

1 With regard to Nexen's role in the Ontario storage market, Nexen is the largest non-utility holder
2 of Ontario storage at Dawn. Nexen ranks third in storage capacity held, behind only GMi and
3 Enbridge when it comes to Union's ex-franchise customers (Union Gas Limited, Undertaking #47,
4 Exhibit B, Tab 1). Much of this storage capacity has been acquired under long-term contracts,
5 demonstrating Nexen's commitment to the Ontario storage market.

6 With respect to the Michigan storage market, by holding long-term storage positions on ANR
7 Pipeline Company, ANR Storage Company, MichCon, Eaton Rapids Storage and Washington 10,
8 Nexen is a very active participant. Nexen's aggregate Michigan storage positions were
9 dramatically understated in the evidence filed by Ms. McConihe (Exhibit D, "Ontario and
10 Canadian Customers Using U.S. Storage") by a factor of over 3.5 times.

11 **Nexen Approach to the NGEIR Proceeding**

12 In intervening and considering our level of participation in this proceeding Nexen explored several
13 means to express our comments and insights into the value and role of the secondary market.
14 Due to the competitive nature of the wholesale natural gas commodity and services market in
15 Ontario, Nexen was reluctant to submit evidence in this hearing (due to the inherent risk of having
16 to reveal confidential and commercially sensitive information) and decided instead to closely
17 monitor the proceeding and submit argument. Nexen has made long-term contractual
18 commitments to the Ontario market for storage within the province, and for storage and
19 transportation into the province from other jurisdictions. Nexen has been willing to make these
20 commitments due to the liquidity and competitive nature of the commodity and services markets
21 in Ontario

22 **Role of the Secondary Market**

23 As in the natural gas commodity market itself, an active secondary market is a major contributor
24 to a liquid and competitive market in natural gas services such as storage/balancing, exchanges,
25 transportation, and peaking services, to name a few. Nexen notes that not one of the expert

1 witnesses on market power put forth comprehensive evidence that attempted to describe in detail
2 or quantify the role of secondary markets in storage services.

3 Some of the expert witnesses believed that market power could be ruled out by only analyzing
4 the primary market. While Nexen believes this is probably true, that view would have been re-
5 enforced by an in-depth analysis of the secondary market. The lack of evidence put forth on the
6 secondary market unfortunately diminished its importance in these proceedings.

7 **Central Issues**

8 In reading the evidence submitted and following the oral hearing, it is apparent that much was
9 presented for the Board to deliberate on. For Nexen, central to this proceeding were the following
10 issues:

- 11 • Do the utilities (Union and Enbridge) and/or their affiliates (MHP Canada L.P.) have
12 market power in the provision of storage services?
- 13 • Further development of the storage market in Ontario
- 14 • If it is determined that the utilities do have market power, is it appropriate for market-
15 based rates to be charged for long term storage services to any customers?
- 16 • If it is determined that the utilities do not have market power, what is the appropriate
17 basis to determine rates for storage services? Should there be a split of cost-based rates
18 and market-based rates between in-franchise and ex-franchise customers?
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- 20 • Non-discriminatory pricing and access for all customers to utility-provided storage
21 services.
- 22 • Should the Board refrain from regulating the rates for storage of gas?

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24 **Do the utilities (Union and Enbridge) and/or their affiliates (MHP Canada L.P.) have market** 25 **power in the provision of storage services?**

26 To answer these questions, the optimal point at which to start is with the determination of the
27 existence of market power. Several parties provided evidence from expert witnesses in the
28 analysis of competition and market power in Ontario and the United States. In making a
29 conclusion on this issue, Nexen agrees with the evidence provided by Union, Enbridge, MHP and
30 GMi that one must take a global look at the market area and competitive service offerings. This

1 means that the market area is not contained within Ontario, but also includes the interconnecting
2 market areas such as Michigan, New York and Pennsylvania for example. OEB witness Ms.
3 McConihe offered that the utilities do hold market power because there is no uncontracted firm
4 transportation capacity available into or out of the Ontario market place. Because of this finding,
5 Ms. McConihe, admittedly, did not focus her thoughts on what third party services might be
6 available as a replacement to holding storage and transportation with the LDCs and pipelines.
7 Nexen agrees with those that dispute her offering, as it is not necessary for transportation
8 capacity to be available in order to have competition for storage services. Although Ms.
9 McConihe made an attempt to put forth some comments on the secondary market for storage
10 services in her reply evidence at the Technical Conference, her research was very cursory and
11 constituted sending an e-mail to a select few secondary market participants requesting
12 information on the extent they provide displacement, exchanges or buy-sell transactions as ways
13 to get around fully subscribed capacity (Exhibit J8.3). Included in her e-mail Ms. McConihe
14 shared her presupposed conclusion that "It is my suspicion that even if you consider the extent
15 that these other transactions replace the need for storage, it will not be enough to mitigate
16 Union's dominant market share". Nexen would note that although BP did respond to Ms.
17 McConihe's e-mail, and later participated in the hearing itself (at the Board's request), they were
18 the only secondary market participant to do so – and did so in a very restrictive manner due to
19 similar concerns as Nexen with regard to confidentiality in a very competitive market with multiple
20 market participants. Nexen also notes that no secondary market participant holding Union
21 storage was heard from in this hearing (BP is not listed as holding Union storage, Undertaking
22 #47, Exhibit B, Tab 1). Nexen presumes this lack of participation is due to the same commercial
23 sensitivity concerns. The limited participation by secondary market participants should not lead
24 to a discounting of its value.

25 The GMi panel supported the competitive nature of the secondary market in stating that when
26 reviewing their options in the secondary market, marketers offer service options using a basket of
27 tools to create competitive services which they evaluate when looking to renew services with the

1 utilities (TR. Vol. 10, pp. 85-87). BP offered that as the LDCs unbundled their products, access
2 to physical assets drove the development of a successful secondary market, offering attractive
3 and affordable options that compete with utility provided services (TR. Vol. 13, pp. 16, 17). Union
4 also offered their view on an active and competitive secondary market throughout their cross-
5 examination (TR. Vol. 1). Nexen agrees with these parties that a successful, competitive
6 secondary market exists. Nexen, along with many other marketers, have been providing bundled
7 and unbundled services in the Ontario market place for many years. Nexen agrees that the
8 utilities operate within a competitive, global marketplace, and therefore do not hold market power
9 for storage services. Nexen therefore agrees with Union, Enbridge and MHP that the Board
10 should refrain from regulating the rates for storage of gas.

11 **Further development of the storage market in Ontario**

12 Enbridge and MHP Canada have indicated a desire to develop new storage services within the
13 Ontario market. They have expressed their concern that to do this they must be allowed to offer
14 those services at market-based rates and be allowed contracting flexibility. Enbridge states they
15 will only further develop their Tecumseh storage capacity under a forbearance decision. In its
16 Argument, Union reiterates evidence offered by EEA/Schwindt that Ontario lacks a workable
17 framework that offers proper incentives for new storage development (Union Argument (Exhibit
18 Y2), pp. 9, reference to EEA/Schwindt evidence, Exhibit C, Appendix B. pp. 57-59). Central to
19 the purpose of this proceeding was the need for additional storage deliverability in the market and
20 services to support the significant balancing requirements of power generators. Providing proper
21 incentives for new storage development and/or facilities enhancements should, over time,
22 address this need for additional deliverability and space. New resources must be allowed to
23 develop, but within an acceptable framework that allows the risks and rewards to be managed by
24 the service developers. These parties have stated that these resources will not be developed
25 under a regulated, cost-based rate structure as the risks are too high and there is no incentive to
26 take on that risk. To allow these developments to occur, again Nexen agrees with Enbridge,
27 Union and MHP Canada that the Board should refrain from regulating the rates for storage of gas.

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2 **If it is determined that the utilities do have market power, is it appropriate for market-**
3 **based rates to be charged for long-term storage services to any customers?**

4 If the Board determines, contrary to our belief, that the utilities do have market power, Nexen
5 supports the continuation of the utilities offering non-discriminatory access to long-term storage
6 services to ex-franchise customers at market-based rates. This practice has been in existence in
7 Ontario for the past 17 years. Although Nexen would benefit in the short term by the return of all
8 its storage contracts to cost-based rates and receive large financial windfalls, it would not be in
9 the best interests of storage services in Ontario. Nexen is supportive of the principles of market-
10 based rates and proper market signals for the long-term health and development of the Ontario
11 storage market. The utilities offer long-term storage services structured in a way that best works
12 for the utility and those parties that see value in the services. The utilities do not set the rates, but
13 rather put the services out to the market through an RFP offering, and award the capacity to
14 those that value it the most. It is a bidding process that captures the maximum value within the
15 marketplace and represents the most fair and non-discriminatory method for the market to access
16 these services.

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18 **If it is determined that the utilities do not have market power, what is the appropriate basis**
19 **to determine rates for storage services? Should there be a split of cost-based rates and**
20 **market-based rates between in-franchise and ex-franchise customers?**

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22 If the Board determines that the utilities do not have market power, then Nexen agrees that it is
23 most appropriate for the Board to forbear from regulating the rates for storage of gas. Nexen
24 supports the structures offered by Union and Enbridge in setting storage capacity at January 1,
25 2007 levels for existing in-franchise customers utilizing bundled storage/balancing services and
26 providing that capacity at cost-based rates. As those in-franchise customers require new storage
27 services and/or capacity above this threshold, it should be offered at market-based rates and their
28 rates become a blend of cost and market based rates. Storage services offered for ex-franchise
29 customers would be under forbearance, which would provide for contracting flexibility, expeditious
30 execution and market-based rates. The removal of contract restrictions on volume and term,

1 Board approval requirements and the associated regulatory delays which introduce risk and
2 uncertainty that diminish the value of storage in the Ontario market place will contribute to the
3 alleviation of risks associated with new storage development.

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5 **Non-discriminatory access and pricing for all customers to utility-provided storage**
6 **services**
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8 The power generators, as in-franchise customers, have stated an expectation to have priority
9 access to new storage services (TR. Vol. 10, pp. 209-210). As well, they also expect rates for
10 those services to be cost-based and allocated to the generators on an incremental cost basis
11 (TR. Vol. 10, pp. 140-141). These expectations by the power generators contribute to the unease
12 expressed by GMi with regard to the clawback of storage services currently provided to ex-
13 franchise customers (TR. Vol. 10, pp 106-107). Clawback of storage services from ex-franchise
14 customers in order to provide priority access to in-franchise customers for unbundled service
15 products is discriminatory and detrimental to not only GMi, but the very existence of the
16 secondary market that Ontario currently supports and benefits from. Equal, non-discriminatory
17 access to storage by all customers is paramount to the success of the market and puts the
18 services into the hands of those that value it the most. Equal and non-discriminatory access by
19 all customers also allows for the continued development of competitive products in the secondary
20 market, which Union, Enbridge, MHP Canada, GMi, and BP have supported through their cross-
21 examination. Nexen agrees with and strongly supports these parities and their views on non-
22 discriminatory access to storage services and the associated pricing. Whatever decision is made
23 by the Board on the issue of forbearance, Nexen would expect to be treated on a level playing
24 field with other ex-franchise customers of Union, such as Enbridge and gas-fired generators
25 outside of Union's franchise. Nexen should be able to compete with these parties on equal
26 footing as we provide comparable services to the same market within Ontario. The storage which
27 Nexen purchases from Union is primarily bundled and resold as commodity and/or services to the
28 Ontario market, which should command equal treatment as Enbridge and ex-franchise generators
29 who are also serving the same market. Nexen, in fact, currently serves gas-fired generation load
30 in Ontario and it would be discriminatory not to be able to compete under the same rules.

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2 **Should the Board refrain from regulating the rates for storage of gas?**

3 Nexen supports the conclusions of Union, Enbridge and MHP Canada that the Ontario storage
4 market is competitive and through that competition the public interests are protected. Nexen
5 believes it is appropriate for the Board to refrain from regulating the rates for storage of gas,
6 which would allow the utilities to set a framework for non-discriminatory access to services and
7 pricing among all ex-franchise storage service customers.

8

9 **Conclusion**

10 Nexen believes that the evidence in this proceeding has demonstrated that the market area for
11 storage is wider than just Ontario and, at a minimum, would include all of Michigan, Illinois,
12 Indiana and New York. Nexen supports the evidence put forth supporting the existence of
13 multiple and sufficient alternative commercial mechanisms to move storage gas around within this
14 relevant expanded geographic market – whether in the primary market, official capacity release
15 market or bundled secondary market. The relevant product market for storage is far broader than
16 the primary physical storage offered by storage operators and would include exchanges, swaps,
17 displacements, backhauls, parking, loans, delivery/redelivery agreements and bundled
18 commodity sales, whether on a baseload or peaking basis (GMi cross-examination TR. Vol. 10,
19 BP cross-examination TR. Vol. 13 and Union cross-examination TR. Vol. 1). These factors alone
20 should lead to the conclusion that the utilities do not hold market power and there exists an active
21 and vibrant secondary market that competes for storage services. Nexen supports the
22 arguments that forbearance will lead to additional storage development in Ontario. Nexen
23 supports market based rates and non-discriminatory pricing and access to storage services.

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