

**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 of storage of gas.

## **NOTICE OF MOTION**

The Corporation of the City of Kitchener ("Kitchener") hereby brings this motion under s. 31(2) of the *Ontario Energy Board Act* (the "Act") and Rule 42 of the Board's Rules of Practice and Procedure to review and vary those parts of the Board's Decision in the matter ("NGEIR") dated November 7, 2006 relating to:

1. The approval given by the Board to the aggregate excess method for determining the level of cost based storage to be allocated for the seasonal load balancing needs of all customers in Ontario including the gas utility of Kitchener.
2. The determination of the Board that the level of cost based storage space available for customers in Ontario is to be frozen at 100 PJs (95 bcf).

### **Nature of the Orders Applied for:**

1. Cancelling the Board's approval of the aggregate excess method of storage allocation and orders requiring Union Gas Limited ("Union") to adopt a method or methods which meet all of the reasonable load balancing requirements of customers in Ontario that result in the least cost.

2. Cancelling the freeze or limit on the level of cost based storage space to be reserved for customers in Ontario.

### **Grounds for the Motion**

1. The Decision contains the following errors of law:
  - (a) The Board's approval of the aggregate excess method imposes unnecessary costs on customers and therefore does not comply with the requirement of just and reasonable rates under Sections 2 and 36 of the Act.
  - (b) The Board's approval of the freeze or limit on cost based storage to be reserved for customers in Ontario offends the requirements of ss.2 and 36 of the Act to give primacy to the needs of Ontario consumers.
  - (c) The Board misapprehended the relationship between Union's storage allocation method and its obligation to meet late season storage requirements on a least cost basis.
  - (d) Having determined that the test for an appropriate method of allocating storage capacity is that it meets the reasonable load balancing requirements of customers under normal weather conditions, the Board erred in its application of this test to Union by failing to take into account Union's storage requirement on March 31 of each year for load balancing in April.

- (e) There is no evidence that aggregate excess meets the reasonable, Board approved load balancing requirements of Union for services to its own sales customers.
  - (f) Having determined that the test for an appropriate method of allocating storage is that it meets the reasonable load balancing requirements of a customer under normal weather conditions, the Board failed to determine whether the aggregate excess approach satisfies this test with respect to the needs of the City of Kitchener.
  - (g) There is no evidence that aggregate excess meets the reasonable storage requirements of Kitchener necessary to provide annual late season load balancing at a level required to serve its customers prudently.
  - (h) In determining that aggregate excess applied to Kitchener, the Board erred in law and in fact by failing to recognize that Kitchener is a public utility with firm customers to serve and that it is not an end use customer.
2. The Decision contains the following errors in fact:
- (a) In applying the test for an appropriate method of storage allocation to Union Gas, the Board ignored the evidence that Union has established, as standard, annual, operating practice with Board approval, storage inventory control points for March 1 to meet design day deliverability requirements and an inventory reserve on March 31 of 5.6 bcf for the purposes of covering daily variances and late

season load balancing requirements in April. In a normal winter, the aggregate excess allocation is exhausted at March 31 and the Board ought to have found therefore that this method failed to satisfy the Board's test in that it makes no provision for the reserve on March 31.

- (b) On the question of whether aggregate excess meets the reasonable needs of Kitchener, the Board referred to the evidence that "...there has been only one occasion in the past 5 years when Kitchener's storage allocation was insufficient". However, the actual allocation to Kitchener over the past 6 years (to which this evidence referred) has been at a level of 10.6% higher than aggregate excess. The Board therefore erred in its application of this evidence to the question of whether aggregate excess meets the reasonable load balancing requirements of Kitchener.
- (c) The Board erred in failing to apply the evidence that under the aggregate excess allocation, Kitchener would have been at risk in 5 of the past 6 years because it would not have received full deliverability from storage on March 1<sup>st</sup>, and therefore would not have met the standard set by the Board for customers in southwestern Ontario served by Union which requires full deliverability from storage on that date.
- (d) The Board erred in failing to take into account the evidence that an aggregate excess allocation to Kitchener is designed to be exhausted on March 31 and therefore cannot provide the load balancing function in April required for all utilities operating in Ontario.

**Facts Relied on:****Introduction**

1. The issue before NGEIR respecting storage allocation was phrased:

“...should there be a constraining allocation of physical storage facilities to some types of customers based on measures such as aggregate excess...”

The aggregate excess method was proposed by Union for the purpose of determining the allocation of storage capacity as of November 1 in each year to meet the load balancing requirements of customers in Ontario.

2. The City of Kitchener operates a gas distribution system which is a public utility serving approximately 60,000 customers. It has a firm obligation to provide service to its customers for which it requires storage capacity for load balancing purposes.

3. In 2000, Kitchener negotiated a long term contract for semi-unbundled services from Union in which the storage capacity allocation was 89.3 million m<sup>3</sup>. Kitchener continues to operate its gas utility with this level of storage capacity.

4. Since 2000, Kitchener’s incremental winter storage requirement has grown substantially.

5. The Board approved the aggregate excess storage allocation for Kitchener effective April 1, 2008. It will reduce the allocation to Kitchener substantially.

### **Aggregate Excess and Load Balancing Requirements of Union**

6. On an annual, planned basis, the Board has approved for Union the requirement that it retains sufficient storage capacity for late season load balancing sufficient to meet a reasonable standard of security of service for Union's customers. This standard requires Union to maintain 2 control points for storage inventory:

- (a) On March 1 of each year sufficient storage inventory to meet design date demand;
- (b) On March 31 of each year storage inventory of 5.6 bcf to manage daily variances and load balancing in April.

7. The above requirements for storage inventory on March 1 and March 31 are annual planned requirements which do not vary in periods of colder or warmer than normal weather.

8. The aggregate excess allocation is exhausted on March 31 in a year of normal weather. Accordingly, aggregate excess is not designed to meet Union's storage requirement at March 31 for load balancing in April. If the weather is normal or colder than normal, Union is required to meet its late season storage requirements by purchasing winter spot gas.

9. Union acknowledges that the cost of winter spot gas exceeds the cost of gas purchased and stored before November 1.

10. There is no evidence that aggregate excess represents the least cost method of meeting late season storage requirements for Ontario customers.

11. The least cost mix of winter purchases and November 1 storage allocation to meet load balancing requirements is ascertainable with the use of planning tools such as the computer program SENDOUT. Enbridge Gas Distribution Inc. uses SENDOUT to determine the optimal mix of supply sources and storage to meet its load balancing requirements. Union uses SENDOUT to determine the optimal mix of all the supply sources or assets to meet its requirements except for storage. Rather, Union's storage level for November 1 is fixed by the aggregate excess method. Union makes no attempt to produce a least cost approach to meet its load balancing requirements.

12. The evidence given in NGEIR indicates that Union's approach of fixing storage allocation on November 1 by aggregate excess unnecessarily adds an average of 1.6 million dollars annually to its cost of service.

### **Aggregate Excess and Load Balancing Requirements of Kitchener**

13. In order to approximate the same security of service which the Board has approved for Union as described in paragraph 6, Kitchener requires:

- (a) Enough storage inventory on March 1 to provide full deliverability from storage on that day;
- (b) A reserve of storage on March 31 to provide load balancing in April.

14. Under aggregate excess, Kitchener would have been at risk in 5 of the past 6 years because it would not have obtained full deliverability on March 1<sup>st</sup>

and a storage account at zero on March 31<sup>st</sup> could not meet load balancing requirements in April.

Dated: December 8, 2006

Corporation of the City of Kitchener  
By its solicitors  
RYDER WRIGHT BLAIR & HOLMES LLP  
3<sup>rd</sup> Floor, 333 Adelaide Street West  
Toronto, Ontario M5V 1R5

Attention: Alick Ryder

Telephone: (416) 340-9070  
Fax: (905) 340-9250

**TO:** The Ontario Energy Board

**AND TO:** All participants in NGEIR