

THE ONTARIO ENERGY BOARD

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

AND 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;

AND IN THE MATTER OF a motion brought by the  
Association of Power Producers of Ontario seeking a review and  
variance of the Board's decision.

**WRITTEN ARGUMENT OF THE ASSOCIATION OF  
POWER PRODUCERS OF ONTARIO (APPrO)  
on the MERITS OF THE MOTION**

**Overview**

1. In its motion, APPrO seeks a ruling from the Board regarding the obligation of Union Gas Limited and Enbridge Gas Distribution Inc. to provide service to in-franchise gas-fired generators as contemplated by the settlement agreements they entered into.
2. In its Decision With Reasons in the Natural Gas Electricity Interface Review proceeding, dated November 7, 2006 (the NGEIR decision), the Board found that there was a clearly demonstrated need for generators to be able to manage their intra-day gas supply needs. In fact, no party opposed this proposition.

NGEIR Decision, at p. 69

3. The settlement agreements clearly and unequivocally contemplated a storage allocation methodology for in-franchise gas-fired generators that had three components:
  - less space than APPrO had proposed in its evidence;
  - increased deliverability for that space; and
  - access to that enhanced space to balance on an intra-day basis.
4. The methodology allocates less space than the methodology originally proposed by APPrO specifically because an in-franchise generator would have the ability to require the utility to provide incremental deliverability so that greater volumes of gas could be delivered in and out of that space, allowing generators to manage their intra-day gas supply needs, based on operational requirements.
5. The one issue that was not settled was whether the incremental deliverability to be added to that space for in-franchise generators was to be provided on a cost of service basis.
6. It is the position of APPrO that the only appropriate and logically available basis for the pricing of the incremental deliverability to be added to the allocated space is a cost of service rate. The in-franchise generators recognize that there is an incremental cost to provide the incremental deliverability and that the cost of service rate is properly based on this incremental cost.

### **The NGEIR proceeding**

7. The NGEIR proceeding was initiated by the Board to address:
  - a. whether the Board should order new rates for the provision of natural gas, transmission, distribution and storage services to gas fired generators (and other qualified customers); and
  - b. whether the Board should refrain from regulating the rates for storage of gas.
8. APPrO's participation in the proceeding was focussed on the need for new rates and services for generators. APPrO did not take a position on the general question of whether the Board should refrain from regulating the rates for storage of gas.

9. As part of its participation in the proceeding, APPrO filed comprehensive and uncontradicted evidence regarding the operational need for intra-day gas supply services for generators. APPrO also filed evidence setting out a number of proposals for new rates and services for generators that would address the operational needs of generators and participated in the Settlement Conference which gave rise to settlement agreements with Union Gas and Enbridge. APPrO also participated in the oral component of the proceeding by presenting a witness panel and cross-examining other witnesses. Aspects of APPrO's participation are set out in more detail below.

### **APPrO's original proposal**

10. In its filed evidence, APPrO provided extensive evidence regarding the operational need for new rates and services for generators.

APPrO evidence, at pp. 1-24  
APPrO Compendium – Tab 2

11. APPrO also made specific proposals for new services for generators, which included the following:

...

3. Utility storage services with higher deliverability at cost-based rates, but with incremental deliverability offered based on the utility's incremental costs.
4. Additional nomination windows and a shorter period between the time a nomination is due and the time the change goes into effect. Specifically, utilities should accept nomination changes each hour throughout the day, with changes becoming effective two hours later, or at the start of any later hour that the customer may specify.

...

7. "Firm all day" transportation and storage service as an option available to all customers.

APPrO evidence, at pp. 25-26  
Compendium – Tab 2

12. Each of these proposals was addressed in more detail in APPrO's evidence. APPrO's Proposal 3 had three elements as follows:

1. Continue to make a base level of storage available to in-franchise customers at rolled-in, cost-based rates. The base level of storage that is made available to power generators should recognize that generators' need for storage is different from that of traditional space heating customers.
2. Give customers the option to increase storage deliverability by paying a rate that reflects the incremental cost of developing or acquiring storage capacity with higher deliverability. Costs associated with high deliverability storage would be tracked separately from the costs of storage with standard deliverability. The cost-based rate for purchasing additional storage deliverability would therefore change over time as additional high deliverability storage capacity is developed or acquired by the utility.
3. In-franchise customers should continue to have priority when additional storage capacity and deliverability are made available by utilities.

APPrO evidence, at pp. 31-32  
Compendium – Tab 2

13. APPrO's Proposal 4 proposed hourly nomination windows, with nominations being effective two hours later, to reflect the fact that:

gas-fired generators often have consumption characteristics that are very different from those of other large gas consumers. Power generators may consume natural gas at a relatively high hourly rate during certain hours of the day, but consume little or no gas during the rest of the day. Power generators also need to adjust their consumption during the course of the day in response to short-term changes in the power market. This results in a variable hourly load pattern determined by both predictable and unpredictable factors.

APPrO evidence, at pp. 33-34  
Compendium – Tab 2

14. APPrO's Proposal 7 was set out as follows:

Firm customers should have the ability to reserve transportation capacity or deliverability as an option under all in-franchise and ex-franchise firm transportation and storage services. "Firm all day" services may be priced at a premium to the standard service, but only if a premium or surcharge is required to compensate utility firm customers for interruptible service credits that they would otherwise receive.

Firm all day service is required in conjunction with the more frequent nomination windows. Both of these in conjunction with an appropriate storage service are required so that generators can manage their intra-day gas supply.

APPrO evidence, at pp. 43-44  
Compendium – Tab 2

15. In the Technical Conference, APPrO elaborated on its storage proposal for in-franchise generators. It was APPrO's position that the existing methodology for allocating space to in-franchise customers was not appropriate for generators. Under the APPrO proposal, the generator would be entitled to contract for a specified amount of storage space with 1.2% deliverability, based on its plant capacity and whether it operated in combined cycle or simple cycle mode. Additional deliverability could be required by the generator, at incremental cost-based rates, to increase the deliverability of the allocated storage space from 1.2% up to 10%.

APPrO Technical Conference presentation  
Compendium – Tab 3

### **The settlement agreements**

16. In the course of the negotiations at the Settlement Conference, it was generally agreed that there was a need for new services to meet the operational requirements of generators. Agreement was reached on additional nomination windows.
17. It was also agreed that the existing methodology for allocating space to in-franchise customers was not appropriate for generators. Union Gas and Enbridge took the position that the APPrO proposal would allocate too much storage space to an in-franchise generator, based on the views of Union Gas and Enbridge regarding the operational requirements of a generator.
18. As a result of negotiation, agreement was reached with Union Gas with respect to a storage space allocation methodology, as set out in the Union Gas Limited Settlement Agreement, dated June 13, 2006. The agreement clearly contemplates an allocation of

storage space at 1.2% deliverability and the right to add incremental deliverability to that space.

19. The agreement states:

The parties agree that new T1 and U7 customers with non-obligated supply **shall be entitled to contract for T1 and U7 storage service with firm storage deliverability up to 24 times the customer's peak hourly consumption and storage space up to 24 times the customer's peak hourly consumption multiplied by four days.** Should a customer elect to contract for firm storage deliverability that is less than **the maximum entitlement**, the maximum storage space than a customer is entitled to at cost shall be 10 times the firm storage deliverability contracted for. In no event, shall the storage space exceed the maximum storage space entitlement previously described. Storage space with 1.2% from deliverability will be available at cost-based rates. Storage deliverability above base firm deliverability of 1.2% up to the customer's firm CD **shall be made available by Union to in-franchise customers in a manner to be determined by the Board as part of Issue No. 2. [Emphasis added]**

Union Gas Limited Settlement Agreement, pp. 14-15  
Compendium – Tab 4

20. An example of how this would work was attached to the agreement as Appendix B.

Union Gas Limited Settlement Agreement, last page  
Compendium – Tab 4

21. It is clear that the storage service to be provided to in-franchise generators included **an entitlement** to contract for a storage service with two elements:

- firm storage deliverability up to 24 times the customer's peak hourly consumption; and
- storage space up to 24 times the customer's peak hourly consumption multiplied by four days.

22. In the context of the obligation to provide this service, it was left to the Board to determine the basis on which Union Gas would charge for the incremental deliverability. Not surprisingly, in light of the larger forbearance issue, Union Gas was not prepared to concede the appropriateness and logic of a regulated rate based on the incremental cost of the incremental deliverability.

23. Integral to the methodology is the ability to withdraw and inject gas throughout the day so that in-franchise generators can manage their intra-day gas supply needs. It does not work without the enhanced deliverability, given that the amount of storage space was tied to the amount of deliverability. To put it another way, the enhanced deliverability was an intentional component of the methodology, as set out in the settlement agreement.
24. The settlement agreement reached with Enbridge was based on identical principles but recognized that, unlike Union Gas, Enbridge was not in a position to meet all of the storage needs of its in-franchise customers using only its own assets.

Enbridge Gas Distribution Settlement Agreement, pp. 23-25  
Compendium – Tab 5

### **The NGEIR decision**

25. In its decision, the Board made a decision to forbear from the regulation of rates for storage services for ex-franchise customers.
26. However, the Board determined that rates for storage services for in-franchise customers would continue to be regulated. At pp. 56-57 of the NGEIR decision, the Board held:

The parties recognized that bundled customers, in particular, do not acquire storage services separately from distribution services, do not control their use of storage, and do not have effective access to alternatives in either the primary or secondary markets. Competition has not extended to the retail end of the market, and therefore is not sufficient to protect the public interest. **However, the Board finds that customers taking unbundled or semi-unbundled service should have equivalent access to regulated cost-based storage for their reasonable needs.** The Board finds that it would not further the development of the competitive market, or facilitate the development of unbundled and semi-unbundled services, if these unbundled and semi-unbundled services were to include current storage services at unregulated rates. The Board also agrees with the parties that noted that re-pricing existing storage will not provide an incentive for investment in new storage and therefore cannot be said to provide that public interest benefit.

However, customers taking unbundled and semi-unbundled services do have greater control over their acquisition and use of storage than do

bundled customers. It is also the Board's expectation that these customers will have access to and use services from the secondary market. **Therefore, the Board concludes it is particularly important to ensure that the allocation of cost-based regulated storage to these customers is appropriate.** This issue is addressed in Chapter 6. [Emphasis added]

and at p. 61, the Board said again: "The Board agrees that effective competitive storage options do not exist for the in-franchise customers of Union and Enbridge. The Board has already determined that these customers will continue to receive regulated cost-based storage rates."

27. However, the storage service for in-franchise generators, as set out in the settlement agreements, is not explicitly addressed in the Board's decision, although the Board did accept the settlement agreements.
28. As a result, Union Gas has taken the position that it is not obligated to provide the additional deliverability it agreed to provide. Instead, it appears that Union Gas takes the position that, notwithstanding the clearly stated generator entitlement that it agreed to meet, it is up to an in-franchise generator to compete in the open seasons held by Union Gas for the additional deliverability. The proposition that an in-franchise generator must compete, not only with other in-franchise customers, but also with ex-franchise customers, as the means by which Union Gas fulfills its commitment under the settlement agreement, is not based on any recognizable principle.
29. Furthermore, notwithstanding the fact that the deliverability which an in-franchise generator is entitled to add to the space allocated by Union Gas under the settlement agreement can only be provided by Union Gas, given that the space itself is provided by Union Gas, Union Gas appears to take the position that not only must an in-franchise generator compete against all comers for that additional deliverability but that there are also market alternatives available to the in-franchise generator to achieve this additional deliverability. Such a position simply defies logic. It is simply not physically possible for anyone other than Union Gas to provide incremental deliverability for Union Gas storage space. In what possible way could a generator nominate with Union Gas for the injection of gas at 1.2% deliverability, using Union



Gas pipes and compressors, and at the same time nominate with someone other than Union for an increase in the injection rate of that gas based on higher deliverability, using Union Gas pipes and compressors? It is simply not possible for anyone else to provide the additional deliverability for the Union Gas space which a generator will be using to manage its intra-day gas supply as an in-franchise customer of Union Gas.

30. Not only is the Union Gas position (a) not in keeping with the commitment it made in the settlement agreement and (b) not logically possible, it also does not comply with the fundamental principle that Union Gas has an obligation to serve its in-franchise customers, a principle that underpins the storage service commitment that is reflected in the settlement agreement and which is also reflected in the Board's decision.
31. The methodologies for in-franchise generators, as set out in the settlement agreements and accepted by the Board, meets the Board's test of providing "equivalent access to regulated cost-based storage for their reasonable needs". The Board made a clear finding regarding the need for services for generators to allow them to manage their intra-day gas supply needs and that is what the methodologies for in-franchise generators, as set out in the settlement agreements, are designed to do.
32. Accordingly, there is only one possible answer to the question of what price is to be charged for the incremental deliverability that is added to the allocated space in accordance with the Union Gas settlement agreement. It is a monopoly service being provided by a monopoly service provider and therefore, recognizing that there is an incremental cost to the service, it is to be charged at a rate based on the incremental cost.
33. It is not open to Union Gas to avoid its commitment by requiring generators to compete in open seasons against ex-franchise customers for service that has nothing to do with the incremental deliverability required for the agreed-upon storage allocation methodology.
34. Having agreed that the storage allocation methodology in the settlement agreement is necessary for meeting the operational needs of the in-franchise generators, it is not open

to Union Gas to avoid its obligation to serve its in-franchise generator customers.

35. The storage service for in-franchise generators, as set out in the Union Gas settlement agreement, should be set out in the Union Gas tariff, just like all the other services provided to in-franchise customers, at a rate based on the incremental cost to provide that storage service.
36. The position of Enbridge has been more nuanced. At the hearing, Enbridge indicated that it would pass through the cost of the additional deliverability and at p. 70 of the NGEIR decision, the Board states:

The Board does have a duty to protect the interests of consumers using these services with respect to price and reliability and quality of service. In this context we find that the crucial factor is the availability of the service itself – namely its reliability and quality. The Board notes that Enbridge committed to offer Rate 316, whether or not the Tecumseh enhancement project goes ahead, and to price it on a cost pass-through basis. The Board expects Enbridge to fulfill this commitment.
37. Enbridge repeated its commitment at the hearing of the threshold issue that was raised by the Board in response to this motion.
38. Given that this is a service intended for in-franchise customers, it is not clear why Enbridge's commitment is not properly reflected in its tariff. The pass-through costs of storage services for other in-franchise customers is reflected in the Enbridge tariff and there is no reason why this should not be done for all in-franchise customers. Enbridge has offered no rationale for not agreeing to this and Enbridge's unwillingness to agree is disconcerting. The absence of this obligation in the tariff creates uncertainty for generators who have to demonstrate that they have gas supply arrangements in place in order to get financing. Furthermore, there is insufficient detail available from Enbridge to understand the mechanics of how Enbridge would meet its obligation to serve its in-franchise generators, as committed to in the settlement agreement. Finally, there needs to be recognition of the fact that Enbridge is not limited to contracting with others to meet the incremental deliverability needs of its in-franchise generator customers and to the extent it is more economic to do so developing its own assets, it should do so.

## **The relief sought by APPrO**

39. The Board made a clear finding that the generators had demonstrated their need for services to allow them to manage their intra-day gas supply.
40. The Board accepted the settlement agreements which set out a storage service that was designed to allow in-franchise generators to manage their intra-day gas supply.
41. The Board determined that in-franchise customers should obtain regulated storage services based on their reasonable operational needs. The storage service in the settlement agreements meets that test.
42. Therefore, APPrO seeks an order of the Board:
  - (a) requiring Union Gas to add a storage service to its tariff that has the following elements, as agreed to:
    - firm storage deliverability up to 24 times the customer's peak hourly consumption; and
    - storage space up to 24 times the customer's peak hourly consumption multiplied by four days,at a rate reflecting the cost of the storage space with 1.2% deliverability and the incremental cost of providing incremental deliverability;
  - (b) requiring Enbridge to amend its tariff setting out the service in appropriate detail and reflecting that the incremental deliverability for the purposes of the storage service to be provided to in-franchise generators will be provided at Enbridge's incremental cost to develop its own assets or on a cost pass-through basis, whichever is more economic;
  - (c) requiring Union Gas and Enbridge to provide the required tariff amendments in draft form for review and comment; and
  - (d) granting APPrO its reasonably incurred costs in relation to this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 12, 2007

Association of Power Producers of Ontario  
By its Counsel

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Ogilvy Renault LLP  
per Patrick Moran