

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 review of certain parts of the Natural Gas Electricity Interface Review (EB-2005-0551) Decision of November 7, 2006 and conducted pursuant to the Board's review decision of May 22, 2007.

**WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA
AND THE VULNERABLE ENERGY CONSUMERS COALITION**

I INTRODUCTION

1. This is the Written Argument of the Consumers Council of Canada ("Council") and the Vulnerable Energy Consumers Coalition ("VECC") delivered pursuant to Notice of Hearing and Procedural Order No. 3 dated May 29, 2007.

2. This Written Argument is confined to one matter, namely the decision to cap the storage available to the in-franchise customers of Union Gas Limited to 100 PJ, which is referred to in Procedural Order No. 3, as the "cap issue".

3. The Council and VECC will not, herein, repeat the arguments made in their Motion to Review, except to the extent that they may be relevant to the cap issue. However, some background is required in order to understand the Council's and VECC's submissions on that issue.

4. For ease of reference, the following short forms will be used in this Written Argument:

1. The Decision with Reasons in the Natural Gas Electricity Interface Review proceeding, issued in November, 2006, will be referred to as the “NGEIR Decision”;
2. The Decision with Reasons, dated May 22, 2007, arising out of motions filed seeking a review of the NGEIR Decision will be referred to herein as the “Motions Decision”;
3. Enbridge Gas Distribution Inc. will be referred to herein as “EGD”;
4. Union Gas Limited will be referred to herein as “Union”.

II BACKGROUND

5. In the NGEIR Decision, the Board made the following findings, among others:

1. Union’s in-franchise customers pay for their storage at cost;
2. The in-franchise customers of EGD pay a blended price for their storage. For EGD’s portion of the storage, they pay EGD’s cost. For that portion of the storage which EGD acquires from Union, they have paid Union’s costs, but will, beginning in 2007, pay a “market” rate;
3. The in-franchise customers of EGD and Union, most of whom purchase storage as part of a bundled service, do not have effective access to competitive alternatives for storage.

6. Because of its finding that the in-franchise customers of EGD and Union do not have effective access to competitive alternatives for storage, the NGEIR Decision put in place certain transition or ameliorative measures. They took two forms, as follows:

1. For Union's in-franchise customers, the Board required Union to maintain a portion of its storage capacity for the use of its in-franchise customers, at cost. The amount to be maintained by Union was capped at 100 PJ;
2. For EGD, the impact of having to pay a market price for the portion of the storage purchased from Union is to be phased in over time. By 2010, the blended rate would reflect the full unregulated cost of the portion purchased from Union.

7. The Council and VECC submit that, at the heart of the NGEIR Decision, there is a contradiction. On the one hand, the Board found, in unequivocal terms, that the in-franchise customers of Union and EGD, at least those taking bundled services, do not have access to competitive alternatives for storage service sufficient to protect the public interest, now or in the foreseeable future. On the other hand, the Board exposes EGD's customers to the effects of competition, that is to unregulated prices, albeit while phasing in the impact on them. In addition, the Board exposes Union's customers to the impact of unregulated prices, to the extent that the cap it exceeded.

8. It is arguable that this contradiction would be explained if the Board had been satisfied that, by 2010, in the case of EGD, or by the time the cap was exceeded, in the case of Union, in-franchise customers would have access to competitive storage services sufficient to protect their interests. There was, however, no such finding in the NGEIR Decision.

9. The Motions Decision reflected that contradiction. In ruling on the cap issue, the NGEIR Decision held as follows:

The NGEIR panel then makes a finding with respect to how the excess capacity should be treated if the in-franchise customers require less than 100 PJ in a given year. The NGEIR panel is silent on the outcome if in-franchise customers require more than 100 PJ of storage per year. Although the NGEIR panel is clear that it does not expect this circumstance to occur for many years, the decision nevertheless appears to raise the possibility that in-franchise customers may, at some point, be subject to unregulated prices.

The Board finds that on this issue the moving parties have raised a question as to the correctness of the order or decision and that a review based on the issue could result in the Board deciding that the decision or order should be varied, cancelled or suspended.

In particular, in this instance, there are unanswered questions that are raised by the NGEIR Decision on the 100 PJ cap issue. Since the NGEIR Decision clearly stated that the in-franchise customers did not have and were not likely to have access to competition in the foreseeable future, a decision that forbears from the regulation of pricing for these customers at some time in the future does not appear to this panel to be consistent. (Motions Decision, p. 48)

10. Having reached those conclusions, the Motions Decision finds that the following questions should have been addressed by the NGEIR panel:

1. If the cap of 100 PJ of storage for in-franchise Union customers remain in place in perpetuity, what is the basis for forbearance (under section 29) of required storage above 100 PJ for in-franchise customers?
2. If the cap of 100 PJ of storage for in-franchise Union customers does not remain in place in perpetuity, what mechanism should the Board use to monitor the likelihood of the cap being exceeded?
3. If the cap of 100 PJ of storage for in-franchise Union customers is likely to be exceeded, what, if any, remedy is available to in-franchise customers?

11. The Council and VECC acknowledge that the panel hearing the NGEIR Motion was aware of the evident contradiction between, on the one hand, the finding that in-franchise customers taking bundled services could not get effective access to storage alternatives and so should not be exposed to unregulated prices, and, on the other hand, then prescribing different treatment for Union's and EGD's in-franchise customers. Rather than trying to resolve the contradiction, the panel in the Motions Decision relies on the fact that "the NGEIR panel took into account the protection of the public interest in its decision to provide transition mechanisms to protect customers". (Motions Decision, p. 43)

12. The Council and VECC submit that the transition measures in the NGEIR Decision are, at best, mitigative only, and only for a limited time, but do not address the central

problem created by the contradiction. The transition measures do not address, in other words, the problem created by the finding in the NGEIR Decision, repeated in the Motions Decision, that in-franchise customers of neither Union nor EGD will get access to the competitive alternatives for storage for the foreseeable future.

III SUBMISSIONS

13. In light of the finding, made in the NGEIR Decision, and relied on in the Motions Decision, that in-franchise customers taking bundled services “are not subject to competition sufficient to protect the public interest; nor is there a reasonable prospect that they will be at some future time”, the Council and VECC submit that the answer to the first question posed in the Motions Decision, on the cap issue, has to be that there is no basis for forbearance (under section 29) of required storage above 100 PJ for in-franchise customers.

14. The Council and VECC submit that the narrow approach to the second and third questions, posed by the Motions Decision on the cap issue, is to confine the answers to Union’s in-franchise customers only.

15. The Council and VECC submit that the solution is to eliminate the cap altogether. The cap represents an attempt at a permanent allocation of Union’s storage assets between utility and non-utility classifications which is clearly inappropriate. In place of the cap, the Board should require Union to forecast, on an annual or periodic basis, its storage needs for the requirements of its in-franchise customers. Doing so would ensure that the interests of Union’s in-franchise customers were protected as circumstances change.

16. However, this narrow approach doesn’t address the contradiction created by the NGEIR Decision, and reinforced by the Motions Decision. What is required is a solution which addresses the needs of all in-franchise customers, whether of Union or EGD. In order to resolve that contradiction, the Council and VECC submit that there must be a solution which addresses not only the future needs of Union’s in-franchise customers, but the present and future needs of EGD’s in-franchise customers, as well. The Council and VECC submit, in other words, that all in-franchise customers, whether of Union or of EGD, should get storage services at cost, unless and until the Board finds that there is competition sufficient to protect the public interest for all of them.

17. The Council and VECC submit, accordingly, that what is required, in order to address the findings in the NGEIR Decision and in the Motions Decision, is the following relief:

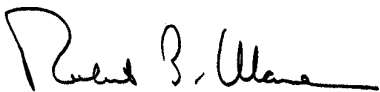
1. The cap on the amount of Union's storage reserved for its in-franchise customers should be removed;
2. Union and EGD should be required to provide the Board, annually, or periodically, a forecast of the storage needs of their in-franchise customers. The amount of storage which Union reserves for the use of in-franchise customers, both its own and those of EGD, should be adjusted accordingly;
3. As a consequence of granting this relief, the contract between Union and EGD for the sale of storage will have to be rescinded. In its place, Union and EGD will have to enter into a new agreement whereby EGD will acquire the storage it requires, but cannot itself provide, for its in-franchise customers from Union, at regulated, cost-based rates.

18. Union and EGD remain at liberty to apply at any time for a determination, under section 29 of the *Ontario Energy Board Act*, that conditions are such that there is competition sufficient to protect the public interest for all customers, including in-franchise customers now taking bundled services.

IV COSTS

19. The Council and VECC ask that they be awarded 100% of their reasonably-incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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“Michael Janigan”

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