uniongas
A Spectra Energy Company

June 22, 2007

Ontario Energy Board
2300 Yonge St.
Suite 2700
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

**RE: EB-2006-0322/EB-2006-0340 – NGEIR Motions Proceeding**

Dear Ms. Walli:

Please find enclosed 10 copies of the Union Gas Limited's Reply Argument which is being filed pursuant to the Board Procedural Order No. 3 issued on May 29, 2007.

We are also enclosing a disk containing the reply argument in Word.

Yours truly,

Mike Packer, CMA, CIM
Director, Regulatory Affairs

cc: All Intervenors EB-2005-0551
All Intervenors EB-2006-0322
All Intervenors EB-2006-0340
Glenn Leslie, Blakes
Sharon Wong, Blakes

**EB-2006-0322**
**EB-2006-0340**

# MOTIONS TO REVIEW THE NATURAL GAS ELECTRICITY INTERFACE REVIEW DECISION

# SUBMISSIONS OF UNION GAS LIMITED

**June 22, 2007**


**BLAKE, CASSELS & GRAYDON LLP**
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

**Glenn Leslie**
Phone: (416) 863-2672

**Sharon S. Wong**
Phone: (416) 863-4178
Fax: (416) 863-2653

**Solicitors for Union Gas Limited**

**Introduction**

1. In its Decision of May 22, 2007 (the "Threshold Decision") and the ensuing Notice of Hearing and Procedural Order No. 3, the Ontario Energy Board ("Board) determined that three of the matters raised by the moving parties had met the test for review:

(1) the Decision to cap the storage available to Union Gas Limited's ("Union") in-franchise customers to 100 PJ (the "Cap Issue");

(2) the Decision regarding additional storage requirements for Union's in-franchise gas-fired generator customers (the "Storage Services Issue"); and

(3) the Decision regarding Enbridge Gas Distribution's ("Enbridge") Rate 316.

Union's Submissions below are limited to the first two issues. Union takes no position with respect to Enbridge's Rate 316.

2. The parties supporting the motions for review have made several submissions which fall outside of the scope of review allowed by the Threshold Decision. For example, the Consumers Council of Canada ("CCC") and the Vulnerable Energy Consumers Coalition ("VECC") have submitted, in paragraphs 16 and 17 of their Written Argument, that the Reviewing Panel should change the NGEIR Decision issued on November 7, 2006 in order to rescind the storage contract between Enbridge and Union and require Union to provide storage to Enbridge for Enbridge's in-franchise customers at regulated cost-based rates. These submissions by CCC and VECC are directly contrary to the ruling that the Board made in the Threshold Decision where the Board found that these issues were not reviewable:

> **The Board finds that the issues raised in this area have not met the threshold test for the matter to be forwarded to a reviewing panel of this Board.** The NGEIR panel did not err in failing to consider the facts, the evidence, or in exercising its mandate. There were no facts omitted or misapprehended in the NGEIR panel's analysis nor are the moving parties raising any new facts. It was entirely within the NGEIR panel's mandate and discretion how to assess the competitive position of segments of the market and how to address the regulatory treatment of customers within those segments. The NGEIR panel clearly decided

> that ex-franchise customers of both Union and Enbridge had access to a competitive natural gas storage market. **Further, the Decision goes on to make clear on page 61, that Enbridge as a utility is ex-franchise to Union and therefore should be subject to market prices. The NGEIR Decision differentiates between the competitive position of a utility (e.g. Enbridge) and the competitive position of that utility's in-franchise customers. For example, the Decision is clear that the in-franchise customers of Enbridge will pay cost based rates which will continue to be regulated by the Board and are based on EGD's costs of storage service owned by the utility and the costs that EGD pays for procuring these services in the competitive market.**
>
> (Threshold Decision, p. 42-43, emphasis added)

3. The Threshold Decision Panel clearly found that the ruling in the NGEIR Decision that Enbridge is to pay market prices for storage acquired from Union is not reviewable because there was no demonstrable error in the Decision. The Threshold Decision accepted the findings of the NGEIR Panel that Enbridge is able to acquire storage services in a competitive market (NGEIR Decision, p. 61), and that Enbridge's in-franchise customers are sufficiently protected by the transition provisions that allow time for Enbridge to effectively access alternative storage arrangements (NGEIR Decision, p. 64).

4. Union will be limiting its submissions to the issues referred to the Reviewing Panel in the Threshold Decision, and will not be commenting on any other matters raised by the parties.

**<u>The Cap Issue:</u>**

5. At pages 48-49 of the Threshold Decision, the Threshold Decision Panel found that the NGEIR Decision should have addressed three questions. Union submits that the answers to those questions should be as follows:

**(a) 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?**

The cap is intended to remain in place in perpetuity. However in the NGEIR Decision the Board did not find any basis for forbearance from regulation on required storage above 100 PJ for in-franchise customers. The intent of the NGEIR Decision is that incremental in-franchise storage requirements due to load growth in excess of 100 PJ would be met by Union purchasing the required additional amounts in the market and passing through the contract costs to its in-franchise customers as part of its regulated rates for standard storage services.

**(b) 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?**

The cap of 100 PJ of storage for in-franchise Union customers remains in place in perpetuity. The only action that could change this is a potential future finding by the Board that the market for in-franchise storage services is competitive sufficient to protect the public interest.

**(c) 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?**

The in-franchise customers will be protected because their rates will still be regulated for all standard storage services, regardless of whether the 100 PJ cap is exceeded or not. Union will have to justify the prudence of the cost of any storage, including any amount in excess of 100 PJ, for inclusion in the cost base for its rolled-in rates for standard storage services.

6. The Threshold Decision Panel referred the Cap Issue to the Reviewing Panel because it found that "the NGEIR Panel is silent on the outcome if in-franchise customers require more than 100 PJ of storage per year" (Threshold Decision, p. 48), and the Threshold Panel found that "the NGEIR panel either failed to address a material issue or made inconsistent findings" (Threshold Decision, p. 49).

7. Union submits that the NGEIR Decision was very clear that all standard storage services for in-franchise customers would continue to be provided by Union at regulated rates. Accordingly, if Union's in-franchise customers require more than 100 PJ of storage per year, that additional storage would also be provided on a regulated basis. The incremental storage above 100 PJ would be purchased in the market by Union when needed. The cost of that incremental storage would be rolled into Union's cost base for the purpose of setting cost-based regulated rates for standard storage services. There has never been any element of forbearance proposed for the standard in-franchise storage services.

8. The imposition of a cap on the amount of existing storage allocated to in-franchise customers is consistent with the NGEIR Panel's finding that there is insufficient competition in respect of distribution and storage services for in-franchise customers to support forbearance from regulating that portion of the market.

9. The intent of the cap is to allocate Union's ***existing*** storage capacity between "utility assets" (up to 100 PJ) used to serve current and some expected future in-franchise demand growth that would continue to be subject to rate regulation, and "non-utility assets" (all existing storage capacity in excess of 100 PJ) that would no longer be subject to rate regulation. This intent is clearly set out in the NGEIR Decision at pages 82-83:

> **The Board finds that there should be a cap on the amount of Union's <u>existing</u> storage space that is reserved for in-franchise customers at cost-based rates.** In the Board's view, **Union's <u>existing</u> storage assets** are, in substance, a combination of "utility assets" required to serve Union's in-franchise distribution customers and "non-utility assets" that are not required for regulated utility

> operations and that are sold in the competitive storage market. **This distinction is supported by the significant excess of total capacity over in-franchise needs for the foreseeable future and by the fact that development in recent years has been driven by the ex-franchise market, not in-franchise needs.** The Board does not accept IGUA/ AMPCO's submissions that the entire amount of Union's storage is a "utility asset" and that ex-franchise customers (such as gas marketers and utilities in the U.S. Northeast) are buying "utility services" when they purchase storage from Union. The Board has determined that the ex-franchise market is competitive and that it will refrain from rate regulation or contract approval; these will no longer be "utility" services.
>
> The Board concludes that its determination that the storage market is competitive requires it to clearly delineate the portion of Union's storage business that will be exempt from rate regulation. Retaining a perpetual call on all of Union's current capacity for future in-franchise needs is not consistent with forbearance. As evidenced by the arguments from GMi and Nexen, two major participants in the ex-franchise market, retaining such a call is likely to create uncertainty in the ex-franchise market that is not conducive to the continued growth and development of Dawn as a major market centre.
>
> The Board concludes that it would be inappropriate, however, to freeze the in-franchise allocation at the level proposed by Union. Union's proposal implies that a distributor with an obligation to serve would be prepared to own, or to have under contract, only the amount of storage needed to serve in-franchise customers for just the next year. **In the Board's view, it is appropriate to allow for some additional growth in in-franchise needs when determining the "utility asset" portion of Union's <u>current capacity</u>.**
>
> The Board acknowledges that there is no single, completely objective way to decide how much should be reserved for future in-franchise needs. The Board has determined that Union should be required to reserve 100 PJ (approximately 95 Bcf) of space at cost-based rates for in-franchise customers.
>
> (NGEIR Decision, p. 82-83. emphasis added)

10. There is nothing in the NGEIR Decision to indicate that the NGEIR Panel intended that any **new** storage in excess of 100 PJ that Union may have to acquire in the future to serve in-franchise customers would not be subject to rate regulation. In fact, it is apparent that the NGEIR Panel intended that any incremental in-franchise storage in excess of 100 PJ would be acquired at the then existing market price and would be rolled into Union's cost base for rate making purposes.

11. The NGEIR Panel essentially accepted the proposal put forward by Union, subject only to an increase in the amount of the cap to 100 PJ, instead of 92.1 PJ as proposed by Union. The fact that the NGEIR Panel accepted Union's proposal is evident from the following portion of the NGEIR Decision:

> **6.1 UNION'S TOTAL COST-BASED STORAGE ALLOCATION**
>
> Union proposed to freeze, on January 1, 2007, the amount of its storage capacity available to in-franchise customers at cost-based rates. The frozen amount would be 92.1 PJ (approximately 87 Bcf), Union's estimate of in-franchise requirements for 2007. **Incremental in-franchise storage requirements due to load growth would be met by Union purchasing the required additional amounts in the market and passing through the contract costs to its in-franchise customers.**
>
> (NGEIR Decision, pp. 77-78, emphasis added)

The NGEIR Decision goes on to discuss the merits of Union's proposal and the arguments made for and against it, and the NGEIR Panel then comes to the following conclusion:

> **Conclusion**
>
> The Board finds that there should be a cap on the amount of Union's existing storage space that is reserved for in-franchise customers at cost-based rates...
>
> The Board concludes that its determination that the storage market is competitive requires it to clearly delineate the portion of Union's storage business that will be exempt from rate regulation...
>
> **The Board concludes that it would be inappropriate, however, to freeze the in-franchise allocation at the level proposed by Union. Union's proposal implies** that a distributor with an obligation to serve would be prepared to own, or to have under contract, only the amount of storage needed to serve in-franchise customers for just the next year. In the Board's view, it is appropriate to allow for some additional growth in in-franchise needs when determining the "utility asset" portion of Union's current capacity.
>
> The Board acknowledges that there is no single, completely objective way to decide how much should be reserved for future in-franchise needs. The Board has determined that Union should be required to reserve 100 PJ (approximately 95 Bcf) of space at cost-based rates for in-franchise customers...
>
> (NGEIR Decision, p. 82-83, emphasis added)

12. There was ample evidence submitted during the NGEIR proceedings to support the NGEIR Panel's conclusions in respect of the 100 PJ cap, and Union submits that there is no reason for the Reviewing Panel to revoke or amend the cap. The reasons in support of the cap are set out in the NGEIR Decision itself at pages 79 – 83.

13. The parties who have asked for the cap to be revoked (CCC, VECC, IGUA and Kitchener) have not provided any reason to doubt the correctness of the original Decision. They baldly assert that the cap contradicts the NGEIR Panel's finding that there is insufficient competition to justify deregulating storage for in-franchise customers. However, as explained above, there is no contradiction in the NGEIR Decision. The NGEIR Panel determined that there is sufficient competition in the ex-franchise market to justify forbearance for ex-franchise customers. The intent of the cap was to determine the portion of Union's existing storage that would be allocated to the competitive ex-franchise market. The cap does not remove any part of Union's standard storage service to in-franchise customers from regulation. The cap therefore does not contradict the NGEIR Panel's finding that the in-franchise market must continue to be regulated, even if the 100 PJ cap is ultimately exceeded for Union's in-franchise customers' needs.

14. In paragraph 3 of its Argument, Kitchener argues that the development of new storage to serve the ex-franchise market will result in an increase in the average cost of Union's storage and an increase in-franchise rates. This is not correct. None of the costs that Union will incur to develop storage capacity and storage services for the ex-franchise market will be included in Union's rate base; Union will bear all of the risks associated with developing new storage facilities (NGEIR Decision, pp. 54 and 106).

15. Kitchener also argued that there should be no cap because the only justification for a cap is the "desire to facilitate more certainty to the ex-franchise, unregulated, market" (Kitchener's Written Argument, p. 3). Kitchener asserts that the development of storage to serve the ex-franchise market is not in the public interest. This assertion by Kitchener is directly

contrary to the findings of the NGEIR Panel when it expressly considered the relevant public interest factors:

> **4.1 TO FACILITATE COMPETITION IN THE SALE OF GAS TO USERS**
>
> The Board has worked over time to ensure that Ontario consumers reap the benefits of commodity competition. The Board must continue to pursue this objective and can do so by facilitating the evolution of a robust market in Ontario. **The development of the Dawn Hub has brought substantial benefits to consumers in Ontario and to other market participants.**
>
> **The Board concludes that it is in the public interest to maintain and enhance the depth and liquidity of the market at the Dawn Hub as a means of facilitating competition.** One way to do this is to encourage the development of innovative services and to ensure access to those services. Choice is the bedrock of competition. The evolution of the transactional services market is an example where innovative and flexible services have evolved within a market-based pricing structure...
>
> **4.2 TO PROTECT THE INTERESTS OF CONSUMERS WITH RESPECT TO PRICES AND THE RELIABILITY AND QUALITY OF GAS SERVICE**
>
> ...
>
> The Board concludes that long-term consumer protection in terms of price, reliability and quality of service is best achieved through thriving competition for the competitive elements of the storage market and effective regulation of the non-competitive elements of the market. **The Board is of the view that refraining from rate regulation and contract approval in the ex-franchise market has the potential to foster more competition in the storage market, to the benefit of all customers,** provided there are clear rules and non-discriminatory access by all market participants. In a competitive market, customers have choices, resources are distributed efficiently, and there are incentives to innovate and respond to customer needs.
>
> **4.3 TO FACILITATE RATIONAL DEVELOPMENT AND SAFE OPERATION OF GAS STORAGE**
>
> ...
>
> The evidence suggests that there is no need for significant new storage within Ontario to serve the traditional requirements of Ontario consumers. However, there is a demonstrated desire for more specialized services to meet the load characteristics of power generators. **The Board also agrees that further development of storage in Ontario would be of benefit to Ontario consumers in terms of reduced price volatility, enhanced security of supply and an**

> **overall enhanced competitive market at Dawn.** There is also evidence that new services, once they are generally available, can enhance the service offerings of other parties, such as marketers, thereby increasing the liquidity of the market.
>
> The Board concludes that it is appropriate to facilitate the development of storage to offer these services without undue risk for ratepayers.
>
> (NGEIR Decision, pp. 44-50, emphasis added)

16. The NGEIR Panel concluded that retaining a perpetual call on all of Union's current capacity for future in-franchise needs is not consistent with forbearance and would not be "conducive to the continued growth and development of Dawn as a major market centre" (NGEIR Decision, p. 82). As a result, the NGEIR Panel concluded that it was necessary to clearly delineate the portion of Union's existing storage capacity that will be exempt from rate regulation by capping the amount of existing storage that could be regarded as a "utility asset". The cap is intended to promote the development of Dawn as a major market centre because, as the NGEIR Panel found, an enhanced competitive market at Dawn will be of benefit to all Ontario consumers. Accordingly, Union submits that Kitchener's argument that the development of a competitive storage market is not in the public interest is without merit.

**The Storage Services Issue:**

17. The Threshold Decision Panel referred the Storage Services Issue to a Reviewing Panel because it concluded that APPrO had raised a sufficient question as to whether the NGEIR Decision erred by requiring that monopoly services be priced at market (Threshold Decision, p. 56).

18. In its Written Argument to the Review Panel, APPrO appears to take the position that the NGEIR Decision did not explicitly address the issue of whether storage services for in-franchise generators should be priced at market or cost (APPrO's Written Argument, para. 27).

19. Union respectfully submits that the Threshold Decision and APPrO's Written Argument both misconstrue the actual findings of the NGEIR Decision (although they misconstrue it in different ways). Union submits that the NGEIR Decision found that any new storage services (including high deliverability service) which is developed by the utilities for in-franchise generators (or any other party for that matter) are to be provided at market prices, and that there will be sufficient competition for these services to protect the public interest.

***The Board's Findings in the NGEIR Decision***

20. Pursuant to s. 29 of the *Ontario Energy Board Act, 1998*, the Board is entitled to refrain from regulating a service if it finds that the service is **or will be** subject to sufficient competition to protect the public interest:

> 29. (1) On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is **or will be subject to competition sufficient to protect the public interest**.
>
> (emphasis added)

21. The NGEIR Panel recognized that s. 29 of the Act empowers the Board to forbear from regulation if forbearance itself will promote sufficient competition to protect the public interest. The NGEIR Panel recognized the dynamic nature of the legal test at page 26 of the NGEIR Decision:

> There are degrees of competition in any market. They range from a monopoly, where there is a sole seller, to perfect competition, where there are many sellers and no one seller can influence price and quantity in the market. It is not necessary to find that there is perfect competition in a market to meet the statutory test of "competition sufficient to protect the public interest"; what economists refer to as a "workably competitive" market may well be sufficient.
>
> It is also important to remember that competition is a dynamic concept. Accordingly, in section 29 the test is whether a class of products "is or will be" subject to sufficient competition. In this respect parties often rely on qualitative evidence to estimate the direction in which the market is moving.
>
> (NGEIR Decision, p. 26)

22. The NGEIR Panel found that forbearing from regulating new storage services was the best way to stimulate the development of these services and that would in turn result in sufficient competition to protect the public interest (NGEIR Decision, pp. 69-70).

23. The NGEIR Panel defined the new storage services in issue as including high deliverability service to generators (both in-franchise and ex-franchise) greater than the standard daily deliverability of 1.2% of storage capacity:

> This issue concerns a set of new storage services and, **in particular, high deliverability storage services.** The services include Enbridge's proposed Rate 316 and services related to the Tecumseh storage enhancement project and **Union's proposed high deliverability storage services** and three ex-franchise services: F24-S, Upstream Pipeline Balancing Service (UPBS) and Downstream Pipeline Balancing Service (DPBS). **These services are of particular interest to dispatchable gas-fired power generators, and indeed were developed in response to generator requests, because they provide the means by which these customers can conduct intra-day balancing.**
>
> The storage requirements for dispatchable gas-fired power generators are very different from existing customers. Whereas existing customers use storage for seasonal or daily balancing, dispatchable generators want to use storage for intra-day balancing. **And whereas existing customers can meet their needs with the standard deliverability service (daily delivery of 1.2% of storage space allocation), dispatchable generators want daily deliverability as high as 10% of their storage space allocation.**
>
> (NGEIR Decision, pp. 66-67, emphasis added)

24. In its recent Written Argument to the Reviewing Panel APPrO argues that Union is obligated under the Settlement Agreement to provide certain storage services. This is the same argument that APPrO made to the NGEIR Panel, and it is clear from the NGEIR Decision that the Board was very aware of APPrO's argument:

> APPrO argued that the utilities have an obligation to provide these services and, because allocations of 1.2% standard deliverability space have been agreed, power generators have no options (other than through the utilities) for acquiring the necessary deliverability services to make use of these storage allocations. In APPrO's view, storage in other geographic areas is not an option because all other transmission systems are limited to the four NAESB nomination windows.
>
> (NGEIR Decision, p. 67)

25. The Board's findings with respect to the basis upon which these storage services are to be provided was set out at pages 69 and 70 of the NGEIR Decision:

> There was no disagreement that these services are needed and should be developed. The generators have convincingly expressed the importance of these types of service to the effective functioning of their operations – both physically and financially. The issue for the Board, within a section 29 context, is how best to achieve this objective. **APPrO and the GTA Generators (supported by the consumer intervenors) advocated a regulated framework; the utilities argued for a competitive framework.**
>
> **These services are not currently offered, indeed they need to be developed,** and investments must be made in order to offer them. Union has been conducting open seasons for its new offerings and is committed to providing these services if the Board refrains from regulating them. **The Board concludes that these services are substantially different from the bundled, unbundled and semi-unbundled distribution services offered by Enbridge and Union.** There is demand for these services from marketers (for example, BP and Nexen) and likely others. **In addition, when the capacity generators hold is excess to their needs, they expect to be able to offer this excess into the competitive market. It follows that they expect to be able to acquire these services through the competitive market as well as sell them.**
>
> The Board could order the utilities to provide these services on a regulated basis. However, the Board concludes that this would not be the best approach to ensuring the development of these services. The key consideration is to ensure that new innovative services are developed and offered into the market. **The Board concludes that the best way to ensure this public interest is met is to refrain from regulating these services.** This will stimulate the development of these services, by the utilities and by other providers. **The Board finds that competition in these services will be sufficient to protect the public interest.**
>
> 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. **Union has proceeded with its open season, and the Board expects Union to offer these services on an open season basis, without withholding capacity. These commitments will ensure a level of consumer protection.**

> **Pricing considerations are relevant, but the Board finds that the development of competitive options will provide appropriate price protection for these consumers.** The Board will also be developing a reporting mechanism and complaint process, discussed at the end of this chapter, and we expect that parties will bring any issues of market failure to the Board's attention.
>
> **The Board will refrain from regulating the rates for new storage services, <u>including</u>** Enbridge's high deliverability service from the Tecumseh storage enhancement project and Rate 316, and **<u>Union's high deliverability storage</u>**, F24-S, UPBS and DPBS services.
>
> (NGEIR Decision, pp. 69-70, emphasis added)

26. The following points are immediately apparent from reading the NGEIR Decision:

a) The Board concluded that the new, non-standard, storage services, and in particular high deliverability service above the standard 1.2% deliverability, are "substantially different from the bundled, unbundled and semi-unbundled distribution services offered by Enbridge and Union", and the Board found that there will be sufficient competition for these non-standard storage services to protect the public interest. It is apparent from these findings that there is no basis for IGUA's argument that there is a fundamental contradiction in the NGEIR Decision. Contrary to IGUA's argument, the NGEIR Panel did not find that the new, non-standard, storage services that Union and Enbridge are to provide are monopoly services. Rather, it found that the new storage services are "substantially different" from the standard in-franchise services where there was insufficient competition to refrain from regulation.

b) The Board decided to refrain from regulating the rates for the non-standard storage services, including Union's high deliverability storage above 1.2% deliverability to its in-franchise generator customers, as it was entitled to do pursuant to s. 29 of the Act having found that there will be sufficient competition to protect the public interest; and

c) the Board made these findings after taking into account APPrO's submissions that the utilities have an obligation to provide some of these non-standard storage services under the Settlement Agreement.

27. There was ample evidence submitted to the Board to support these findings in the NGEIR Decision. Union submits that there is no evidentiary basis for the Reviewing Panel to find that the NGEIR Panel made an error, and there is no basis upon which the Reviewing Panel should change the Decision.

***The Evidence of Sufficient Competition***

28. Set out below is a summary of the relevant evidence that was given during the NGEIR hearing. While reading the evidence, it is important to keep in mind the purpose that the in-franchise generators seek to achieve with high deliverability service. The rate of deliverability (i.e. whether it is 1.2% of storage capacity or 10% of storage capacity) is not what is important to the generators' intra-day balancing requirements; rather what the generators need is the ability to control the amount of gas that they receive at various times throughout the day. APPrO's witnesses agreed with this point during the hearing, and there is no controversy about this. Therefore, adequate substitutes exist to meet the generators needs so long as the generators can obtain delivery of gas when they need it at competitive prices. The NGEIR Panel found that the evidence supported the conclusion that there are non-storage products and services which provide reasonable substitutes for storage. These substitutes include commodity sales, swaps, exchanges, displacement, and delivery/redelivery services (NGEIR Decision, p. 33).

29. Union proposed pricing and its high deliverability storage services to in-franchise customers at market values. Union testified that it would need to develop assets to provide these services and the ability to secure market values is necessary to attract the capital to develop the assets. Without forbearance, Union would go the market to purchase these services (Transcript Vol. 2, pp. 143-145, Union's Compendium, Tab 1). Union planned to conduct an "open season" to determine the level of interest for high deliverability services, and Union stated that it would

identify minimum bid prices in the open season package to address the generators' requirement for more information about the cost of these services (Transcript Vol. 3, pp. 103-104, Union's Compendium, Tab 2).

30. Generators suggested that the high deliverability services otherwise available are poor substitutes for the services that can be provided by Enbridge and Union. The generators' position is that the alternatives would not allow them to withdraw gas from storage on an intra-day basis (Transcript Vol. 10, p. 138; p. 140; pp. 179-182, Union's Compendium, Tab 3). Having said that, APPrO recognized that one other available option is to buy additional space to get the deliverability they need. That would provide them more space than required (Transcript Vol. 10, p. 228, Union's Compendium, Tab 4 ). However, as Mr. Henning testified, the extra space has value and could be resold (Transcript Vol. 3, p. 46, Union's Compendium, Tab 5).

31. APPrO supported the development of additional storage space and recognized the importance of incentives to storage developers (Transcript Vol. 10, p. 144, Union's Compendium, Tab 6). APPrO's concerns were entirely focussed on establishing a value for the services in question (Transcript Vol. 10, p. 246, Union's Compendium, Tab 7). APPrO testified that they were not trying to pay a lower price than market. They simply wanted a mechanism to ensure a competitive price (Transcript Vol. 10, pp. 237-238, Union's Compendium, Tab 8).

32. The generators admitted that they plan to resell the storage services they obtain from Enbridge and Union when they do not need them into the secondary market (Transcript Vol. 10, p. 234; p. 239, Union's Compendium, Tab 9).

33. The generators' concerns about the cost of these services were addressed by Union's commitment to identify minimum bids in the open season package. Another measure of the value of high deliverability service is the net cost of sufficient storage space to achieve the desired deliverability (Transcript Vol. 10, p. 228, Union's Compendium, Tab 4).

34. Generators need to evaluate their alternatives by soliciting offers in the market and comparing the cost of products and services (Transcript Vol. 2, p. 59; Vol. 3, p. 48, Union's Compendium, Tab 10). There are many options to obtain incremental deliverability (Transcript Vol. 3, p. 27, Union's Compendium, Tab 11). Supply does not have to come from storage (Transcript Vol. 3, pp. 44-45, Union's Compendium, Tab 12). There is more than one marketer. In a competitive market there will be a competitive price for intra-day supply (Transcript Vol. 3, pp. 82-83, Union's Compendium, Tab 13).

35. Marketers can also develop services to meet a market need (Transcript Vol. 3, p. 48, Union's Compendium, Tab 10). Interest in the marketplace underpins development and development requires the necessary commercial pricing and commitments as well as a proper commercial framework (Transcript Vol. 3, pp. 42-43, Union's Compendium, Tab 14).

36. Other market participants are also developing the services that the generators need. Mr. Isherwood testified that TCPL has a short-notice balancing service before the National Energy Board that would have aspects similar to Union's F24-S service in terms of short notice all-day firm access to gas with 96 nomination windows. Mr. Isherwood testified that a lot of parties are responding to the need of the generators and that "as the market develops, you will see others such as Vector and Bluewater step up to the plate as well" (Transcript Vol. 3, pp. 72-73, Union's Compendium, Tab 15).

37. Mr. Acker of BP Canada Energy Company testified that BP could not currently provide a firm intra-day service (Transcript Vol. 13, p. 25, Union's Compendium, Tab 16), but acknowledged that situation could change if such services were available in the market from Union or Enbridge. Mr. Acker stated that "I'm unaware of anyone who's been unable to satisfy their needs, whether it's in the primary, secondary, or ex-franchise market" (Transcript. Vol. 13, p. 71, Union's Compendium, Tab 17). Mr. Acker also stated that "My business will react to the way the market evolves. If customers of ours have access to storage services, we will approach them and explore opportunities to help them optimize those services. Whether they paid cost or

market-based in that scenario is irrelevant." (Transcript. Vol. 13, p. 76, Union's Compendium, Tab 18).

38. The fact that gas supply does not have to come from storage, and that others like marketers can meet the generators need for delivery of supply, is important because it addresses the primary error in APPrO's argument. APPrO argues that the market for storage services cannot be competitive because generators who have a commitment from Union for storage allocation must physically take storage deliverability from Union. The necessity to take physical deliverability from Union is a result of the contractual position between Union and APPrO's members. APPrO's argument does not address the availability of competitive substitutes. It is entirely possible for participants in a competitive market to limit their choices by contract.

39. However, whether a particular market is competitive has nothing to do with whether a particular buyer agrees to take services from a particular supplier. In this case, an in-franchise generator who chooses to contract for storage service from Union obtains some storage deliverability from Union as part of that service, but that does not mean that the in-franchise generator does not have competitive alternatives for receiving gas supply when it needs it. As noted above, the NGEIR Panel found that the evidence supported the conclusion that there are non-storage products and services which provide reasonable substitutes for storage. These substitutes include commodity sales, swaps, exchanges, displacement, and delivery/redelivery services (NGEIR Decision, p. 33). Accordingly, an in-franchise generator may choose to obtain its gas supply by using the standard storage services offered by Union at regulated rates (1.2% deliverability), the new storage services that are being developed by Union at market prices, or obtain its gas supply in a variety of other ways, or by a combination thereof.

40. There is no rational basis for APPrO's complaint that requiring the in-franchise generators to participate in an open season process is a violation of the Settlement Agreement. In the Settlement Agreement, Union agreed that it would make certain storage services available; however, the Settlement Agreement was clear that the issue of whether those services would be subject to market price or a regulated rate was for the determination of the Board. The Board

was fully aware that Union intended to set the market price for the storage services by way of an open season, and, in fact, the Board determined that the open season methodology would ensure "a level of consumer protection" (NGEIR Decision, p. 70). Union has fulfilled its commitments under the Settlement Agreement since all of the services it agreed to provide are available to any customer who agrees to pay the market price as determined in the open season.

41. At paragraph 28 of APPrO's submission, APPrO claims that "Union has taken the position that it is not obligated to provide the additional deliverability it agreed to provide." This statement, and the ones that follow through that paragraph, could not be further from the truth. Union agreed to provide deliverability up to 1.2% at cost-based rates, and will provide any further deliverability at market prices. If Union has the immediate capacity to provide the requested higher deliverability service, it will do so using the market price from the most recent open season for storage deliverability. If Union does not have the immediate capacity to offer the higher deliverability service, it will conduct an open season to determine if there is enough demand for that service to justify an investment in new facilities or offer to obtain the necessary capacity in the market at market prices. In either case, Union will ensure that higher deliverability services are available through Union to in-franchise generators at market prices (Transcript. Vol. 3, p. 27-28, Union's Compendium, Tab 19).

42. In summary, there was ample evidence to support the Board's finding that there will be sufficient competition for storage services to protect the public interest. In-franchise generators already have options for obtaining the supply they need, and the market will develop more options for them in the future if it is allowed to develop. Further, as noted above, in-franchise generators can themselves go to the market to seek out options and pricing as well. Accordingly, Union submits that the evidence overwhelmingly supports the Board's finding that there will be sufficient competition to protect the public interest if the Board refrains from regulating new storage services to in-franchise generators, and there is no reason why the Reviewing Panel should change the Board's Decision by imposing regulated rates for the new storage services.

EB-2006-0322
EB-2006-0340

# MOTIONS TO REVIEW THE NATURAL GAS ELECTRICITY INTERFACE REVIEW DECISION

## COMPENDIUM

## SUBMISSIONS OF UNION GAS LIMITED

**June 22, 2007**

INDEX

1. EB-2005-0551, Transcript Vol. 2, pp. 143–145.
2. EB-2005-0551, Transcript Vol. 3, pp. 103–104.
3. EB-2005-0551, Transcript Vol. 10, p. 138; p. 140; pp. 179-182.
4. EB-2005-0551, Transcript Vol. 10, p. 228.
5. EB-2005-0551, Transcript Vol. 3, p. 46.
6. EB-2005-0551, Transcript Vol. 10, p. 144.
7. EB-2005-0551, Transcript Vol. 10, p. 246.
8. EB-2005-0551, Transcript Vol. 10, pp. 237-238.
9. EB-2005-0551, Transcript Vol. 10, p.234; p. 239.
10. EB-2005-0551, Transcript Vol. 2, p. 59; Vol.3, p. 48.
11. EB-2005-0551, Transcript Volume 3, p. 27.
12. EB-2005-0551, Transcript Volume 3, pp. 44-45.
13. EB-2005-0551, Transcript Volume 3, p. 82-83.
14. EB-2005-0551, Transcript Volume 3, p. 42-43.
15. EB-2005-0551, Transcript Volume 3, pp. 72-73.
16. EB-2005-0551, Transcript Volume 13, p. 25.
17. EB-2005-0551, Transcript Volume 13, p. 71.
18. EB-2005-0551, Transcript Volume 13, p. 76.
19. EB-2005-0551, Transcript Volume 3, pp. 27-28.

TAB 1

TAB 1

VT INCEPIT FIDELIS SIC PERMANET

Ontario

# ONTARIO ENERGY BOARD

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|---|---|
| FILE NO.: | EB-2005-0551 |

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|---|---|---|
| VOLUME: | 2 | |
| DATE: | June 20, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

acceptance of this proposal on some specific, I'll just say, transparency requirements, you wouldn't have a problem with that?

MR. BAKER: Again, subject to the caveat of not disclosing confidential commercial information.

MR. THOMPSON: All right. Let me move on now.

The new service, you had some discussion about that in your examination in-chief with Mr. Leslie. These were the market-based F24-T/F24-S. There was a discussion of those in your examination in-chief. Do you recall that?

We're talking about the new services that you described in your examination in-chief, something to the effect, if we don't get what we want, we're not going to offer them. I'm paraphrasing it in typical IGUA rhetoric but ...

MR. ISHERWOOD: I think what we said earlier was, if the Board chose not to forbear, the one option that we may have would be to go in the marketplace and actually purchase a service, that would allow us then to offer the other services we're trying to develop here.

MR. THOMPSON: Right. But it wasn't clear to me, you're proposing new services. The Board has not even -- this F24-T and the rest of them. But by the same token, you seem to be asking them to forbear. Have I got that right?

MR. ISHERWOOD: F24-T is a cost-of-service transport service. The only three that are market-based are the upstream pipeline balancing service, the downstream pipeline balancing service, and F24-S.

MR. THOMPSON: Right.

MR. ISHERWOOD: And I'd also throw into this mix as well incremental deliverability above what would be allocated to a large power general customer under general T1 contract. All four of those services would require Union to build more deliverability.

And for us to attract the capital to do that, we would definitely need to have a forbearance type of model, more than likely. To the extent we didn't have that, our proposal or our suggestion was we would go out on the market and try and purchase that same service.

MR. THOMPSON: But this is where I'm confused with what you described as the forbearance type of model. To me, forbearance comes after the Board has regulated for a while. Here you've got services that haven't even been approved before. And so it sounds to me like you're asking the Board to exercise market-based rate-making authority and approve these under the auspices of a market-based price signal regime. Is that really what you're asking for?

MR. BAKER: No. Not really, because if you look at what we have today, you can say that we have a market-based pricing regime. But we don't have the economic incentive to go out and look to develop and commit capital to new storage or new storage deliverability.

There are risks associated with doing that in terms of developing that kind of business. So, to the extent that we commit capital and we develop an asset and we sell it into the market at a market-based rate, under today's framework the majority of that value goes back. It's not a framework that compensates someone like Union to go out and take the risk to develop those kinds of assets and commit the capital to them.

MR. THOMPSON: So what is it you're asking the Board to approve with respect to these new services? Or are you just telling us: This is what we plan to do, leave us alone.

MR. BAKER: No, I think it's definitely related to what we're dealing with in this hearing. It is saying that the market for those services, the exfranchise wholesale market, is competitive, that market-based rates are supportable, and on that basis we would go forward and we would look to sell those services at rates that would be sufficient enough for us to commit the capital and develop those assets.

MR. THOMPSON: The Board will approve words but nothing else? Is that the idea?

MR. BAKER: I don't see the distinction to the extent that there is a determination that there's forbearance from the existing exfranchise wholesale storage market. To the extent that we developed new assets and sold those services as part of that market, I would see that as being one and the same thing.

TAB 2

TAB 2

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| FILE NO.: | EB-2005-0551 | |
| VOLUME: | 3 | |
| DATE: | June 26, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

short in the fall and long in the spring, because we're always short in the spring and long in the fall, if you're opposite, then the degree of interruptibility is probably not a bad service.

MR. BROWN: But when the crunch times come, the double peak of the winter peak and summer peak, you would agree with me that gas-fired generators tend to make sure that their requirements are covered by firm service?

MR. ISHERWOOD: It's up to them and their risk profile.

MR. BROWN: All right. With respect to -- so I take it from your answer, then, that a generator could go to its local utility. That is really predicated on an excess of supply of high deliverability service existing. That's the situation you foresee?

MR. ISHERWOOD: Again, I would separate the deliverability from space and say excess deliverability being available, but it is the same idea.

MR. BROWN: Right. In terms of negotiations, you would agree with me that for negotiations to be fair, both parties should have relatively equal access to information about the thing they're negotiating over?

MR. ISHERWOOD: That's correct. What we have committed to do on our open season is, when we do the open season in the next month or so, our proposal is to actually put on the open-season package some minimum bid prices just reflecting the generator's concerns that they may not have as much information as they're comfortable with. So we're prepared to do that in open season, and that may give comfort where comfort is needed here.

MR. BROWN: Could I ask you to go to the cross-examination brief that we just marked as Exhibit J.3.2, and go to tab number 2? I think, Mr. Isherwood, these questions probably will be for you, although, Mr. Baker, perhaps also for you.

I have reproduced at tab 2 part 284 of the FERC regulations. As you know, they contain some reporting requirements for interstate pipelines and storage operators.

If Union were to persuade the Board that the Board should forebear or perhaps more lightly regulate the pricing and offering of storage by Union, I would like to ask you whether Union would be prepared, as a condition of such an order, to publish publicly the information that you find starting on page 745 of tab 2.

You will see on that page, I've put little lines on the side, but the first set of information --

MR. ISHERWOOD: Sorry, we don't have 745.

MR. BROWN: That's too bad, because that is sort of the key page. You don't have that?

MR. BAKER: I have 744. Then it actually goes to page 737.

MR. BROWN: It may be 36. That's the page you have on it. Anyway, if you have the hard copy, it will be page 745. Do you have that, Mr. Isherwood?

MR. ISHERWOOD: Yes.

**TAB 3**

TAB 3

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **10** | |
| **DATE:** | **July 13, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

available for other transactions.

The other portion of the discussion, because within the time available we weren't able to work through all the issues that may be involved to increasing the number of nomination windows from 13 to something closer to the hourly nomination that we thought was necessary and still feel would be helpful, the agreement was that there would be an industry task force that would convene very soon after the completion of this proceeding, I would expect, that would go through those issues and see if that could be expanded. So we see all three of those elements of the settlement being important.

MR. MORAN: Now, in light of the description of the settlement on storage allocations that's laid out in the two settlement agreements, and in the context of the services as you've described them, with the addition of nomination windows within the Union system, can an infranchise generator access high deliverability storage that's located outside of Ontario to meet its intraday needs?

MR. ROSENKRANZ: I think it's important to - the answer is today no. And I want to explain why the answer is no. It's important to look at what the additional what the additional high-deliverability needs of the generators are, particularly today, with the services that exist today or are expected to exist in the near-term, and speaking in particular of the Enbridge Rate 125/316 services that are being implemented, but in the Union system today we're customers.

How would you describe the intra-day secondary market in Ontario?

MR. KELLY: I'd say that the intra-day secondary market in Ontario is not capable of providing the services that gas-fired generators need. TransCanada has held extensive discussions, most specifically within its work on PEC. We have held a number of discussions with marketers. We have posted RFPs specifically for the services that we believe PEC requires, in order to manage its fuel on a day-to-day basis, and to date we have not been successful in terms of securing the types of services that we require.

In fact, in conversations with the marketers, they've indicated to us that the types of services that we really need are the types of services that are actually being discussed here at the NGEIR forum... shall I start over?

So, as I mentioned, the types of services that the gas-fired generators need, at this point in time the marketing community, we've seen no indication from the marketing community that they're able or capable of providing those services to us on a reliable basis, intra-day.

MR. MORAN: Mr. Cramer, has your experience been any different from what Mr. Kelly has described?

MR. CRAMER: No.

MR. MORAN: All right. Finally, Mr. Wolnick, how should the deliverability needs of generators be met based on the methodology set out in the two settlement

And, you know, I mean, if the generators are saying, we're willing to pay the cost for the deliverability that we're demanding, that given that we're making the money available, you should be able to find it. And our position is, you know, particularly with respect to deliverability, because of how it has to fit within the Ontario gas system, that it's really the utilities that are required to do it.

We can get typical, you know, load deliverability storage from other resources, but when it comes to the high-deliverability needs that we need intra-day, as it stands today in Ontario, the only entities that are in a position to provide that are the utilities, because of how the system is set up.

And then, you know, if it gets to the point that it becomes very costly, you know, I mean - you know, if it costs me more to deal with the problem than it costs to simply absorb the problem, I'll absorb the problem. But the ramification of that is, when the IESO asks me to run, I may not be able to.

MR. CASS: But in the course of that answer, you referred to the utilities, and you said "you should be able to find it." And when you're talking about utilities finding the solution, you're not talking about a generating plant not running or anything of that nature, you're talking about the utilities going to market, the gas markets, and finding a solution that provides an appropriate alternative; right?

MR. CRAMER: Our view is that if the generators - the generators ultimately produce - you know, represent the demand. And that demand is obviously going to be reflective of the cost of the service. So, I mean, inherently there has to be a balance there.

And again, I mean we're asking the utility to pursue that because our view is that the utilities are the only party in a position to do it, as it stands today. And that you know, there will be a balance between the demand that we represent and the cost of meeting that demand.

But again, if it's not out there, the demand is going - the cost is going to go up, and the demand will decrease. So I mean, there has to be a balance there, and it may be that the balance ultimately results in a reduction in our need - or I shouldn't say our need, but our demand for the service. And it will, in turn, be reflected in how the facilities can operate.

MR. CASS: Have any generators, to your knowledge, or the knowledge of anyone on the panel, put out an RFP, whether non-binding or preliminary or otherwise, to find out about availability of this type of service?

MR. CRAMER: I think -

MR. ROSENKRANZ: Maybe first you could be more specific. Of what kind of service?

MR. CASS: The high-deliverability service we're now talking about.

MR. ROSENKRANZ: If I went out and said I have a half Bcf of Enbridge space with which I have 1.2 percent deliverability and I want additional deliverability to go with my contract on Enbridge, I can guarantee you that no one would be able to respond to that RFP. And that's what we're talking about here today.

MR. CASS: But, Mr. Rosenkranz, deliverability is just a certain amount of gas in a certain amount of time. There's many ways you could go out and find out in the market who can give you that amount of gas at that time.

MR. ROSENKRANZ: Not to get my gas out of my storage contract today.

MR. CRAMER: Delivered to my burner tip.

MR. ROSENKRANZ: Well, then, that's the next step. We've talked about this. But if we're coming back and you're asking about the concern that we have and that we're here for today, which is this additional deliverability under, in your case, Rate 316 service, for a customer that already has an allocation of space and a very small amount of storage that, based on some arcane rules based on history, is deemed to be 1.2 percent that you're saying you'll - and we've agreed, will be available at embedded cost-based rates, how do I get the rest of that deliverability that you and we have agreed is required? And you're saying, go out and run an RFP. And I'm saying, there's no one who has that product but you.

MR. CASS: Well, Mr. Rosenkranz, I don't want us to get down into argument. But I don't think that your proposition is at all correct. The molecules don't have to match up.

You have a certain amount of gas in storage at a certain deliverability. If because of the deliverability parameters that are standard to all customers you can't get it out as fast as you want, you can make an exchange of your gas, at your deliverability, for some other gas, different molecules that get you what you want.

MR. ROSENKRANZ: How?

MR. CASS: The molecules don't matter to you, as long as you get it when you want it.

MR. ROSENKRANZ: Now you seem to be providing evidence. I'd like to hear that, I'd like to understand that.

MR. CASS: Well, all I was asking was has any generator, to your knowledge, gone out to the market to find out the availability of such a thing; and is it a yes or no?

MR. ROSENKRANZ: And if the thing we're talking about is the thing I just referred to, it would be nonsensical, because nobody has that thing but the utilities.

MR. CASS: All right. So the answer is, no?

MR. ROSENKRANZ: The answer is, no, it hasn't been done, because it doesn't make sense.

MR. CASS: Now, again -

MR. CRAMER: I think Mr. Kelly wasn't -

MR. CASS: I'm sorry?

MR. KELLY: Earlier I made reference to an RFP that BEC had posted. And while I hold the position that we are not prepared to divulge what was contained in that RFP specifically, I will state that one of the things we were

TAB 4

TAB 4

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **10** | |
| **DATE:** | **July 13, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

the premium would be, that's where you're struggling?

MR. ROSENKRANZ: There's no market to set a market-based rate against, because this service is really a sub-service of the service. And we're talking about additional deliverability on 316 storage service where you already have your space. If there's nobody else that you can buy that service from, where's the price setting? Where's the market-based price? It presumes a market.

MS. SEBALJ: We're back to where we were at the beginning of this conversation, which is a Red Lake situation.

MR. ROSENKRANZ: No, I don't think it's anything like Red Lake situation.

MS. SEBALJ: Well, if we had others in the market selling high-deliverability storage, then we'd have comparators and potentially competition, and therefore, an ability to get to a market price.

MR. ROSENKRANZ: It doesn't matter how many high-deliverability storage services there are in Ontario. If I can't get service from them onto the Enbridge system with the same attributes as this additional deliverability on my storage -- which I'm not sure how I can do that. Anybody else I buy deliverability from, I've got buy additional space. I don't want additional space. I want more deliverability for the space I already have.

So it's a --

MS. SEBALJ: So we're back to this, you're captive in the utility's territory for that piece, and therefore it

**TAB 5**

TAB 5

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| FILE NO.: | EB-2005-0551 | |
| VOLUME: | 3 | |
| DATE: | June 26, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

subject to the physical constraints.

And you're right, in some of those instances it may mean that the service that you will be contracting for to get the required deliverability might give you a little more space than you might otherwise want in a perfect environment. The good news is that you can sell that space and you can sell it back within the secondary market.

Your members have an opportunity, by virtue of being here at Dawn, of making different kinds of decisions than other people could make in other market areas, where you can, as Mr. Baker was talking about, actually go out into the marketplace and re-buy that gas, balance your own storage, subject to the constraints of the services that you've purchased.

So the answer to your question is that there may not be, and I am not aware of something that is exactly that kind of service.

I am aware of things that you can buy that will get you the deliverability you need and the ability to nominate gas into Dawn. It may require that you have something that doesn't match exactly, but within this competitive market, as we sit here today, it's the seasonal value of storage which is what is driving the current storage prices. It's the overall -- and if you had additional space into this hypothetical, given today's market conditions, in order to get the deliverability that you need, it would be extremely valuable in the marketplace in order to put that seasonal gas storage, given what is happening in terms of the

**TAB 6**

TAB 6

VT INCEPIT FIDELIS SIC PERMANET

Ontario

# ONTARIO ENERGY BOARD

**FILE NO.:** EB-2005-0551

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**VOLUME:** 10

**DATE:** July 13, 2006

| | | |
|---|---|---|
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

surprised by the question, and we had prepared to some extent.

In terms of a formal position of APPrO on all of the subcomponents that you raise in that question, and it does raise a number of different issues, certainly APPrO supports the development of additional storage. APPrO sees the importance of incentives in terms of market-based rates under appropriate circumstances to appropriate applicants developing additional storage.

Our concern, particularly, is the issue of the pricing of specific high-deliverability storage services to infranchise customers, and that's certainly what we want to discuss in terms of this particular panel as the remaining concern from our settlement.

We have concerns, I'm authorized to state, that the APPrO membership has some concerns about the relationship between affiliates, particularly storage and delivery services. And as you would expect, one of our big issues is access, comparability of access to services, particularly storage services.

So, in terms of answering your specific question, as far as I can go, we have not done an investigation of the particular relationship between MHP and Union, or do we have any recommendations on what particular structural or rule measures should be taken to provide protections that are possible. All I'm authorized to say is that we have some concerns about that issue.

MR. SMITH: Is it fair to say you're simply flagging

TAB 7

TAB 7

Ontario

# ONTARIO ENERGY BOARD

**FILE NO.:** EB-2005-0551

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| | | |
|---|---|---|
| **VOLUME:** | **10** | |
| **DATE:** | **July 13, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

That's not an issue.

MR. KAISER: So it's just down to price.

MR. CRAMER: Yes.

MR. KAISER: Thank you.

Anything further?

MS. SEBALJ: I'll just remind those that are left in the room that we are actually starting at 9:30 tomorrow morning, not at 8:30, because of the notice that went out. And we are in a different room. We are in room S7, and as well, the Procedural Order No. 9 will be coming out shortly, which will give people an indication of the schedule for argument.

MS. CAMPBELL: Actually, it's out.

MS. SEBALJ: Oh, look at that. Instantaneous.

MR. KAISER: All right. 9:30 tomorrow.

---On adjourning at 5:11 p.m.

**TAB 8**

TAB 8

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **10** | |
| **DATE:** | **July 13, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

comfortable that that situation would be that that's a market price.

MR. CRAMER: And also, the underlying assumption is that that was the most cost effective means for Enbridge to meet the needs of its customers. I mean, if Enbridge was, in fact, able to develop that capability on its own at a lower cost than entering into a contract with Tribute, then presumably prudence would dictate that they would develop their own resource.

MR. RUPERT: One last question on this. Once you get into tagging a service to a particular provider, cost-based, market-based, you run the risk of what happens in many other markets where if you run things through enough people and you come back, you'll find out that someone's buying from someone at a market-based rate. So how do you actually continue to determine that what you're paying for is this true market-based service? Or is it, in fact, the result of a whole bunch of transactions amongst a whole bunch of people, and you're in fact buying what you think you should have had as cost-based service you're paying market-based rates for it? That happens in all other kinds of products and commodities, as you know.

So what's your view as to how you're going to control your need to be paying cost-based rates if the service is somehow emanating from a utility?

MR. ROSENKRANZ: Well, I think, if I'm understanding your question correctly, that you've identified our concern, which is not that we're trying to pay a lower price than market. We're trying to come up with a mechanism where we pay a just and reasonable price for a utility's service.

So if it turns out that, for example, all of the higher-deliverability resources that Enbridge acquires - that they don't do any of their own build, so there is no, strictly, cost; it's all done at market-based rates with other parties, because that's the cheapest way of doing it, and that's the price we end up paying - we don't have a problem with that.

We're not looking to create a premium that we're capturing. What we're looking for is the fact that they would be taking those services that they buy at market and running them through their system to create a service to us on their system that meets our need that we can't get by going out into the market. But we would essentially end up paying, as you say, market cost, and we wouldn't have a problem with that.

Our problem is being in a situation where we're supposedly negotiating a cost with one party for something that we can't get on our own from other parties where there's no market-based price.

MR. RUPERT: But it sounds like you do have a difficulty with a situation, perhaps down the road, where a utility develops some high-deliverability storage services, finds that in addition to gas-fired generators there's several marketers who were also interested in that service. You seem to have a problem with getting into competition

TAB 9

TAB 9

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **10** | |
| **DATE:** | **July 13, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

MR. CRAMER: I can give you one example. I mean, again, the basic -- we have a basic operational need that we're going to have to satisfy. So we have a certain amount deliverability, a certain amount of space that we're going to require to support our operations when we're operating.

But I mean, as an example, suppose we have a cold winter day, that, you know, there's a demand for intra-day gas in Toronto, and there's no opportunity for me to run on the electricity side. I mean, I've got the combination deliverability out of storage, I've got the combination of my M12 capacity to Parkway, I've got a transportation contract on TransCanada. I can deliver gas on a short-notice basis to a customer that needs it in Enbridge CDA. I mean, I've got a bundle of assets I'm going to monetize in some fashion. Some days I'm going to use it to produce power, some days I'm going to use it to sell gas to somebody.

There's a whole -- I mean, you've got a basket of assets that you're going to try to optimize every day. But I mean, realistically, I mean, if I'm under a long-term contract with the OPA, for example, to provide capacity, I'm not likely going to be able to sell that deliverability to somebody else and let it go. I'm going to have the keep it to meet my needs, and then just use it on a day-to-day basis in the most optimum fashion.

MR. RUPERT: Okay, so I understand. So it's that ability.

with those marketers for that service. You've, I think, requested a priority for that service.

MR. ROSENKRANZ: I thought we -- if we said that -- if I said that, I misspoken. I thought what -- again, if I'm understanding your question correctly, if there was 2 Bcf of high-deliverability storage developed, and 1 Bcf of infranchise need, and the other Bcf was put into the exfranchise market and offered up as that type of service in an auction, we don't have a problem with that.

MR. RUPERT: No, I think you just agreed with what I said. It was the first Bcf which is yours, I think that's what I mean by priority.

MR. ROSENKRANZ: It goes to infranchise needs, and again, I want to make sure we're not misspeaking and we're saying power generators. It's infranchise customers with that need.

MS. CHAPLIN: Just to be sure I understand the implications of this as much as possible. What essentially you are asking for is a service for your own operational needs, but you seem to be acknowledging that on the days when you don't need it, you may be able to rebundle or repackage your assets and, in a sense, become a marketer and provide that service into the market. And you expect to be able to do that in order to mitigate your own cost exposure. Is that a correct summary?

MR. CRAMER: That's correct.

MS. CHAPLIN: And so I accept your characterization saying you need these services for your operational needs,

TAB 10

TAB 10

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **2** | |
| **DATE:** | **June 20, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

space and deliverability. I didn't have to on that basis, but since you broached the subject, I would say that, in fact, that liquid market provides a really important competitive alternative to storage in Ontario.

MR. SLOAN: For many customers, there would be no effective difference between buying gas in the secondary market and holding Union Gas storage or buying from storage, particularly if you're talking about downstream customers that might contract for Union Gas storage. They can get the same gas with essentially the same reliability at a liquid market point, which Dawn is.

There are, of course, financial differences between holding it and different risk profiles will choose to do things differently. But in terms of getting gas to the customer, there's really no significant difference.

MR. BAKER: I'd just say as well, on a practical basis, the way that the market will work is they'll call the marketplace. They'll call Union Gas. They'll look at what the cost-of-service is from Union Gas. They'll call a variety of different marketers who are known to offer those products on the marketplace, and they'll do their comparison. So that's the way it practically happens on the market.

I think back to the comments we had earlier, it is very difficult in a proceeding like this, because those transactions and prices, individual transactions, aren't disclosed. But practically, in terms of the way a customer would look to evaluate those, they would simply go out and

Ontario

# ONTARIO ENERGY BOARD

FILE NO.: EB-2005-0551

---

VOLUME: 3

DATE: June 26, 2006

BEFORE:

| | | |
|---|---|---|
| Gordon Kaiser | Presiding Member and Vice Chair |
| Cynthia Chaplin | Member |
| Bill Rupert | Member |

that out, you have to go out and you have to ask, you have to talk to people in terms of what they're willing to do and what they're willing to provide. Our experience has been, as Mr. Henning has said, there are a number of parties out there that are prepared to do many things and taken their portfolio of assets and put services together to meet a required need.

So it is a matter going out into the marketplace, explaining clearly what you're looking for, and asking how a marketer or another storage operator would structure a service to meet your requirement.

MR. MORAN: So Mr. Henning, when did you do that? Where do I see the results of that in your report?

MR. HENNING: In our reply evidence, we went back and we took a look at the number of major marketers, in terms of the locations that they're at. So I would suggest that if you're looking within the reply evidence, page 36, attachment 1, you can go out to any or all of the BP, ConocoPhillips, Coral, Chevron, Constellation, all of these that are having space within the area. That's what marketers do.

MR. MORAN: I understand all of that, Mr. Henning, but you're not answering my question, not even close.

My simple question is: Which one of these guys actually offer high deliverability, 24-hour firm service into the Ontario market? If you don't know the answer, I think it is okay to say "I don't know," but if you do know the answer I would like to know which ones they are.

**TAB 11**

TAB 11

Ontario

# ONTARIO ENERGY BOARD

FILE NO.: EB-2005-0551

---

VOLUME: 3

DATE: June 26, 2006

| | | |
|---|---|---|
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

deliverability you want to offer at what you call market-based rates; right?

MR. ISHERWOOD: At market prices, that's correct.

MR. MORAN: The part about offering that to generators at market-based rates, there is no settlement on that issue, just to be perfectly clear?

MR. ISHERWOOD: That's correct.

MR. MORAN: In fact, the position of the generators, as you understand it, is that that should be provided at cost-based rates, based on incremental cost; correct?

MR. ISHERWOOD: It wasn't always clear to me whether it was cost of service or incremental tolling, or if it was a combination of the two, but certainly you talked about incremental costs recovery.

MR. MORAN: Yes. In fact, that is in the original proposal in the pre-filed evidence; correct?

MR. ISHERWOOD: Right.

MR. MORAN: Yes. So in the context of a need that is being identified by the generators as infranchise customers in order to help them manage the intra-day volatility associated with operating the electricity marketplace, the generators are left to compete for that in an open season process that we don't know very much about yet; right?

MR. ISHERWOOD: Yes. There are lots of options to obtain incremental deliverability. Enbridge recently did an open season and Union, as I think I mentioned a few days back, is open season, as well, so there are multiple sources for that.

**TAB 12**

TAB 12

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| FILE NO.: | EB-2005-0551 | |
| VOLUME: | 3 | |
| DATE: | June 26, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

inventory when, in fact, my real needs are really that intra-day volatility. It doesn't make a lot of sense, which is why I thought we had agreed that deliverability was the more important issue.

So if that is the more important issue, and I have sudden changes in my gas usage during the day, where do I get that high deliverability that I can get access to during the day?

MR. ISHERWOOD: Union Gas, as part of the power service development work, came up with a new service, F24-S, which is an all-day firm storage service for 13 -- 13 windows would apply to that. That was really in response to the exact case that you mentioned, in terms of a generator mid-day needing to change either in or out of storage. That service can provide that capability.

MR. MORAN: Right.

MR. BAKER: To the extent that a plant was coming up and you were requiring -- under T1, you can meet your consumption requirements by a function of both your upstream deliveries and your deliverability out of storage. So with the additional nomination windows, to the extent that you needed gas because you were called on to run, you could go out into the marketplace and acquire supply at Dawn or wherever to meet that requirement.

So it doesn't necessarily have to come out of storage. You can actually acquire the supply to meet your requirements at your plant.

MR. MORAN: That's probably true, and then I have some gas on my hands that I have to get rid of still; right?

MR. BAKER: I'm just saying there are two scenarios you've posed, and you blended them together very quickly. The one was that a plant was coming up on very short notice and you needed supply and your question was: Where do I get the high deliverability storage to meet my requirements at my plant? That was my example.

I think it is important to differentiate, to the extent you are coming up and you have a consumption requirement at your plant, your only option is not storage gas coming out of storage at a high-deliverability rate. You can acquire the physical supply at Dawn to meet your consumption requirements.

MR. MORAN: All right.

Mr. Henning, you have heard Mr. Isherwood refer to this F24-S service, the firm all-day storage service that Union is prepared to offer. Do any of these other service providers have the ability to offer a firm 24-hour storage service into Ontario? That you know of. I mean it is okay if you don't know but I'm just curious whether you do.

MR. HENNING: Mr. Moran, I'm trying to figure out how the best way to answer this question, because in some sense I'm looking at a situation where the power generator requires a certain amount of deliverability, and there are a variety of products that are out there in the market. And now perhaps they may not exactly match this innovative product that Union's prepared to offer, but there are a lot of folks out there trying to figure out how to offer --

TAB 13

TAB 13

VT INCEPIT FIDELIS SIC PERMANET

Ontario

# ONTARIO ENERGY BOARD

FILE NO.: EB-2005-0551

---

VOLUME: 3

DATE: June 26, 2006

BEFORE:

| | |
|---|---|
| Gordon Kaiser | Presiding Member and Vice Chair |
| Cynthia Chaplin | Member |
| Bill Rupert | Member |

I am going to suggest to you, if I heard that correctly, that certainly when one is looking at doing trades through the NGX, that generators are generally limited to buying gas on a day-ahead basis on the timely window for the next day. Is that your understanding of the way NGX generally operates?

MR. BAKER: I believe that is the way it generally operates today.

MR. BROWN: Right. So if a generator is actually within the gas day - that is, after the timely nomination window has come and gone - it will find it very difficult, will it not, to try and purchase or sell gas, this imbalance that it may be left with during the course of the day, through NGX? That is really not a viable option open to it at this point of time, is it?

MR. BAKER: I haven't spent a lot of time looking specifically at NGX, but I think when we were looking at this, we were looking specifically at buying and selling gas from the marketers and secondary market operating at Dawn as opposed to NGX.

MR. BROWN: In terms of marketers on the secondary market, would it be fair to say that if a generator at 12 noon on a day - you're into the gas day - and, as a result of dispatch instructions from the IESO, is left with an imbalance, be it a surplus or a deficit of gas, on a peak day, if the generator were to go to the secondary market to try and acquire or sell gas at that point of time, the marketers essentially would be able to put a gun to the generator's head with respect to the price that the generator could fetch for the gas; correct?

MR. BAKER: I'm not sure I would agree with the characterization. I think there is many factors that would go into play. I mean, the marketers are out there and they're in business to competitively price their product. There is not just one marketer out there that says, I've got the product and I've got the price so there would be a number of people that would be out there competing, to actually purchase the gas or sell the gas to a generator. So it's a competitive market and they pay the market price.

MR. BROWN: But you'd agree with me, would you not, that a prudent generator would arrange its affairs to minimize the number of occasions that it would have to go into the intra-day gas market to buy or sell gas and instead try and manage imbalances either through storage or storage-related products.

MR. BAKER: I'm not sure I can sit here today and say exactly what a generator wants to do or not do. We've heard many, many things over the course of having these discussions over the last six or eight months, some to the point saying, We really don't think we need storage. We think we can get services upstream at Dawn to meet our requirements from everything that we think we would need storage.

So there are many different things, but I would agree with you that is certainly one option a generator would have, would be to try to contract in advance for a service

TAB 14

TAB 14

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| FILE NO.: | EB-2005-0551 | |
| VOLUME: | 3 | |
| DATE: | June 26, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

percent deliverability to achieve; right?

MR. ISHERWOOD: That's correct.

MR. MORAN: Can I get 25 percent deliverability from you today?

MR. ISHERWOOD: It's quite possible.

MR. MORAN: How would I?

MR. ISHERWOOD: It would depend on which contracts come up for expiry. When those 10 percent contracts come up for expiry, it's possible. Union Gas looks at space and deliverability quite different.

In terms of our future development, we have not a lot of space in the hopper to develop, if you want. We do have a lot of deliverability we can develop. We look at deliverability being quite different than space. We're not concerned whether it is 10 percent or 25 percent. We're really concerned by the absolute number. So to the extent that we can develop 300,000 or 400,000 gJs per day deliverability, which is the size of our next project, personally I could care less whether it is 1 percent, 2 percent or 10 percent. I'm more interested in whether the customer needs 25,000 or 100,000 gJs of that 300,000 that we develop.

MR. BAKER: Also, that reminds me of the discussion we were having the other day in terms of: Is it available today? To the extent that we have incremental power generators coming on stream in Ontario and they're looking for incremental service, you will definitely have situations where you've got storage operators that would have a development project that could potentially bring that service to market, whether it is Union, whether it is Enbridge, whether it is Detroit Edison, MichCon.

So, again, storage operators don't traditionally develop a big chunk of deliverability just to sit on the shelf and hope that a market will eventually come and contract for it. They look to have expressed interest in the marketplace and that will underpin development. So to the extent we have incremental demands, will you see the potential for incremental developments required to develop that service.

MR. MORAN: Right. So, Mr. Isherwood, if I have some gas in Union storage, I'm on the no-notice T1 deliver and I have gas in Union storage at 1.2 percent deliverability, but at 3 o'clock I'm told by the IESO I'm running when I didn't think I was going to be, or I'm not running when I thought I was going to be, so I have to move a fairly large volume of gas either in or out of storage, where do I go to get that extra deliverability at 3 o'clock?

MR. ISHERWOOD: Again, I want to stay away from using 1.2 percent, because if you had enough space, 1.2 percent of a large amount of space may give you the deliverability you need; right? So the question really is: How much gas do you need to buy in addition to the fixed amount of deliverability you have?

MR. MORAN: You're absolutely right, Mr. Isherwood. I could contract for a very large amount of 1.2 percent deliverability space and have a whole lot of gas in

TAB 15

TAB 15

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| FILE NO.: | EB-2005-0551 | |
| VOLUME: | 3 | |
| DATE: | June 26, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

right? And this is one of the ways of a power generator managing that intra-day volatility. They have that firm 24-T service and they can match it with the F24-S service for balancing. They have more nomination windows and --

MR. ISHERWOOD: It certainly works for customers. The other option that's been discussed in front of the Board as well is the GEC plant in -- along our western edge of our franchise.

MR. MORAN: I might have heard of it.

MR. ISHERWOOD: You may have heard of it?

MR. MORAN: Yes.

MR. ISHERWOOD: Had plans to tie in -- still has plans to tie into the Vector pipeline. Vector had stated they have those types of services available as well. So in that circumstance, there are other options as well.

MR. MORAN: Right. So in terms of the product offering with more frequent nomination windows and so on, as things stand right now, it is a made-in-Ontario product. Leading edge. It can't be matched up with products outside of Ontario at the moment; fair enough?

MR. ISHERWOOD: I think I go back to the TCPL services as well. I'm just trying to go through my list of services available in the market. TCPL has a short-notice balancing service before the NEB currently. It is not an approved service, but that service would have very similar aspects of F24-S in terms of short notice all-day firm access to gas sitting in the market area, in their case. So there probably are other services available between Enbridge and

TCPL.

MR. MORAN: Between Enbridge and TCPL, but how does that work with Union and its F24-T service?

MR. ISHERWOOD: It works very well, I think. A power customer has the option of purchasing F24-S, storage service at Dawn combined with F24-T to get the gas to Parkway.

Alternatively, or maybe in parallel, the customer may also elect to take some of TCPL services. And the short-notice balancing services is a one that would come to mind in terms of having, in their case, not 13 nomination windows but 96 windows available to access supply or parked gas, either take or park gas throughout the gas day.

So I think a lot of parties are responding to the needs of the generators. Certainly, we've seen lots of evidence of that between Union, Enbridge and TCPL. I think as the market develops, you will see others such as Vector and Bluewater step up to the plate as well.

MR. MORAN: All right. I think, as indicated in the settlement proposal, that is work that still remains to be done; right?

MR. ISHERWOOD: Parts of it does, yes, that's right.

MR. MORAN: So when it comes to using the new nomination windows for F24-T, my choices are to match that with F24-S; right?

MR. ISHERWOOD: That's an option, yes.

MR. MORAN: Which is made in Ontario; right?

MR. ISHERWOOD: The Union Gas option.

TAB 16

TAB 16

Ontario

# ONTARIO ENERGY BOARD

| | | |
|---|---|---|
| **FILE NO.:** | **EB-2005-0551** | |
| **VOLUME:** | **13** | |
| **DATE:** | **July 19, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

we try to remarket that asset and/or associated services to third parties in the secondary market.

MR. BRETT: Mr. Acker, the last subject heading is "Power Generation Services."

First question:

"Is there a difference in your ability to offer intra-day services versus day-ahead or longer-term services?"

MR. ACKER: There most definitely is. We can offer firm day-ahead and firm longer-term services, but to date we are unable to provide firm intra-day service. The number of NOM windows is currently restricted to four, and other than the first NOM windows the subsequent three windows are on a reasonable-efforts basis. So it is very fair to say that we are not yet in any position to offer firm intra-day services to those market participants looking for them.

MR. BRETT: And the last question on the sheet, Mr. Acker.

"Does BP have experience serving dispatchable gas-fired generators? Are the storage services and nomination windows currently available in the market sufficient to permit generators or marketers on their behalf to manage their gas supply without excessive risk?"

MR. ACKER: I'm going to restrict my comments only to Ontario because I'm unfamiliar with BP's power generation

**TAB 17**

TAB 17

Ontario

# ONTARIO ENERGY BOARD

**FILE NO.:** **EB-2005-0551**

---

| | | |
|---|---|---|
| **VOLUME:** | **13** | |
| **DATE:** | **July 19, 2006** | |
| **BEFORE:** | **Gordon Kaiser** | **Presiding Member and Vice Chair** |
| | **Cynthia Chaplin** | **Member** |
| | **Bill Rupert** | **Member** |

industry standards such as the standard NAESB four nomination window on a gas day.

MR. ACKER: That is also correct. And I would further say that everything that I've agreed to is the status of the industry today.

MR. BROWN: Right. An expression was used -- I think it was a somewhat ironic comment on day 8 of this proceeding -- and the comment was that based on some of the things that had been heard up to that point of time that what you hear about the dynamic marketing world, where you can do virtually everything at a moment's notice.

I take it that's a bit of an overstatement as to what marketers can actually do?

MR. ACKER: We are marketers, so we tend to over emphasize our capabilities.

MR. BROWN: Right. But you do have these very practical limiting conditions?

MR. ACKER: We have practical limits. We can only do what the physical marketplace will physically allow us to do. Again, I'll emphasize that to the best of my knowledge, up until the situation where prospective power generators in Ontario had been looking for services that presently do not exist, I'm unaware of anyone who's been unable to satisfy their needs, whether it's in the primary, secondary, or exfranchise market.

MR. BROWN: Are you familiar with the film "Field of Dreams"?

MR. ACKER: Yes.

TAB 18

TAB 18

Ontario

# ONTARIO ENERGY BOARD

| | |
|---|---|
| FILE NO.: | EB-2005-0551 |

| | | |
|---|---|---|
| VOLUME: | 13 | |
| DATE: | July 19, 2006 | |
| BEFORE: | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

infranchise customers with those services at cost, the focus of your business would be consistent with your past practice; that is, you would like look to try and get business from exfranchise customers who need that kind of service?

MR. ACKER: I'm not going speculate on that. My business will react to the way the market evolves. If customers of ours have access to storage services, we will approach them and explore opportunities to help them optimize those services. Whether they paid cost or market-based in that scenario is irrelevant.

MR. BROWN: Thank you very much, panel. Those are my questions.

MR. KAISER: Thank you, Mr. Brown.

Mr. Moran, did you have anything?

MR. MORAN: Very briefly, Mr. Chair.

**CROSS-EXAMINATION BY MR. MORAN:**

MR. MORAN: My name is Pat Moran. I'm acting for the Association of Power Producers of Ontario.

I just have one follow-up area from Mr. Brown's questions. And that ties into the questions with respect to the infranchise customers and the bundled customers and their lack of interest in storage services from a marketer such as yourself.

Mr. Acker, I think you indicated that, based on personal experience, you're familiar with the infranchise cost-based rates in the Union territory?

MR. ACKER: Yes, I am.

TAB 19

TAB 19

Ontario

# ONTARIO ENERGY BOARD

FILE NO.: EB-2005-0551

---

VOLUME: 3

DATE: June 26, 2006

BEFORE:

| | | |
|---|---|---|
| | Gordon Kaiser | Presiding Member and Vice Chair |
| | Cynthia Chaplin | Member |
| | Bill Rupert | Member |

deliverability you want to offer at what you call market-based rates; right?

MR. ISHERWOOD: At market prices, that's correct.

MR. MORAN: The part about offering that to generators at market-based rates, there is no settlement on that issue, just to be perfectly clear?

MR. ISHERWOOD: That's correct.

MR. MORAN: In fact, the position of the generators, as you understand it, is that that should be provided at cost-based rates, based on incremental cost; correct?

MR. ISHERWOOD: It wasn't always clear to me whether it was cost of service or incremental tolling, or if it was a combination of the two, but certainly you talked about incremental costs recovery.

MR. MORAN: Yes. In fact, that is in the original proposal in the pre-filed evidence; correct?

MR. ISHERWOOD: Right.

MR. MORAN: Yes. So in the context of a need that is being identified by the generators as infranchise customers in order to help them manage the intra-day volatility associated with operating the electricity marketplace, the generators are left to compete for that in an open season process that we don't know very much about yet; right?

MR. ISHERWOOD: Yes. There are lots of options to obtain incremental deliverability. Enbridge recently did an open season and Union, as I think I mentioned a few days back, is open season, as well, so there are multiple sources for that.

MR. MORAN: Clearly, there is no intention on the part of Union to allocate any high deliverability to infranchise customers.

MR. ISHERWOOD: Our intent would be to build to meet the market.

MR. MORAN: As opposed to allocating to meet the needs of the infranchise customers?

MR. ISHERWOOD: It's difficult to allocate with the costs not really known; right? But to the extent the market is prepared to contract long term and the rates are acceptable and attract the capital, we are prepared to build for it.

MR. MORAN: If there was an incremental cost associated with that high deliverability, and that is the basis on which it was going to be provided, it would be easier to allocate it at that point, wouldn't it?

MR. ISHERWOOD: I'm not sure how I would do that.

MR. MORAN: Well, you allocate today, don't you, storage space based on a particular methodology to infranchise customers?

MR. ISHERWOOD: At 1.2 percent deliverability, that's correct.

MR. MORAN: Right. Those are cost-based rates and you just allocate is it based on the needs; right?

MR. ISHERWOOD: That's correct.

MR. MORAN: So to get back to the question I asked, if high deliverability was going to be based on incremental cost as opposed to what you referred to as market-based