#### THE ONTARIO ENERGY BOARD

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

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

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

## REPLY ARGUMENT OF THE ASSOCIATION OF POWER PRODUCERS OF ONTARIO (APPrO) On the MERITS OF THE MOTION

- Both Union and Enbridge have failed to respond to the direct question raised in APPrO's
  motion. The in-franchise generators negotiated in good faith for an in-franchise storage
  methodology that would provide the in-franchise generators with the ability to manage their
  intra-day gas supply needs.
- 2. Union has not addressed the plain meaning of the storage methodology set out in the settlement agreement:

The parties agree that new T1 and U7 customers with non-obligated supply shall be entitled to contract for T1 and U7 storage service with firm storage deliverability up to 24 times the customer's peak hourly consumption and storage space up to 24 times the customer's peak hourly consumption multiplied by four days. Should a customer elect to contract for firm storage deliverability that is less than the maximum entitlement, the maximum storage space than a customer is entitled to at cost shall be 10 times the firm storage deliverability contracted for. In no event, shall the storage space exceed the maximum storage space entitlement

previously described. Storage space with 1.2% firm deliverability will be available at cost-based rates. Storage deliverability above base firm deliverability of 1.2% up to the customer's firm CD shall be made available by Union to in-franchise customers in a manner to be determined by the Board as part of Issue No. 2. [Emphasis added]

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

- 3. Union has not addressed the fact that nowhere in the NGEIR decision does the Board address the implementation of this aspect of the settlement agreement.
- 4. Union has not addressed the fact that by necessity and logic, that only Union can provide the incremental deliverability for the storage space allocated by Union to the in-franchise generator.
- 5. Union and Enbridge sat in the same room as the generators during the ADR process.
- 6. Regardless of Enbridge's parsing of its settlement agreement, the generators negotiated with both Union and Enbridge based on the same principles.
- 7. For Enbridge to now say that the generators applied a completely different approach to Enbridge is not a sustainable position and calls into question the integrity of the ADR process. As in all settlement processes, compromises were made. If the Board does not require the utilities to implement the storage methodologies in the settlement agreements, which the Board accepted, then the in-franchise generators have compromised in vain.
- 8. Both Union and Enbridge have pointed to those parts of the evidentiary record and the NGEIR decision that relate to the Board's decision to forbear from regulating the exfranchise storage market as the basis upon which APPrO's motion should be dismissed, none of which is actually relevant to the narrow issue relating to in-franchise generators that is raised in APPrO's motion. In doing so, Union and Enbridge ignore:
  - (a) the uncontradicted evidence of APPrO's witnesses that in-franchise generators require services to manage their intra-day gas supply needs;
  - (b) the uncontradicted evidence from the only marketer to give evidence that intra-day services could only be provided by the utilities and that a marketer could only assist an in-franchise customer in optimizing those services;
  - (c) the uncontradicted evidence of the various forbearance witnesses, including Enbridge's, that high deliverability storage upstream of Dawn was not accessible by in-franchise

- customers in Ontario for intra-day gas supply management in the absence of firm all day services with frequent nomination windows across the Dawn Hub, which do not exist;
- (d) the Board's conclusions on the need to continue to regulate in-franchise storage services.
- 9. APPrO has been clear from the moment it filed its motion that it does not seek a review of the Board's decision to forbear in the ex-franchise market. It did not take a position on that issue in the NGEIR proceeding and does not seek to do so now.
- 10. Furthermore, APPrO has consistently been clear throughout the review process that the only issue it is pursing at this stage is the narrow issue of implementation of the agreed upon storage methodologies for in-franchise generators.
- 11. Union and Enbridge have completely failed to address the fact that the NGEIR decision does not address this narrow issue and have chosen instead to deny the existence of this issue, notwithstanding the Board's determination that this was a reviewable issue. Union and Enbridge have simply taken the arguments related to forbearance in the ex-franchise market and applied them to the in-franchise situation in a manner that is inconsistent with what the Board itself concluded on the need to continue to regulate in-franchise storage services.

#### 12. Enbridge, in its argument at p. 5 states:

Under Issue 1.5 in the Settlement Proposal, the Company agreed to an allocation of cost-based storage for gas fired generators that can be used in conjunction with the standard deliverability aspect of Rate 316 service. In addition, the Company committed that, as part of Rate 316, it will offer Board-regulated high deliverability storage to in-franchise generators based on the acquisition of the underpinning services in the market.

As can be clearly seen in this passage, Enbridge continues to take the illogical position that deliverability is something that exists separately from the allocated storage space. Enbridge seems to be of the view that one can have storage space allocated from Enbridge and obtain deliverability for that space elsewhere.

13. This is a variation on a similar theme pursued by Union in its argument. Union continues to assert that it is appropriate to say to its in-franchise generator customers that notwithstanding the clear terms of the agreed upon storage methodology, the in-franchise generator customers must compete against ex-franchise customers or alternatively pay some price that has been

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- set in Union's last open season. There was no discussion of any of this during the NGEIR proceeding.
- 14. The reality is that if an in-franchise generator has space from Enbridge or Union, that in-franchise generator is not able to go to Michigan or TCPL, or any of the other options identified by Enbridge in its argument, to increase the deliverability of that space from Enbridge or Union.
- 15. It is also impossible to understand what Enbridge means when it says "it will offer Board-regulated high deliverability storage to in-franchise generators based on the acquisition of the underpinning services in the market" while at the same time it asserts that the Board decided it would forbear from regulation and paradoxically also asserts that it will offer these services on a cost pass-through basis. Could it get any more confusing?
- 16. All of this adds up to nothing more than a thinly veiled attempt by Union and Enbridge to avoid the fact that:
  - (a) there is an obligation on a utility to provide the services required to meet the needs of its in-franchise customers;
  - (b) the negotiation with Enbridge on a storage allocation methodology was done on the basis of the same principles that were engaged in the negotiations with Union;
  - (c) the issue relating to the storage allocation methodology is a narrow issue as raised in APPrO's motion and is separate from the issue of forbearance in the ex-franchise market, which APPrO is not seeking to change;
  - (d) the need of in-franchise generators to manage their intra-day gas supply requirements was accepted by Enbridge and Union and subsequently by the Board;
  - (e) both utilities negotiated to reduce the amount of allocated space on the basis that generators would have the ability to add a certain amount of incremental deliverability to that space, precisely because of the acknowledged need to manage intra-day gas supply.
- 17. This is not the kind of uncertainty that should exist at the end of a process that was established to ensure that there would be appropriate services in place to meet the needs of an expanding group of customers, namely gas-fired generators.
- 18. This uncertainty will be properly resolved if the Board directs the utilities to file tariff sheets that clearly define:
  - 1. The right of in-franchise customers to request incremental deliverability up to the amounts specified in the NGEIR settlement agreements;

- 2. The obligation of the utility to develop or acquire the necessary resources to provide the requested services;
- 3. The obligation of the utility to price the additional deliverability on a cost pass-through basis, based on the utility's prudently-incurred costs;
- 4. The procedures setting out how customers may request the additional deliverability service, and how the utility will provide the service.
- 5. The deadline by which the utility is to respond to a customer's request for service.
- 6. The deadline for the utility to commence service once the customer contracts for the storage space and incremental deliverability.
- 7. The form of agreement.

### 19. Therefore, APPrO seeks an order of the Board:

- (a) requiring Union Gas to add a storage service to its tariff that has the following elements, as agreed to:
  - firm storage deliverability up to 24 times the customer's peak hourly consumption; and
  - storage space up to 24 times the customer's peak hourly consumption multiplied by four days,
  - at a rate reflecting the cost of the storage space with 1.2% deliverability and the incremental cost of providing incremental deliverability;
- (b) requiring Enbridge to amend its tariff setting out the equivalent service in appropriate detail and reflecting that the incremental deliverability for the purposes of the storage service to be provided to in-franchise generators will be provided at Enbridge's incremental cost to develop its own assets or on a cost pass-through basis, whichever is more economic;
- (c) requiring Union Gas and Enbridge to provide the required tariff amendments in draft form for review and comment; and
- (d) granting APPrO its reasonably incurred costs in relation to this motion.

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# ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 28, 2007

Association of Power Producers of Ontario By its Counsel

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