EB-2006-0322
EB-2006-0338
EB-2006-0340

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

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

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

REPLY SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA AND THE VULNERABLE ENERGY CONSUMERS COALITION

I INTRODUCTION

1. These are the Reply Submissions of the Consumers Council of Canada ("Council") and the Vulnerable Energy Consumers Coalition ("VECC") to the Argument of Enbridge Gas Distribution ("EGD"), dated June 21, 2007, and to the Submissions of Union Gas Limited, ("Union"), dated June 22, 2007. These Reply Submissions are delivered pursuant to Notice of Hearing and Procedural Order No. 3 dated May 29, 2007.

2. We will respond separately to the Argument of EGD and to the Submissions of Union.

3. For ease of reference, the following short forms will be used in these Reply Submissions:

1. The Decision with Reasons in the Natural Gas Electricity Interface Review proceeding, issued on November 7, 2006, will be referred to as the "NGEIR Decision";

2. The Decision with Reasons, dated May 22, 2007, arising out of motions filed seeking a review of the NGEIR Decision will be referred to as the "Motions Decision".

II THE ARGUMENT OF EGD

4. EGD states that "it submits this argument in response to a review motion and supporting argument filed by the Association of Power Producers of Ontario". (EGD Argument, p. 1) However, the EGD Argument contains submissions on the Written Argument filed by the Council and VECC (the "Council/VECC Argument"). We will, hereinafter, respond only to those parts of the EGD Argument which address the Council/VECC Argument.

5. Council/VECC argued that the Motions Decision identified a basic contradiction at the heart of the NGEIR Decision. That contradiction is that the Board cannot find, as it did in the NGEIR Decision, that, because of the absence of a competitive storage market to protect the interests of in-franchise customers, cost-based regulated prices for storage are required for those customers, on the one hand, while simultaneously holding that EGD's in-franchise ratepayers would be exposed to unregulated prices for a portion of the storage services acquired on their behalf, and Union's in-franchise customers would be exposed to unregulated prices for that portion of the storage services acquired above the 100 PJ cap, on the other.

6. EGD responds to that position by saying that there is no contradiction because EGD can purchase storage for its in-franchise customers in a competitive market. EGD says that the NGEIR Decision distinguished between the in-franchise customer, *per se*, who cannot get access to competitive storage services, and the in-franchise customer on whose behalf EGD purchases storage. EGD argues that the latter can get access to competitive storage services through EGD.

7. With respect, this is a distinction without a difference. When storage services are purchased, on their behalf, by EGD in the ex-franchise market, in-franchise customers are paying a price which is obtained by their monopoly distributor in another market. There is no

competition for in-franchise customer business. If a genuine competitive market existed for in-franchise customers why is it assumed that the price would be the same as the ex-franchise market? EGD's customers still require the protection of regulated cost-based rates for their storage.

8. In the case of Union, its in-franchise customers would have to pay an unregulated price for storage services acquired above the 100 PJ cap, a price would reflect the much greater cost of acquiring storage in the ex-franchise market. Union's in-franchise customers would, in other words, be in exactly the same position as the in-franchise customers of EGD. The Motions Decision held that this was inconsistent with the finding in the NGEIR Decision that the in-franchise customers of Union should not be subjected to unregulated prices.

9. Implicit in the NGEIR Decision is the conclusion that the in-franchise customers of Union and EGD should not be exposed to unregulated prices unless and until the storage market is sufficiently competitive that those customers can themselves acquire storage services in a competitive market. Until that state of affairs exists, those customers should not be exposed to unregulated prices.

10. EGD also argues that Council and VECC have not met what it says are the standards that a moving party must meet in order to succeed in a review motion. In support of that, it cites a passage from the Motions Decision. (EGD Argument, p. 10) What that passage was positing was the standard that a moving party had to meet in order to pass the threshold test. The Council and VECC have passed the threshold test, as the Motions Decision held.

11. Finally, EGD says that the arguments of the Council and VECC "do not contain even one reference to the evidence from the hearing". We submit that we do not need any reference to the evidence. The Motions Decision identified the contradiction that had to be addressed. We do not need evidence references to support, *ex post facto*, the Motions Decision.

III THE ARGUMENT OF UNION

12. Union argues, first, that the submission by the Council and VECC that the storage contact between EGD and Union should be rescinded is outside of the scope of the Motions Decision. The argument on that point was necessary simply because it is a logical consequence of the larger argument, by the Council and VECC, that EGD's in-franchise customers should

only have to pay the cost-based rates of Union. If the Board were to accept that argument, then it follows that the storage contract between Union and EGD would have to be rescinded. If that contract were not rescinded, then the result would be illogical.

13. Union advances the same argument as EGD, namely that there is no contradiction in the NGEIR Decision because EGD's in-franchise customers will get the benefit of EGD's ability to get access to a competitive storage market to fulfil the storage needs of its in-franchise customers. We think that that argument is wrong, for the reasons set out above. In our view, it has even less validity in the case of Union, which would be both marketing the surplus former rate base storage and purchasing it on behalf of its ratepayers. We will not repeat our submissions on the point.

14. Union's submissions on this issue create their own contradiction. Union asserts, without any evidence, that the NGEIR Decision holds that its in-franchise customers would always pay a cost-based, regulated rate, regardless of whether the cap were exceeded. At the same time, however, Union argues that the intent of the NGEIR Decision is that incremental, in-franchise storage requirements above the cap would be met by Union purchasing in the market and passing its "contract" costs on to its in-franchise customers as part of its regulated rates. Since the price paid in the market is neither cost-based nor regulated, what is passed on to Union's ratepayers is not a cost-based, regulated rate. The NGEIR Decision surely did not intend that the storage needs of Union's customers above the cap were to be met by re-pricing rate base storage to ex-franchise market levels.

15. With respect, Union cannot have it both ways. Either its in-franchise customers pay regulated rates or they do not. The NGEIR Decision says that those in-franchise customers should not be subject to unregulated prices because no competitive market exists for them. Union cannot disguise the reality of what its ratepayers would be subjected to by arguing that its in-franchise customers would pay a "contract" cost as part of a regulated price. That "contract" cost is an unregulated price.

16. We submit that the purpose of the cap was to protect the in-franchise customers of Union. Union itself recognized, albeit belatedly, that its in-franchise customers required that protection. The amount it proposed to reserve for its in-franchise customers was too low. In

light of that, the Board set the cap at 100 PJ. The Motions Decision recognized that any cap, whether 100 PJ or otherwise, created a problem if the cap were exceeded.

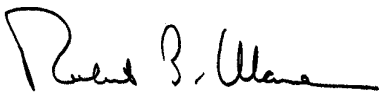
17. We submit that Union's Submissions are simply not responsive to the Motions Decision. Union has not addressed the problem created by the existence of a cap, and the NGEIR Decision ruling that its in-franchise customers should not have to pay an unregulated price. Union has not provided any response to that fundamental dilemma.

IV RELIEF REQUESTED

18. We repeat the request for relief set out in paragraph 17 of the Council/VECC Argument.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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