

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 Rules 42, 44.01 and 45.01 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

**REPLY ARGUMENT OF
THE INDUSTRIAL GAS USERS ASSOCIATION (“IGUA”)**

June 28, 2007

Peter C. P. Thompson, Q.C.
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street
Suite 1100
Ottawa, ON K1P 1J9

Telephone (613) 237-5160
Facsimile (613) 230-8842
Counsel for IGUA

TABLE OF CONTENTS

I. HIGH DELIVERABILITY STORAGE SERVICES	1
II. THE CAP ISSUE	6

1. The following is IGUA's Reply to the Written Arguments submitted by Enbridge Gas Distribution Inc. ("EGD") dated June 21, 2007, and Union Gas Limited ("Union") dated June 22, 2007.

I. HIGH DELIVERABILITY STORAGE SERVICES

2. In their Arguments, EGD and Union contend that the scope of the Board's high deliverability storage services forbearance orders was intended to and should continue to extend to cover the provision of high deliverability storage services to their in-franchise distribution services customers.¹ IGUA submits that these arguments lack merit in that they fail to recognize that the NGEIR Decision expressly finds that the only storage services market which is sufficiently competitive to protect the public interest is limited in scope to the storage services acquired by ex-franchise customers acquiring those services at Dawn.²
3. The in-franchise distribution customers of EGD and Union acquire storage services downstream of Dawn. The NGEIR Decision expressly finds that EGD and Union, now and for the foreseeable future, exercises and will continue to exercise market power over these in-franchise distribution customers and the storage services they require to meet their reasonable needs.³ No distinction was made in the market power analysis with respect to storage services between storage deliverability at 1.2% and storage deliverability at injection and withdrawal rates higher than 1.2%. It was common ground that high deliverability storage services were far less prevalent than standard storage deliverability. As a result, the Board's findings that the storage services acquired by in-franchise customers of EGD and Union downstream of Dawn are monopoly services

¹ Argument of EGD dated June 21, 2007 ("EGD Argument"), pp. 4 to 6; Argument of Union dated June 22, 2007 ("Union Argument"), pp. 10 to 14, paras. 20 to 27

² NGEIR Decision, page 57

³ See Footnote 2

covers all storage services, including all new and existing storage services, innovative and otherwise. Such services must be provided by EGD and Union to their in-franchise customers under the auspices of regulated rates.

4. IGUA submits that, contrary to the submissions of EGD and Union, a determination of the correct ambit of the high deliverability storage services forbearance orders has nothing to do with any of the following:
- (a) How EGD proposes to develop or acquire the assets it needs to provide storage deliverability services higher than 1.2% to its in-franchise customers, or whether EGD acquires these services from third parties at Dawn or elsewhere;⁴
 - (b) Whether high deliverability services may be available at Dawn from utilities, pipeline companies, other storage companies, or from the Dawn Hub;⁵
 - (c) Whether in-franchise customers of EGD can or cannot add deliverability services higher than 1.2%⁶ (despite its threats⁷, EGD cannot withhold a service required by its in-franchise customers to meet their reasonable needs and as noted below, a high deliverability service is currently available to in-franchise customers of Union under Union's T1 Rate Schedule); or
 - (d) Whether the NGEIR Decision promotes the rational development of storage, as EGD contends,⁸ or does nothing other than confer windfall profits of between \$50M to \$100M per year on Union's shareholder, as IGUA and others contend.

All of these factors are irrelevant to the issue.

⁴ EGD Argument, pp. 2 and 4

⁵ EGD Argument, pp. 7 and 8

⁶ EGD Argument, page 3

⁷ EGD Argument, page 4, referring to the Company's evidence that it would only develop high deliverability capacity in a "forbearance environment"

⁸ EGD Argument, pp. 9 and 10

5. Rather, the correct scope of the high deliverability storage services forbearance orders is dictated by the finding that there is now and, for the foreseeable future, will be insufficient competition to protect the interests of in-franchise distribution customers of EGD and Union. This finding precludes the broad high deliverability storage services forbearance orders which EGD and Union say the NGEIR Decision authorized. The higher deliverability services which in-franchise power generators need must be made available to them under the auspices of Board approved rate schedules.
6. That storage deliverability to in-franchise customers could not be and was not the subject matter of the forbearance orders the Board issued, is evident from the Board's responses to the letters from the City of Kitchener ("Kitchener") dated December 20, 2006, and February 13, 2007, and the letter from counsel for IGUA dated February 14, 2007, to the effect that Union was misinterpreting the Decision in NGEIR as having fixed the level of cost-based deliverability to in-franchise customers at 1.2% and as authorizing market pricing for deliverability above 1.2%. In its response to counsel for the Kitchener dated January 10, 2007, and its responses to counsel for Kitchener and IGUA dated February 28, 2007, the Board confirmed that the interpretation Union was placing on the Board's Decision with respect to storage deliverability for in-franchise customers would be addressed in a later proceeding and that the Board was developing a process for a review and consideration of the questions Kitchener and IGUA had raised with respect to the allocation of storage deliverability to in-franchise customers.⁹
7. IGUA submits that the Board's letters to counsel for Kitchener and IGUA confirm that a regulated rate schedule is required to cover the provision of all deliverability services to

⁹ The Board's February 28, 2007 letter to counsel for the City of Kitchener is appended to Kitchener's Reply Argument. For easy reference, we have appended to this Reply Argument Kitchener's December 20, 2006 letter to the Board; the Board's January 10, 2007 response; Kitchener's February 13, 2007, and IGUA's February 14, 2007 letters to the Board; and the Board's February 28, 2007 response to counsel for IGUA.

in-franchise customers. Since the provision of storage deliverability services to all in-franchise customers remains regulated, all revenues and costs associated with the provision of such services must be brought into account in determining the overall revenue requirement recoverable from all ratepayers using regulated services.

8. The regulated rate schedule options include a range rate “maximum” as currently specified in Union’s T1 Rate Schedule, or cost-based charges for the service. Higher deliverability services are available as “Short Term Storage/Balancing Service” specified in subparagraph (g) on page 2 of Union’s T1 Rate Schedule at a “maximum”, “Commodity Charge Rate/GJ” of “\$6.00”. The criteria for determining the appropriate charge within the level of the “maximum” are set out in Item 5. of the “Notes” thereunder and include:
- i) The minimum amount of storage to which a customer is willing to commit;
 - ii) Whether the customer is contracting for firm or interruptible service during Union’s peak or non-peak periods;
 - iii) Utilization of facilities; and
 - iv) Competition.
9. If the NGEIR Decision purports to forbear from regulating the rates for high deliverability storage services currently being provided or to be provided to in-franchise customers, as Union and EGD argue¹⁰, then the NGEIR Decision is neither “thoughtful” nor “logical” as EGD suggests in its submissions.¹¹ This aspect of the NGEIR Decision is completely illogical and cannot stand.

¹⁰ EGD Argument, pp. 4 to 6; Union Argument, pp. 10 to 14, paras. 20 to 27

¹¹ EGD Argument, page 2

10. If the Board's findings to which EGD¹² and Union¹³ refer about the differences between high deliverability and lower deliverability services were intended to apply to in-franchise distribution customers, then they are findings which contradict the finding that in-franchise customers are now, and for the foreseeable future, will remain as monopoly services customers. If the NGEIR Decision finding that there will be sufficient competition in high deliverability storage services at Dawn to protect the public interest is intended to apply to in-franchise distribution customers of EGD and Union, then the finding is wholly incompatible with the conclusion that such customers remain monopoly services customers. If EGD and Union correctly interpret the Board's findings in this respect, then the findings are illogical and contradict the conclusion that in-franchise customers of EGD and Union are monopoly services customers. If EGD and Union correctly interpret these findings, then the findings must be corrected. They are contradictory and unsupportable.
11. In its Argument, EGD repeatedly criticizes the submissions of those parties seeking a correction of this obvious and illogical contradiction in the NGEIR Decision by reciting the prohibition against re-argument.¹⁴ IGUA submits that the prohibition against re-argument does not apply to aspects of the NGEIR Decision which are obviously wrong. IGUA submits that when a decision contains contradictory findings and is illogical, then a standard for review calling for correctness has been satisfied.¹⁵
12. The forbearance orders pertaining to the high deliverability storage services to be provided by EGD and Union to their in-franchise customers must be set aside and cancelled. Both EGD and Union should be directed to submit rate schedules for the high

¹² See Footnote 8

¹³ See Footnote 8

¹⁴ EGD Argument, pp. 2, 8 and 11

¹⁵ EGD Argument, pp. 10 and 11

deliverability storage services that are needed to serve their in-franchise customers, and to make the other rate-making adjustments described in paragraph 15 of IGUA's Argument-in-Chief.

II. THE CAP ISSUE

13. Union's submissions on this issue appear to presume that when exercising its forbearance powers under Section 29 or its rate-making powers under Section 36 of the *OEB Act*, the Board can permanently separate Union's physically integrated and inseparable storage assets into "utility" and "non-utility" classifications. In its Argument, Union emphasizes that the NGEIR Decision permanently separated its existing assets between "utility" and "non-utility" classifications¹⁶ without responding to IGUA's submissions to the effect that the Board lacks statutory authority to make a permanent asset separation order under either Section 29 or Section 36 of the *OEB Act*. In reply, IGUA reiterates that the Board has no power or authority under Section 29 or Section 36 to separate integrated and inseparable assets.
14. What the Board can do, in an exercise of its rate-making jurisdiction under Section 36 of the *OEB Act*, is allocate revenues and costs to "utility" and "non-utility" classifications for the purpose of determining just and reasonable rates. However, it must be recognized that there is a material difference between a separation of assets and an allocation of the revenues and costs incurred by a corporate entity that is found to be providing "utility" and "non-utility" services. Union's corporately owned storage assets, which are physically inseparable, cannot form the subject matter of a permanent asset separation order. The revenues and costs associated with the physically inseparable assets can be allocated to "utility" and "no-utility" services but the assets cannot be separated.

¹⁶ Union Argument, pp. 4 to 6, paras. 9 to 11

15. The Review Decision agrees that the NGEIR Decision relied on the Board's rate-making authority under Section 36 of the *OEB Act* to justify its "utility" and "non-utility" classifications.

16. The Review Decision states, at page 32, as follows:

"With respect to the allegation by CCC/VECC and IGUA that the NGEIR panel exceeded its jurisdiction by restructuring the storage businesses of Union and Enbridge, something which they assert should come under section 36 of the legislation, the Board also finds there is no reviewable error.

The NGEIR panel confined its considerations related to the application of the test under Section 29 in determining whether and to what extent there was competition in the natural gas storage market sufficient to protect the public interest. The portions of the decision that go on to discuss the impacts of the Section 29 decision on the structure of the natural gas storage market flow from the determination under Section 29, but the NGEIR panel does not, in its Decision, describe these as arising out of their Section 29 jurisdiction. The NGEIR proceeding was commenced pursuant to sections 19, 29 and 36 of the Ontario Energy Board Act, 1998. As such, the NGEIR panel acted under the authority of Section 29 and 36 in making the determinations in the NGEIR Decision. The decisions made by the NGEIR panel with respect to the allocation of storage available at cost-based rates and the treatment of the premium on market-based storage transactions were made based on evidence filed by the parties to the proceeding and the NGEIR panel considers this evidence as part of the NGEIR Decision."
(emphasis added)

17. An allocation of costs and revenues to "utility" and "non-utility" classifications made under the auspices of Section 36 of the *OEB Act* culminates in a Rate Order. Rate Orders are not perpetual; their duration is limited generally to the particular test period under consideration. An allocation of costs and revenues to "utility" and "non-utility" classifications, which leads to a particular Rate Order, only subsists as long as the particular Rate Order endures. The continued appropriateness of a particular allocation of revenues and costs to "utility" and "non-utility" classifications is reviewed when new Rate Orders are considered upon the expiry of prior Rate Orders. Because Rate Orders are not perpetual, it follows that the Board cannot, in an exercise of its rate-making

jurisdiction, make either a permanent separation of assets order, or a permanent allocation of revenues and costs to “utility” and “non-utility” classifications.

18. The permanent Cap feature of the NGEIR Decision must be set aside because the Board has no power to make either a permanent separation of assets order or a permanent allocation of revenues and costs to “utility” and “non-utility” classifications under either Section 29 or Section 36 of the *OEB Act*.
19. Since the permanent separation of assets or allocation of revenues and costs to “utility” and “non-utility” classifications is *ultra vires* the Board, it matters not whether setting aside and cancelling the Cap feature of the Board’s Order in the NGEIR Decision gives in-franchise customers a “perpetual call” on Union’s integrated storage assets as Union argues.¹⁷ However, the reality is that setting aside and cancelling the Cap feature of the NGEIR Decision does not operate to give in-franchise customers a perpetual call on integrated storage assets as Union argues.
20. The practical realities of the manner in which Union will utilize its integrated storage assets, without the *ultra vires* Cap feature of the NGEIR Decision, is described in paragraphs 10 and 11 of IGUA’s Argument-in-Chief. Union will plan the utilization of its integrated storage assets as follows:
 - (a) On an on-going basis, Union management will determine how its integrated storage assets will be utilized to meet its statutory obligations to serve its in-franchise customers and its contractual obligations to its ex-franchise storage services customers;

¹⁷ Union Argument, page 9, para. 15

- (b) As the combined needs of monopoly and non-monopoly storage services customers increase, Union will either develop additional storage itself or acquire incremental storage from third parties;
 - (c) If the amount of storage capacity which Union allocates to meet the needs of its monopoly services customers, in combination with the portion of its integrated assets allocated to support the needs of non-monopoly storage services customers is insufficient to satisfy those combined requirements, then, in order to discharge its statutory obligation to serve those who require monopoly services, Union must either cut back on its sales of non-utility storage services upon the expiry of contracts, or acquire incremental storage;
 - (d) If Union decides to cut back the amount of storage services it provides to ex-franchise storage services customers upon the expiry of contracts, then that action does not create any problems about which those customers can complain, because, according to the NGEIR Decision, they can get all the storage services they need from suppliers other than Union operating in the competitive market at Dawn.
21. In the end, removal of the Cap simply leads to sensible storage services business planning by Union and a periodic determination, for rate-making purposes, of the revenues and costs then being incurred by Union to be allocated to “utility” and “non-utility” classifications.
22. For all of these reasons, IGUA submits that the submissions of EGD and Union lack merit. They should be rejected.

23. IGUA reiterates its request that it be awarded 100% of its reasonably incurred costs in this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of June, 2007.



BORDEN LADNER GERVAIS LLP
Barristers & Solicitors
Suite 1100 - 100 Queen Street
Ottawa, ON K1P 1J9

Peter C.P. Thompson, Q.C.
Telephone (613) 237-5160
Facsimile (613) 230-8842
Counsel for IGUA

APPENDIX A

1

RWBH

NGEIR

Ryder Wright Blair & Holmes LLP 333 Adelaide Street West, 3rd Floor Toronto ON M5V 1R5
T. 416-340-9070 F. 416-340-9250

December 20, 2006

VIA SAME DAY COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2005-0551 NGEIR RATES ORDER

We act for the gas utility of the City of Kitchener in this matter. It has recently come to our attention that in a meeting with its T1 customers to discuss its proposals with respect to its storage allocation policy, Union Gas Ltd. is interpreting the Board's decision in NGEIR as:

- a. Fixing the level of cost based deliverability from storage to in-franchise customers at 1.2%;
- b. Authorizing market pricing for deliverability above 1.2%.

I am enclosing slides excerpted from a presentation to T1 customers on December 13, 2006 which illustrates Union's position.

It is submitted that Union's position on deliverability and its interpretation of the NGEIR decision are wrong. For the integrity of the Board's orders and for the benefit of clarity among Union's contract customers in their dealings with the utility it is submitted that the rates order in NGEIR should expressly state that it does not cover the allocation of storage deliverability for existing in-franchise customers.

The following background on the deliverability issue may be appropriate.

1. Deliverability is the maximum rate of withdrawal from storage. It is expressed as a percentage of the allocated space so that, for example, deliverability of 1.5% means that the customer can withdraw gas from storage equal to 1.5% of its space in any 24 hour period. If the deliverability from storage is insufficient in any 24 hour period to meet actual demand when combined with supply based on average forecast demand, then the deficit will likely be covered by the purchase of expensive winter gas. Otherwise the customer is exposed to penalties payable to Union. It will be seen that deliverability has a significant financial impact on customers.

2. Currently, all in-franchise customers receive their deliverability needs at cost. There is no standard level of deliverability applicable to Union's customers. The range is indicated by Exhibit J5.87 from RP-2003-0063 which I have taken the liberty of enclosing. As of that case, it shows a range running through T3 (1.5%) M2 (2.18%), M7 (2.52%) and SPS at 10%. The only Board approval that exists on deliverability relates to the allocation of deliverability costs (see Exhibit N19.6 also from RP-2003-0063). In NGEIR, the Board's approval of a standard 1.2% deliverability was the subject of agreement between Union and new power generation customers which have very different storage requirements from existing customers (see NGEIR decision at pp. 69-70). No Board approval for a level of cost based deliverability was either proposed or given by the Board in NGEIR for existing in-franchise rates customers.

3. Currently, among contract customers served under T1 and T3, deliverability is treated as a contract parameter to be negotiated. Charges for deliverability are applied on a cost-of-service basis under the approved Rate Schedule. No existing rate class, including T1 and T3 was faced with an application by Union for any alteration in their levels of deliverability in NGEIR or in the recent rates case of EB-2005-0520.

4. It will be seen from the current range of deliverability needs of Union's customers that market prices above 1.2% will significantly increase their deliverability costs. The excerpted slides from Union's recent meeting with T1 customers shows the intention to immediately implement its "1.2% cost based deliverability methodology" for all new T1 customers and non-grandfathered T1 renewals.

In the circumstances, it is submitted that a clarification by the Board by inserting in the NGEIR Rates Order a clause expressly stating that the Order does not address the allocation of deliverability as an asset to existing in-franchise

customers would avoid confusion and assist those customers in their subsequent dealings with the Utility. Given the relationship with EB-2005-0520 it may also be necessary to amend the Order in that proceeding as well.

Finally it is submitted that the Board should address the question of an appropriate level of deliverability for in-franchise customers so that the question can be determined in an orderly way and not through unilateral initiatives of Union. In this respect, Kitchener respectfully submits that the Board issue a Procedural Order at its convenience to set out the process and timeline to address the question. Due to the potential financial impact on affected customers, including intervenors in NGEIR such as Kitchener, it is submitted that the Board provide in this process full opportunity for these parties to participate in the decision making process. Further, and to ensure that the issue and its rate-making consequences will be controlled by the Board, it is asked that Union be directed to continue the pre-NGEIR practice of negotiating deliverability with contract customers and to terminate the practice of asserting that deliverability has been determined in NGEIR.

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP

"Alick Ryder"

J. Alick Ryder, Q.C.
Encls.

cc: All Participants of NGEIR, via email
Dwayne Quinn, City of Kitchener, via email
Jim Gruenbauer, City of Kitchener, via email
Glenn Leslie, Blake, Cassels & Graydon LLP, counsel to Union Gas Ltd,
via email

T1 Customer Meeting

Cost-Based Storage Allocation

Responding to OEB NGEIR

Directive

Sheraton Four Points
London Ontario
December 13th 2006

Deliverability



- The Board recognizes that Union's standard cost-based storage service has 1.2% deliverability attached
- Deliverability among existing T1 customers today is quite varied
- Pursuant to the OEB's NGEIR Decision:
 - Deliverability up to 1.2 % of allocated space is available at cost based rates (firm and interruptible)
 - Anything greater than 1.2% at market price
 - Price to be determined annually
 - T1 customers will enjoy greater flexibility with market priced deliverability

people

Implementation



uniongas
A Duke Energy Company

- Adjustments to Grandfathered T1 customers will be made upon renewal - after the Board's decision is received
- Adjustments to existing long term contracts will be made upon contract renewal
- During the transition period between now and a Board decision
 - The 1.2% cost-based deliverability methodology will be implemented for all new T1 customers and non-grandfathered T1 renewals

people

Exhibit J5.87
Page 1 of 2

UNION GAS LIMITED

Answer to Interrogatory
from the City of Kitchener

Reference: Issue H.5.6

Question

- a) Please provide a table showing the amounts of storage deliverability historically underpinning service at EBRO 494, EBRO 499 and since EBRO 499
 - i) To the City of Kitchener
 - ii) To rates M-2, M-4, M-9, M-7 and T-3
- b) What was Union's proposed level of storage deliverability for contract unbundled customers in RP-1999-0017? (U-2, U-7, and U-9)
- c) Please describe how SPS contributes to the deliverability of U-2. Please include in your explanation the allocations and deliverabilities attached to SSS and SPS.
- d) Please also provide a table showing the storage space historically underpinning service to the City of Kitchener at and since EBRO 494.

Answer

a) The tables as requested are attached below:

i)

	EBRO 494	EBRO 499	RP-2003-0063
	Level of Deliverability		
CCK	1.84% *	1.69% *	1.50%

* CCK included in Rate M9 Class

ii)

Rate Class	EBRO 494	EBRO 499	RP-2003-0063
	Level of Deliverability		
M2	2.49%	2.36%	2.18%
M4	3.01%	1.87%	2.50%
M9	1.84%	1.69%	1.71%
M7	0.08%	0.92%	2.52%
T3			1.50%

PK RW

Witness: Mark Kitchen / Pat McMahon
 Question: July 24, 2003
 Answer: August 13, 2003
 Docket: RP-2003-0063

8
1

Exhibit J5.87
Page 2 of 2

b) The approved Standard Storage Service (SSS) available to all unbundled rate classes includes storage deliverability of 1.2% for inventory levels greater than or equal to 20% of the allocated space.

The approved Standard Peaking Service (SPS) available to U2 customers only, includes storage deliverability of 10%.

The methodology and assumptions relating to the Standard Storage Service (SSS) and Standard Peaking Service (SPS) were discussed in RP-1999-0017, Exhibit B, Tab1, page 55 to 60 (Attachment #1). Further discussion and amendments to Union's position related to SSS and SPS appear in RP-1999-0017 Decision with Reasons, Appendix D, pages 22 to 25 (Attachment #2). Union also provided evidence related to the rate design of the SSS and SPS at RP-1999-0017, Exhibit B, Tab 4, pages 16 to 18 (Attachment #3). The Board approved the rate design as proposed by Union in its RP-1999-0017 Decision at para. 3.35 (Attachment #4).

c) Please see part (b) above.

d)

	EBRO 494	EBRO 499	RP-2003-0063
	Storage Space (10 ³ m ³)		
CCK	69,000 (1)	75,922 (2)	89,300 (3)

Notes:

(1) Estimated.

(2) RP-1999-0017, Exhibit C19.15, Issue 1.3.3, Page 2 of 2, Line 5 (Attachment #5).

(3) As per their T3 contract.

Witness: Mark Kitchen / Pat McMahon
Question: July 24, 2003
Answer: August 13, 2003
Docket: RP-2003-0063

Ontario Energy Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie de l'Ontario
C.P. 2319
26e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL ONLY

January 10, 2007

Mr. J. Alick Ryder, Q.C.
Ryder, Wright Blair & Holmes LLP
33 Adelaide Street
3rd Floor
Toronto, ON M4V 1R6

Dear Mr. Ryder:

Re: EB-2005-0551 NGEIR Rates Order

This will acknowledge receipt of your letter dated December 20, 2006 seeking a clarification on Union's interpretation of the Board's decision in this matter. The Board believes that this issue can be addressed when Union Gas submits its allocation methodology as directed in the NGEIR Decision.

Please direct any questions to Rudra Mukherji at 416-440-7608 or at Rudra.Mukherji@oeb.gov.on.ca.

Yours truly,

Original signed by

Peter H. O'Dell
Assistant Board Secretary

cc: Dwayne Quinn, City of Kitchener
Jim Gruenbauer, City of Kitchener
Glenn Leslie, Counsel to Union Gas Limited
NGEIR – All Parties

RWBH

Ryder Wright Blair & Holmes LLP 333 Adelaide Street West, 3rd Floor Toronto ON M5V 1R5
T. 416-340-9070 F. 416-340-9250

February 13, 2007

VIA FACSIMILE TRANSMISSION

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2005-0551 NGEIR RATES ORDER

We act for the Gas Utility of the City of Kitchener. The Board will have my letter of December 20, 2006 expressing concern over the fact that Union has interpreted the decision in NGEIR as having fixed the level of cost based storage **deliverability** to in-franchise customers at 1.2% and authorized market pricing for **deliverability** above 1.2%. My letter outlined some of the existing facts from other proceedings relating to deliverability for in-franchise customers. None of these facts were addressed in company proposals or in the evidence and argument in NGEIR. My letter, therefore, sought the Board's assurances that:

- a) any Order implementing NGEIR would confirm that it is not addressing the question of storage deliverability, and;
- b) the parties would be given an opportunity to fully address the question of appropriate deliverability in a future proceeding.

On January 10th, 2007, the Board responded to my letter stating that the matter can be addressed when Union submits its allocation methodology as directed in the NGEIR decision. Since the Board's letter, Union's responses to the Board's direction has been received. These responses contain Union's first proposals on deliverability for non-generator customers at 1.2%. In effect, Union's proposals on deliverability and on allocation methods form an application to the Board to be considered at a hearing. Accordingly, it is submitted that it would not be

11

appropriate for the Board to issue an Order in NGEIR until after it has completed its hearing on Union's recent proposals.

In addition, it is noted that the Board has recently received three applications to review the decision in NGEIR. It is submitted that the need to make a determination on these applications provide an additional reason to defer the issuance of any Order in NGEIR.

I appreciate the Board's consideration of the above submissions.

Yours truly,

RYDER WRIGHT BLAIR & HOLMES LLP

"Alick Ryder"

J. Alick Ryder, Q.C.
/rg

cc: Dwayne Quinn, via email
Jim Gruenbauer, via email
Glenn Leslie, via email
NGEIR parties, via email



By E-mail

February 14, 2007

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th floor - 2300 Yonge Street
Toronto, ON M4P 1E4

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

PETER C.P. THOMPSON, Q.C.
direct tel.: (613) 787-3528
e-mail: pthompson@blgcanada.com

Dear Ms Walli

Storage Allocation Proposals of Union Gas Limited

Board File No.: EB-2005-0551
Our File No.: 302701-000415

We are writing to inform the Board that our client, the Industrial Gas Users Association (“IGUA”), does not yet regard the response that Union Gas Limited (“Union”) has provided to the Board’s NGEIR Decision directives with respect to Storage Allocation to appropriately address the different requirements of IGUA members who obtain storage services as an component part of the distribution services provided to them by Union. Although IGUA and Union have had several useful discussions, whereby Union has responded to some of the concerns of our members, IGUA would have preferred to continue these collaborative efforts before Union made its filing.

Therefore, we write to inquire whether we can safely assume that the Board will not rule on the appropriateness of Union’s response to the Storage Allocation directives contained in the NGEIR Decision without first inviting comments thereon from parties adversely affected by the proposals and allowing them to file any responding information which they wish the Board to consider. In other words, can we assume that no orders will issue implementing Union’s Storage Allocation proposals without first allowing those affected thereby to be heard? Can we assume that, for the time being, the status quo with respect to storage services for T1 customers will prevail?

Similarly, IGUA has questions about Union’s proposals to change the deliverability access rights for T1 customers. IGUA did not understand the issue of deliverability access rights for Union’s T1 customers to be a matter in issue in the NGEIR proceedings. Once again, IGUA will continue to work with Union in an attempt to find ways to fairly address this issue. Can we assume that before issuing any orders with respect to deliverability access rights for T1 customers, the Board will first allow interested parties to be heard and that the status quo will prevail for the time being?

Yours very truly

Peter C.P. Thompson, Q.C.
PCT/slc
c. NGEIR parties
Murray Newton (Industrial Gas Users Association)
OTT01\3144428\1

Vancouver
Toronto
Ottawa
Montréal
Calgary

Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie de l'Ontario
C.P. 2319
27em étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL

February 28, 2007

Peter C.P. Thompson, Q.C.
Counsel for IGUA
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, ON K1P 1J9

Dear Mr. Thompson:

Re: Storage Allocation Proposals of Union Gas Limited

We are in receipt of your letter dated February 14, 2007 in which you inquire regarding the Board's process in respect of the storage allocation proposal filed by Union Gas Limited ("Union") in accordance with the requirements of the November 7, 2006 Natural Gas Electricity Interface Review Decision.

The Board is in receipt of the proposals of both Union and Enbridge Gas Distribution Inc. ("Enbridge"), dated February 2, 2007 and February 6, 2007, respectively.

The Board is developing a process for the review and consideration of these proposals and will inform all interested parties from the EB-2005-0551 proceeding once that process is developed.

Yours truly,

Original signed by

Peter H. O'Dell
Assistant Board Secretary

cc: All Interested Parties in EB-2005-0551