



**EB-2006-0074**

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

**AND IN THE MATTER OF** an Application by Union Gas Limited to the Ontario Energy Board for approval of the parties to, the period of, and the storage that is the subject of the three storage contracts between Union Gas Limited and Enbridge Gas Distribution Inc.

### **NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1**

On March 31, 2006, Union Gas Limited (“Union” or the “Applicant”) applied under section 39(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B (the “Act”) for an order of the Board approving, without a hearing, the parties to, the period of, and the storage that is the subject of three storage contracts (contract numbers LST045, LST046 and LST047) (collectively, the “Contracts”) with Enbridge Gas Distribution Inc. (“Enbridge”).

Union requested that the Application be disposed of without a hearing on the grounds that the only parties affected by the application are Union and Enbridge and that the availability of this service does not affect other parties interested in peak short-term or long-term storage service.

In the Board’s Natural Gas Forum Report, dated March 30, 2005, the Board indicated that it will review the issue of whether it should refrain from regulating some or all matters relating to gas storage (the “Storage Review”). The Board plans to carry out the Storage Review as part of the Board’s Natural Gas Electricity Interface Review (“NGEIR”). In view of this, when reviewing an application involving gas storage, the Board takes into account any potential adverse impact of the application on the Board’s ability to consider issues in the Storage Review portion of the NGEIR proceeding.

The Board assigned file number EB-2006-0074 to the application.

Union and Enbridge have entered into the Contracts, subject to the Board's approval, to replace one existing storage contract that expired on March 31, 2006. The total storage space associated with the Contracts remains unchanged from that which was included in the single expired contract. The Contracts provide for the following firm storage space to Enbridge:

<b>Contract Number</b>	<b>Start Date</b>	<b>End Date</b>	<b>Volume (GJ)</b>	<b>Volume (Bcf)</b>
<b>LST045</b>	April 1, 2006	March 31, 2008	10,000,000	9.4
<b>LST046</b>	April 1, 2006	March 31, 2009	6,000,000	5.6
<b>LST047</b>	April 1, 2006	March 31, 2010	5,260,000	4.9

Union submitted that the only parties affected by this application are Union and Enbridge and that the availability of this service does not affect other parties interested in peak short-term or long-term storage service.

Union requested that the commercial terms of the Contracts be held in confidence as per Rule 13 of the Ontario Energy Board's *Rules of Practice and Procedure*. The reason for this request is that the Contracts contain information that is commercially sensitive, and may harm both Enbridge's and Union's competitive position in the marketplace and their ability to fairly conduct business.

The Board will grant the confidentiality requested by Union Gas, in accordance with the Board's *Rules of Practice and Procedure*.

The Board issued a Notice of Application on April 11, 2006 to participants in the Natural Gas Forum, the Natural Gas Electricity Interface Review and/or proceedings to set natural gas rates for 2006. The deadline for submissions was Monday 17, 2006. No Submissions were received. Union did file a "reply" submission dated April 18, 2006 in which it summarized its position and expressed a need to expedite this application.

The Industrial Gas Users Association (“IGUA”) filed a late submission, dated April 20, 2006, in which it requested an extension to the deadline for making submissions. The Board granted the request. In its letter, IGUA submitted that the Board should hold a hearing on this application to allow IGUA and other to make more comprehensive submission in this matter.

IGUA noted that the rates under the new Contracts are market-based, while the rate under the original contract was cost-based, and submitted that the difference has a material adverse impact on Enbridge’s customers. IGUA submitted that Enbridge’s rates should continue to reflect cost-based storage charges, subject to retroactive increase if the Board ultimately determines that storage charges should be market-based. IGUA further submitted that the Board should conduct a written hearing so that IGUA and others can make more comprehensive submissions regarding the inappropriateness of approving the pricing provisions of the new Contracts.

Union was given an opportunity to respond to IGUA’s submissions and did so by letter dated April 28, 2006. Union noted the limitations of section 39(2), specifically that the section does not require approval of the price being charged under the storage contract, and that the price negotiated between Enbridge and Union is within the Board approved C1 Rate Schedule. Union submitted that the Board can effect any decision in NGEIR through its regulation of Union and Enbridge.

Under section 39(2) of the *Ontario Energy Board Act*, the Board can approve application for gas storage contracts without a hearing. The criteria for proceeding without a hearing under this section are not set out in the legislation. The strictest test that may arguably be applied would be the test enunciated in subsection 21(4)(b) of the Act, which states that the Board may proceed without a hearing if it determines that no person would be adversely affected in a material way by the outcome of a proceeding.

IGUA submitted that a written hearing should be held to address the issue of the appropriateness of the charges contained in the Contracts. The Board notes that the current application is made under section 39(2) of the Act, which specifies that there must be Board approval for the parties to, the period of, and the storage that is the subject of Contracts. Union is not seeking approval of the rate to be charged; nor is Enbridge seeking approval for the recovery of the charges in its rates.

Rates and charges are matters which are dealt with through rate proceedings. The Board, in its RP-1999-0017 Union decision, approved range rates for ex-franchise storage services. The charges in the Contracts do fall within the Board-approved range. To the extent the cost differs from that currently included in Enbridge's rates, that difference will be recorded in the appropriate Enbridge deferral account for later consideration by the Board. Only if the cost difference is approved will the amount be collected from ratepayers.

The Board notes that Union and Enbridge have entered into the Contracts, subject to Board approval, to replace an existing storage contract that expired on March 31, 2006. The total storage space associated with the three Contracts remains unchanged from that which is included in the single expired contract. However, the pricing has changed, from cost-based to market-based. Although the pricing is not subject to Board approval, the Board must consider whether this change in circumstances results in the potential for adverse consequences as a result of the operation of the section 39(2) parameters, namely quantity and term. The Board finds that there is no adverse impact on Enbridge's ratepayers, because the cost consequences will only flow through to ratepayers after the Board considers the relevant deferral accounts in an Enbridge rate proceeding. Therefore, on this issue the Board concludes that a hearing is not required.

The Board must also consider whether approval could have an adverse impact on the Board's ability to implement its findings in the NGEIR proceeding. Union has submitted that the operation of section 4.04 of the Contracts provides adequate protection. Under section 4.04, if the Board finds that Union should provide storage services to Enbridge at cost-based rates, then each Contract will expire at the end of the then current year. The Board finds that it cannot conclude that there is no potential adverse impact on the Board's flexibility to implement the NGEIR findings without a further examination of this clause. For this reason the Board will hold a written hearing in order to receive submissions from interested parties on the issue of whether this clause is sufficient to ensure the Board has the flexibility it needs to implement whatever findings it makes in the public interest in the course of the NGEIR proceeding. For the ease of participants, the clause in question is as follows:

4.04 If at any time prior to, or during the term of this Contract, the Ontario

Energy Board (OEB) issues a decision or makes an order as part of the Natural Gas Forum proceeding that results in Union providing, or Union only being permitted to provide, Storage Services to Shipper at cost of service based rates, then:

- (a) this Contract will terminate on the latter of March 31, 2007 or the March 31<sup>st</sup> following such decision or order; and,
- (b) the parties recognize that the OEB has certain powers that it may exercise in implementing the recovery of the difference between the price paid hereunder by Shipper and such cost of service based rates, including through the disposition of the deferral accounts that each of Union and Shipper have set up to capture the variances relating to this Contract and through requiring that Union and Shipper make certain offsets in their respective accounting records for any amounts not captured in these deferral accounts.

Having determined that a written hearing is required in this proceeding, the Board is hereby issuing a Notice of Hearing and Procedural Order No. 1.

**The Board is proceeding as expeditiously as possible in this proceeding. As such, please take notice the Board requires that parties file both (a) letters of comment or requests for observer status or requests for intervention, and (b) intervenor submissions on the same date of May 12, 2006.**

The Board may issue further Procedural Orders from time to time.

## **A. NOTICE OF HEARING**

### **How to See Union's Application**

Copies of the Application and redacted non-confidential versions of the Contracts are available for public inspection at:

- the Board's offices, and
- the offices of Union; and

- on the Board's website ([www.oeb.gov.on.ca](http://www.oeb.gov.on.ca)).

See the addresses below.

### **How to Participate**

You may participate in this proceeding in one of three ways.

1. You may send the Board a letter of comment. Your letter should include any request to make an oral presentation to the Board, and must be received by the Board **no later than May 12, 2006**
2. You may request observer status in order to receive documents issued by the Board in the proceeding. Your request must be made by letter received by the Board **no later than May 12, 2006**.
3. You may request intervenor status if you wish to actively participate in the proceeding. Your request must be made by letter of intervention received **no later than May 12, 2006**. Your letter of intervention must include a description of how you are, or may be, affected by the proceeding. If you represent a group, provide a description of the group and its membership. The Board has determined as a result of submissions made in response to the Board's Notice of Application dated April 11, 2006, that it will hold a written hearing in this matter. The Board will not hold a written hearing if a party satisfies the Board that there is good reason for holding an oral hearing. Your letter of intervention should indicate your preference for a written or oral hearing, and the reasons for that preference. The Board may order costs in this proceeding.

You must indicate in your letter of intervention whether you expect to see costs from the Applicant and the grounds for your eligibility for costs. You must provide a copy of your letter of intervention to the Applicant.

Further information on how to participate may be obtained by visiting the Board's Web site at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) or by calling our Consumer Relations Centre at 1-877-632-2727.

## **How to Contact Us**

In responding to this Notice please reference Board file number EB-2006-0074. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail address and fax number. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

For your convenience, the Board accepts letters of comment by either post or e-mail. Our e-mail address is [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca). Please include the application file reference number in the subject line of your e-mail.

Letters of intervention must be sent to the Board by regular mail to the address below. Please remember that you must send a copy of your request for intervention to the applicant at the address below.

**IF YOU DO NOT FILE A LETTER STATING YOUR WISH TO PARTICIPATE IN THIS PROCEEDING, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE OF THE PROCEEDING.**

## **Addresses for Viewing Copies of the Application**

Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4  
Attn: Peter O'Dell, Assistant Board Secretary  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656  
E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

## **Applicant**

Union Gas Limited  
P.O. Box 2001  
50 Keil Drive North  
Chatham ON  
N7M 5M1

Attn: Bryan Goulden, Manager, Regulatory Applications  
Tel: 519-436-4637  
Fax: 519-436-4641  
E-mail: [bgoulden@uniongas.com](mailto:bgoulden@uniongas.com)

**B. PROCEDURAL ORDER NO. 1**

**THE BOARD ORDERS THAT:**

1. Intervenors that wish to make submissions on the issue of whether clause 4.04 of the Contracts provides the Board with sufficient flexibility to implement whatever findings are made in the NGEIR proceeding must file those submissions along with their requests for intervenor status **no later than May 12, 2006** and must provide a copy to Union.
2. Union may file reply submissions **no later than May 17, 2006** and must provide a copy to each intervenor.
3. All filings to the Board noticed in this Procedural Order must be in the form of 10 hard copies and must be received by the Board by 4:45 p.m. on the stated dates. The Board requests that, in addition to the hard copies that are filed, all parties include a copy of their filings on disk or by e-mail in searchable PDF format.

DATED AT Toronto, May 5, 2006.

**ONTARIO ENERGY BOARD**



Peter H. O'Dell  
Assistant Board Secretary