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By Email and by Regular Mail

October 30, 2006

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
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Toronto, ON M4P 1E4

Dear Ms Walli

Multi-Year Incentive Rate Regulation
Board File No.: EB-2006-0209
Our File No.: 302701-000411

By email dated October 20, 2006, Laurie Klein requested that parties provide comments on the goals and objectives of the Incentive Regulation Plan ("IR Plan"), the parameters for that IR Plan, and on the reporting requirements during the IR Plan. The following are the preliminary positions of the Industrial Gas Users Association ("IGUA"). IGUA reserves its right, however, to consider the views of others during the consultation, as well as the views of external consultants, before finalizing its positions.

Goals and Objectives of the IR Plan

In IGUA's view, the goals and objectives of the IR Plan should be to establish, from the outset, an Incentive Regulation Mechanism that provides benefits to utility customers through sustainable efficiency gains fostered by the terms and conditions of the IR Plan, while at the same time providing the utility with the opportunity to increase earnings arising from its adoption of appropriate cost efficiencies.

The primary goal of the IR Plan should be to produce just and reasonable rates. In order for rates to be just and reasonable, the IR Plan must be fair to both the utility's shareholders and the utility's customers. In other words, the IR Plan must maintain an appropriate balance between the shareholders and the ratepayers, in which the benefits derived from the IR Plan are appropriately shared.

Encompassed in this goal is the objective that ratepayers during the IR Plan should be better off than under Cost of Service Regulation. This requires not only that the service quality be maintained during the IR Plan, but also that efficiency gains realized during the IR Plan continue into the future. Efficiencies achieved during the term of the IR Plan should not be short-term temporary gains for the shareholder. Rather, efficiencies should be achieved that are sustainable beyond the term of the IR Plan. This latter issue was recognized in the Natural Gas Forum Report:

> "The challenge is to ensure that the efficiencies do not result just in short-term shareholder benefits, but rather in sustainable improvements that benefit ratepayers through lower utility costs and lower rates."

A convincing demonstration that the parameters of a particular IR Plan will produce sustainable benefits for ratepayers is an objective which should be accorded a high priority.

Parameters of the IR Plan

IGUA is in the process of jointly retaining an expert to advise on the appropriate parameters or boundaries for an IR Plan. As such, IGUA reserves its position on the parameters of the IR Plan. That said, there are some parameters which are of concern.

First, it is critical that we start the IR Plan off from an appropriate starting base so that both the utilities and ratepayers are not disadvantaged because of something that "slips through the cracks". While the 2007 test year will be the Base Year for purposes of the multi-year IR plan, there does not appear to be a mechanism to adjust for anomalies that may occur in the 2007 revenue requirement.

For example, the Union 2007 test year cost of service was fixed through a settlement agreement this past spring, and therefore, does not reflect any adjustment that may need to be made if the OEB rules that there should be some sharing of cushion gas revenues with ratepayers. Similarly, there may be elements in the 2007 costs of service that are more of a 'one-time' cost that should not form part of the starting base. For example, EGD reflects income taxes of $106.9 million 'before tax shield', then shows a $59.2 million tax shield credit provided by interest costs, for a net income tax bill of $60.6 million. How would this tax shield credit apply over a five year IR plan?

As well, there may be costs on the other side of the equation, such as non-utility costs. For instance, how will deferral accounts for expenses, the disposition of which will not be known for some time, be cleared? Would the starting base for the IR Plan be subject to a series of redeterminations if these accounts get finalized?

Second, there needs to be some regulatory oversight with respect to major utility restructuring initiatives which might be undertaken during the IR Plan. Examples of such major restructuring initiatives include new affiliate outsourcing arrangements of significance or a conversion of the regulated utility to an income trust.

Third, the IR Plan should not provide the utilities with the ability to implement structural rate design changes, materially changing the "tilt" of demand and commodity charges in rates or materially shifting cost recovery responsibility from one rate class to another without prior Board approval. Such changes to rate design, including the allocation of costs between rate classes, should continue to require prior approval of the OEB.

Fourth, the parties to this consultation should consider whether EGD or Union can 'monetize' some of their utility assets by using them for non-utility activity, to the benefit of the shareholder only, during the term of the IR Plan. An example would be expansion of the sale of utility-dedicated storage to third party customers. IGUA will consider how best to protect the interests of ratepayers, whose business allowed the utilities to get into and expand these activities, against such behaviour. In this regard, the IR Plan may require certain checks and balances, as well as revenue sharing or a crediting mechanism, on such activity. IGUA will be seeking further guidance on this issue from its expert.

Fifth, the appropriate adjustment mechanisms to be applied are matters upon which IGUA reserves its position. IGUA recognizes that annual adjustments will be necessary to set a fair annual revenue requirement. IGUA will be seeking guidance from the intervenor expert with respect to this item.

Sixth, with respect to the term of the IR Plan, IGUA believes that the initial term should be shorter than the five years proposed by Board Staff. In this regard, there is a possibility that the IR Plan can have an initial term of 3 years with the possibility of an extension if a certain percentage of stakeholders consent to that extension.

IGUA believes that there should be an appropriate complaint mechanism, but this is something that IGUA will be seeking further guidance on from its expert.

Reporting Requirements

Transparency is critical for an IR Plan to be successful. Regular reporting is the key to transparency. The IR Plan should require the public filing of detailed information on both a quarterly and an annual basis.

TransCanada Pipelines Limited currently files publicly available quarterly and annual surveillance reports with the National Energy Board ("NEB"). These surveillance reports enable stakeholders and the Board to monitor the utility's operations in comparison with the revenues and expenditures budgeted for the test year. IGUA believes that these surveillance reports can be used to model budgeting and reporting during an IR Plan. These reports include:

(a) Income Summary;

(b) Summary of Revenue by Class of Service;

(c) Average Pipeline Rate Base;

(d) Throughput Detail;

(e) Payroll Statistics (including salaries, wages and employee benefits and the average number of employees);

(f) Deferred Balances;

(g) Performance Measures; and

(h) Intercorporate Transactions

Yours very truly

Peter C.P. Thompson, Q.C.

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c. List of Interested Parties
Peter Fournier (Industrial Gas Users Association)

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