

Was page page 1 1
E.B.R.O. 494-05

E.B.O. 177-09

**RULING ON A MOTION BY THE CORPORATION OF THE CITY OF
KITCHENER TO VARY THE E.B.R.O. 494, E.B.O. 177-09 RATE ORDER**

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By letter dated July 24, 1997, the Corporation of the City of Kitchener (“Kitchener”) filed a motion with the Ontario Energy Board (“the Board”) to vary the E.B.R.O. 494, E.B.O. 177-09 Rate Order as it relates to the M9 rate class. As evidence in support of the motion, Kitchener filed an affidavit from Mr. Edy Kovacs, General Manager of Public Works for Kitchener.

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Kitchener served the motion and the affidavit on all intervenors in the E.B.R.O. 494, E.B.O. 177-09 proceeding. Natural Resource Gas (“NRG”) sent a letter to the Board on July 31, 1997 indicating its support for the motion. Kitchener and NRG are the only two customers in the M9 rate class of Union Gas Limited (“Union”).

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Four grounds are stated as the basis for Kitchener’s motion. These grounds are:

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- a) Because the Board’s decision dated March 20, 1997 reduced the allocated costs to the M9 class, an implementation in the Final Rate Order which increased M9 revenues does not meet the test of “just and reasonable rates” required by section 19(1) of the Act;
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b) The increase in the M9 rate from the level proposed during the hearing was affected by a change in the revenue to cost ratio which differs from that approved by the Board in its decision;
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c) The increase in the M9 delivery commodity rate and the increase in the M9 revenue to cost ratio constitute a change in the rate design from that which was raised or contemplated during the hearing, contrary to section 19(6) of the Act which requires the Board’s determinations to be made on the basis of evidence adduced at the hearing; and
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d) The cost reductions resulting from the Board’s decision were not allocated to the rate classes in accordance with methods approved by the Board.

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The E.B.R.O. 494, E.B.O. 177-09 Rate Order (“the Order”) implementing the E.B.R.O. 493/494 Decision With Reasons (“the Decision”) and setting rates for Union’s 1997 test year was issued May 23, 1997. The new rates were effective as of January 1, 1997. A Vary Order was issued on June 24, 1997 to clarify the prices payable under certain rate schedules and to require provision of more appropriate customer contact information in customer notices. The E.B.R.O. 494, E.B.O. 177-09 Vary Order had no impact on rates, and has no impact on the substance of Kitchener’s motion.

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Kitchener in its motion sought a variance of the Order to reduce by \$222,000 the revenue to be collected from the M9 rate class. Kitchener alleged this revenue was added to the M9 rate class through a change in the rate design approved in the Decision. The variance would address what Kitchener considered a disproportionate allocation of the cost reductions flowing from the Board’s Decision. In the alternative, Kitchener sought an order suspending the recovery of the difference between the revenues under the Order and the revenues which Kitchener believed conformed to

the E.B.R.O. 493/494 Decision, with the difference recorded in a deferral account for subsequent disposition by the Board.

The Board has reviewed Kitchener's submission and determined that the grounds put forward by Kitchener in its motion and accompanying affidavit are insufficient to persuade the Board that the Order should be reviewed or varied. The stated grounds for the motion do not raise a question as to the correctness of the Order sufficient to require a hearing of the motion. The Board has reviewed the Decision and the Order and does not find an inconsistency of the nature alleged by Kitchener between the Decision and the Order. Rather, the Board finds that Kitchener's motion results from a misunderstanding of the Decision and the practice of the Board in setting rates.

In finalizing rates, the Board must exercise its judgement to ensure that the findings in a decision flow through into the actual rates set. As Mr. Kovacs recognizes in his affidavit at paragraph 10, some change in the level of a rate proposed in a hearing will almost always be necessary to implement the Board's decision in a manner that is fair and equitable to all rate classes. In setting just and reasonable rates, the Board is required to assess the impact of its findings as to revenue requirement, costs of service and cost allocation on all rate classes. This process requires the Board to balance competing interests and use its expert knowledge of the utility, its customers and natural gas regulatory practice. In this case, the Board is of the view that the rate set in the Order for M9 customers is within the range of just and reasonable rates that could be set based on the evidence adduced in the hearing and the Board's findings in the Decision.

In its motion Kitchener submits that the final revenue to cost ratio for the M9 class differs from that approved by the Board in the Decision. The Board did not in fact approve a specific revenue to cost ratio for the M9 class. The Board's finding on revenue to cost ratios is found at paragraph 9.15.10 of the Decision and reads:

"The Board finds that Union's revenue to cost ratios as filed in its updated evidence at the end of the oral hearing, are appropriate as a base for the determination of 1997 test year rates." (emphasis added).

A more restrictive finding would have required the use of specific revenue to cost ratios in setting rates, but such a finding was not made. The paragraph quoted above does allow for some adjustment to such ratios during final rate setting. In reviewing the Order the Board notes that the revenue to cost ratio for Union's M9 class is consistent with the Board's findings in the Decision.

SUMMARY

The grounds put forward by Kitchener in its motion are insufficient to persuade the Board that there is reason to believe that the Order should be reviewed or varied. The rate set for Union's M9 customers is just and reasonable, and the motion does not raise a question as to the correctness of the Order. Kitchener's request is based on a misunderstanding of the Board's finding with respect to revenue to cost ratios and the process followed by the Board in using its findings concerning the appropriate base revenue to cost ratios to establish the rates published in the E.B.R.O. 494, E.B.O. 177-09 Rate Order.

The Board therefore declines to hear the motion.