



**EB-2011-0038**

**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 for an order or orders amending or varying the rate or rates charged to customers as of October 1, 2011;

**BEFORE:** Ken Quesnelle  
Presiding Member

Cathy Spoel  
Member

## **DECISION AND ORDER ON DRAFT RATE ORDER**

### **Background**

Union Gas Limited (“Union”) filed an application dated April 18, 2011 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order of the Board amending or varying the rate or rates charged to customers as of October 1, 2011 in connection with the sharing of 2010 earnings under the incentive rate mechanism approved by the Board as well as final disposition of 2010 year-end deferral account and other balances (the “Application”).

The Application also requested approval for a cost allocation methodology to be used to allocate costs between Union’s regulated and unregulated businesses. The Board has assigned file number EB-2011-0038 to the Application.

## The Proceeding

A Notice of Application and Procedural Order No. 1 was issued on May 13, 2011. The Board established various procedural steps in the process, including dates for a Settlement Conference and a Settlement Proposal. By letter dated August 9, 2011, Union advised the Board that no settlement had been reached with the intervenors.

On September 19-21 2011, the Board held a hearing on all matters in this proceeding. Arguments were heard in accordance with the schedule established at the hearing and the Board issued its Decision and Order on January 20, 2012.

The Board directed Union to file a Draft Rate Order which reflected the Board's findings in its Decision. The Board directed Union to include working papers in its Draft Rate Order which provide:

- An updated margin sharing calculation for the Long-term Storage account which reflects the Board's findings on this matter;
- An updated UDC account balance which reflects the Board's findings on this matter; and
- An updated ESM amount, if necessary, which reflects the Board's findings in this Decision.

The Decision and Order set out the schedule for the filing of the Draft Rate Order and for submissions on the Draft Rate Order. The Draft Rate Order was filed on February 2, 2012. Submissions on the Draft Rate Order were to be filed on February 10, 2012.

The Canadian Manufacturers & Exporters ("CME"), London Property Management Association ("LPMA"), and the Federation of Rental-housing Providers of Ontario ("FRPO") requested that the Board establish a process for hearing argument regarding the amount that should be shared with ratepayers in Account No. 179-70 (the "Short-term Storage Account"). Board staff and Union submitted that this issue could be sufficiently addressed as part of the existing Draft Rate Order submission process.

On February 13, 2012, the Board issued Procedural Order No. 5 which granted an extension to all parties until February 14, 2012 to file comments on the Draft Rate Order.

### Comments on the Draft Rate Order

Board staff, CME, LPMA and the City of Kitchener (“Kitchener”) were of the view that the Draft Rate Order accurately reflects the Board’s findings in the proceeding, with one exception.

CME argued that the ratepayers’ share of 2012 net short-term revenues should be \$0.831 million. Board staff, LPMA, and Kitchener supported this position.

The noted parties argued that the 79% / 21% split that the Board directed Union to use to split margins on short-term storage transactions between in-franchise customers and the non-utility storage business was based on evidence at the time of the NGEIR proceeding that indicated Union could not and would not be able to link a short-term transaction to a specific slice of the storage space.

The parties noted that in this proceeding, the Board has found that the intent of the NGEIR Decision was to effect the one time separation of plant assets between Union's utility and non-utility businesses;<sup>1</sup> that Union plans resource optimization activities around non-utility storage assets only and tracks the use of its non-utility storage space for ex-franchise transactions;<sup>2</sup> and that the entire amount of utility storage above in-franchise customer needs is sold as short-term storage service and that all of the cost of this space are to be paid by in-franchise customers.<sup>3</sup>

The parties submitted that based on the above Board findings, it is no longer impossible to link a short-term transaction to a specific slice of storage space (i.e. utility or non-utility). The parties noted that the evidence on the record in this proceeding indicates that utility assets are used for short-term transactions and not for long-term transactions, while non-utility assets are used for long-term transactions and not for short-term transactions. The parties submitted that therefore there is no link between short-term transactions and non-utility assets and that this is a clear change from the way Union told the Board how its storage operations operated in the NGEIR proceeding. As a result, the parties submitted that all short-term transactions are based on utility assets and the 79% / 21% split is no longer justified.

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<sup>1</sup> See EB-2011-0038, Decision and Order, p. 6.

<sup>2</sup> See EB-2011-0038, Decision and Order, p. 16.

<sup>3</sup> See EB-2011-0038, Decision and Order, p. 20.

This position results in the sharing of 100% of the net short-term revenues in the Short-term Storage Account minus a 10% incentive payment to Union. The noted parties argued that the ratepayers' share of 2012 net short-term revenues should be increased to \$0.831 million.

In its reply submission, Union noted that the Draft Rate Order reflects the Board's findings in its Decision and should be approved as filed.

Union noted that the Short-term Storage account includes revenues from C1 Off-Peak Storage, Gas Loans, Enbridge LBA, Supplemental Balancing Services, C1 Short-Term Firm Peak Storage, and C1 Firm Short-Term Deliverability. Union indicated that the net margin for Short-Term Storage and Other Balancing Services is determined by deducting the costs incurred to provide the service from gross revenue.

Union submitted that the Board found that the credit balance in the Short-term Storage account was \$0.657 million and that the position taken by the noted parties that the ratepayers' share of 2012 net revenues in the Short-term Storage account should be \$0.831 million is procedurally misconceived. Union submitted that the preparation of a draft rate order is properly concerned with giving effect to a decision that the Board has already made, and is not the proper context for new and inventive arguments about matters not explicitly dealt with by the Board, particularly where the Board expressly dealt with the calculation of margin sharing in the Short-term Storage Account in its Decision.

Union submitted that the position taken by the parties listed above is inconsistent with existing rates. Union noted that current proceeding relates to the clearance of deferral accounts during the five-year incentive rate period. Union noted that base rates established subsequent to the NGEIR Decision reflect the 79% / 21% split in rate base between utility and non-utility. Union noted that it is currently in an incentive rate-making period and that, to the extent this issue warrants consideration at all, it should be raised in Union's rebasing proceeding (EB-2011-0210) later this year. Union indicated in argument-in-chief that it would raise this issue in the rebasing proceeding and noted that it has done so.

Union submitted that if the Board accepts the argument advanced by the noted parties and concludes that Union's ability to track its non-utility storage position is a reason to

depart from the NGEIR Decision in relation to the sharing of margin on short-term transactions, then there is no need to distinguish between short-term and long-term storage at all. Union submitted that the logical consequence is that the categories of short-term and long-term storage should be abolished. Union noted that the Board found in the current proceeding that 100 PJ shall be reserved as the utility asset. The remainder is non-utility. Therefore, Union submitted that transactions (be they optimization or otherwise) that utilize only non-utility storage should be 100% to the account of the shareholder regardless of the length of the transaction. Equally, transactions which utilize the utility storage asset (again, regardless of the length of the transaction) should be to the account of ratepayers, subject only to the 10% incentive payment to the shareholder.

### **Board Findings**

The Board finds that the ratepayers' share of 2012 net short-term revenues should be \$0.831 million.

The Board agrees with CME, LPMA, Kitchener, and Board staff that the outcome of the findings in its Decision is the establishment of the ratepayer credit in the Short-term Storage Account of \$0.831 million.

The Board's findings in the current proceeding effectively fix 100 PJs as the utility asset.<sup>4</sup> In addition, the Board's findings are informed by Union's ability to track what storage assets are being used for each type of storage transaction<sup>5</sup> and state that the entire amount of utility storage above in-franchise requirements is available for sale as short-term storage services (and all costs of this space is to be paid for by in-franchise customers).<sup>6</sup>

Although the Board was not explicit in its findings that \$0.831 million is the amount that should be shared with ratepayers, it is a clear outcome of its findings. The Board's findings in this proceeding result in the sharing with ratepayers of all net revenues (minus a 10% incentive payment as set out in the NGEIR Decision<sup>7</sup>) in the Short-term Storage Account as it is a utility asset which is supporting these transactions.

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<sup>4</sup> See EB-2011-0038, Decision and Order at p.6.

<sup>5</sup> See EB-2011-0038, Decision and Order at p. 16.

<sup>6</sup> See EB-2011-0038, Decision and Order at pp. 20-21.

<sup>7</sup> See EB-2005-0551, NGEIR Decision with Reasons at p.103.

The Board does not agree with Union's position that addressing this issue as part of the Draft Rate Order process is procedurally misconceived. This outcome is directly related to the Board's findings in its Decision and Order.

The Board notes that the background section on page 18 of the Board's Decision and Order contains a paragraph that describes a calculation used to derive the \$0.657 credit balance. This paragraph is a description of Union's evidence and is footnoted as such. The Board accepts that additional clarity with regard to the context of the paragraph may have avoided the confusion that has apparently arisen.

The Board did not include the specific amount to be shared with ratepayers in its findings related to the Short-term Storage Account, however the Board has found as part of this Draft Rate Order process that the amount of \$0.831 million is a clear outcome of its findings in the Decision and Order.

Union has submitted that accepting the argument advanced by CME, LPMA and others leads to the conclusion that there is no need to distinguish between short-term and long-term storage at all. The Board considers that if there is a need to deal with this issue it would be more properly addressed as part of Union's rebasing application

### **Implementation**

The Board directs Union to file a revised Draft Rate Order which reflects the Board's findings in this Decision. The Board will review the revised Draft Rate Order to confirm that all the necessary changes have been made and will issue a Final Rate Order in due course. As directed in the Decision and Order on January 20, 2012, the Board will seek to have the resulting rate impact of this Decision implemented on April 1, 2012 to align with other rate changes expected to result from the Quarterly Rate Adjustment Mechanism ("QRAM") proceeding.

### **Cost Awards**

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will issue a Decision on Cost Awards after the steps set out below have been completed.

**THE BOARD THEREFORE ORDERS THAT:**

1. Union shall file a Draft Rate Order reflecting the Board's findings in this proceeding on March 7, 2012.
2. Eligible intervenors shall file with the Board and forward to Union their respective cost claims within 14 days of the date of this Decision.
3. Union shall file with the Board and forward to the intervenors any objections to the claimed costs of the intervenors within 21 days from the date of this Decision.
4. If Union objects to the intervenor costs, intervenors shall file with the Board and forward to Union any responses to any objections for cost claims within 28 days of the date of this Decision.
5. Union shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number EB-2011-0038, be made through the Board's web portal at [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your document to the [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

All parties must also provide the Case Manager, Lawrie Gluck, [Lawrie.gluck@ontarioenergyboard.ca](mailto:Lawrie.gluck@ontarioenergyboard.ca) with an electronic copy of all comments and correspondence related to this case.

**DATED** at Toronto, February 29, 2012

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary